EMPLOYMENT TRIBUNALS

Claimant:	**Mr. Ashley Wilson**
Respondent:	**Chief Constable of Nottinghamshire Police**
Heard at:	**Nottingham**
On:	**13th & 14th October 2016 (reading days) &** **17th October 2016** **6th March 2017 (reading day)** **9th, 10th, 13th, 14th, 15th, 16th, 17th, 20th March 2017** **21st March 2017 (in Chambers)** **22nd March 2017**
Before:	**Employment Judge Heap**
Members:	**Mr. M Pavey** **Mr. A O'Dwyer**
Representation	
Claimant:	**Miss. A Niaz-Dickinson – Counsel**
Respondent:	**Mr. A Roberts - Counsel**

JUDGMENT having been given orally at the hearing, written reasons are now given in accordance with Rule 62(2) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013:

RESERVED REASONS

BACKGROUND & THE ISSUES

1. This claim is brought by Mr. Ashley Wilson (hereinafter referred to as "The Claimant") against the Chief Constable of Nottinghamshire Police (hereinafter referred to as "The Respondent" or the "Respondent Force"). The Claimant remains a serving officer at Detective Inspector level within the Respondent Force.

2. The Claimant presented his claim to the Employment Tribunal by way of an ET1 Claim Form received on 25th January 2016. The complaints pursued by the Claimant at the stage of presentation of that Claim Form were

discrimination arising from disability; indirect discrimination; a failure to make reasonable adjustments and victimisation. Those complaints all relied upon the protected characteristic of disability. The disabilities relied on for those purposes were diabetes and high blood pressure.

3. The Claimant's claims were resisted in their entirety by the Respondent by way of an ET3 Response submitted and received by the Employment Tribunal on 24th February 2016.

4. The claim came before Employment Judge Milgate at a Preliminary hearing for the purposes of case management on 29th March 2016. Employment Judge Milgate made a number of Orders relating to the further particularisation of the claim and she also noted that the Respondent conceded that the Claimant was a disabled person within the meaning of Section 6 Equality Act 2010 on account of both medical conditions upon which he relied. However, it was not accepted (and continued to be disputed before us) that the Respondent had any knowledge of the Claimant's disability (or any substantial disadvantage arising from it) for certain periods to which his claim related. We say more about that in our findings of fact below where necessary.

5. It should be noted that during the course of the proceedings, the Claimant withdrew the complaints of victimisation and of indirect discrimination. Also abandoned were some aspects of the claim for a failure to make reasonable adjustments. We therefore say no more about those abandoned complaints and have set out the details of those matters which remained live before us at paragraphs seven to ten inclusive below.

6. However, we would wish to observe here that we have made no adverse finding or taken any negative view of the Claimant as a result of the withdrawal of the other complaints that are no longer before us and we have dealt with each of the remaining complaints on their own merits and based upon the evidence before us.

THE CLAIMANT'S POSITION

7. The basis of the complaint of discrimination arising from disability was that it was contended by the Claimant that the following sixteen acts had occurred and which amounted to discrimination arising from disability (see pages 99B to 99D of the hearing bundle):

    a. That on 23rd June 2015 it was suggested in a meeting with Detective Superintendant Rob Griffin that reasonable adjustments could be made to the EMSOU MC role for the Claimant to only have to travel to West Bridgford once or twice per week but that that was reneged upon by posting the Claimant to EMSOU MC without adjustments;

    b. That on 8th July 2015 the Respondent received a report from Dr Booth (the Force Occupational Health Adviser) which confirmed that the Claimant was operationally fit to carry out all aspects of his role but which stated that a greatly increased commute time might affect his energy levels with a "knock on" effect on role capability.

Without consultation the Claimant was informed that he was not going to be posted to EMSOU and "that was that";

c. That on 13th August 2015 the Claimant was informed that he would be replaced in his existing post at Bassetlaw, Newark and Sherwood by Temporary Detective Inspector Jamie Hill who had significantly less experience and qualifications than the Claimant;

d. That on 13th August 2015 the Claimant was informed that Temporary Detective Inspector Dave Bola would be posted to the violence team at Mansfield despite the Claimant being significantly more experienced and qualified as well as equally capable of carrying out that role;

e. That on 28th August 2015 the Claimant was informed that he was being posted temporarily to the Telephone Investigations Bureau;

f. That on 1st September 2015 the Claimant was informed that his posting to the Telephone Investigations Bureau was for a period of three months on the basis that it was a substantive Detective Inspector post that was vacant and suitable bearing in mind the need to accommodate reasonable adjustments "for the individual";

g. That on 28th August 2015 the Claimant became aware that Detective Inspector Brian Foster had been given the opportunity to "act up" in order for a vacancy to be created for the Claimant at the Telephone Investigation Bureau;

h. That on 3rd September 2015 the Respondent appointed Detective Sergeant Becky Hodgman (who was less qualified than the Claimant and not fully qualified to Inspector rank in order to perform acting duties) as Acting Detective Inspector for Mansfield despite the Claimant being able to fulfil that role without any adjustments;

i. That on 7th September 2015 the Respondent stated that it had been advised that an increased commute time and *associated additional working travel* would have an impact on the Claimant's ability to perform his role despite that not being the advice given by Dr. Booth. The Claimant was also informed that on that mistaken basis the EMSOU role and all other Detective Inspector roles across the Respondent Force were found to be inappropriate for him due to those travel requirements;

j. That a review of alternative Detective Inspector posts was recommended by the Respondent but no such review was ever carried out;

k. That on 4th November 2015 the Respondent gave little or no consideration to making reasonable adjustments to the EMSOU MC role. The Respondent also refused to accommodate the Claimant stating words along the lines of "what does it say to everyone else who didn't get their first choice if he is accommodated?";

l. That on 4th November 2015 the Claimant asked why he could not carry out his previous post which had been taken by Acting Detective Inspector Jamie Hill but was incorrectly/misleadingly informed that his previous role did not exist[1];

m. That on 10th November 2015 the Claimant's grievance was rejected on the grounds that it was unsubstantiated;

n. That on 1st February 2016 the Claimant was invited to a meeting under the first stage of the Police (Performance) Regulations 2012 to address the issue of his unsatisfactory attendance under the Unsatisfactory Attendance Procedure;

o. That on 11th March 2016 a written improvement notice was served on the Claimant informing him that if his attendance did not improve within a 12 month period he would progress to the next stage of the attendance management policy and procedure. The Claimant was reminded that the procedure may result in his dismissal;

p. That on 20th April 2016 the Claimant submitted an appeal against the finding of unsatisfactory attendance and the terms of the written improvement notice on 30th March 2016, an appeal meeting took place on 18th April and on 20th April it was confirmed that his appeal was unsuccessful.

8. The Claimant set out Further and Better Particulars of the claim under Section 15 EqA 2010 (see page 99DD and 99EE of the hearing bundle) and those matters have also been helpfully expanded upon in written and oral submissions by Miss. Niaz-Dickinson on behalf of the Claimant. We have not set out within these Reasons in detail the submissions made on behalf of the Claimant or the Respondent as those are comprehensively dealt with in their respective skeleton arguments, but the parties can be assured that we have taken all matters into account before reaching our decision in these proceedings.

9. The Claimant further contended that there had been a failure to make reasonable adjustments in that it was said that he had been placed at a substantial disadvantage by the requirement to "book on" to the station to which they are posted. This was the provision, criterion or practice ("PCP") relied upon. That PCP was said to place the Claimant at a substantial disadvantage on the basis that an increased commute time would lead to a drop in his energy levels with a consequent result of causing him overwhelming fatigue.

10. The Claimant had also identified the reasonable adjustments that it was said should have been made by the Respondent to ameliorate the disadvantage and these were as follows (see page 99BB and 99CC of the hearing bundle):

a. To permit the Claimant to "book on" at an alternative police station for three quarters of his five weekly shifts before travelling on to West Bridgford to carry out the EMSOU MC role;

[1] It is common ground that this allegation arises from a meeting between Inspector Sam Wilson and Detective Chief Superintendant Helen Jebb at which the Claimant himself was not present.

b. To permit the Claimant to remain in his previous County CID role based at Worksop and/or Newark in place of Temporary Detective Inspector Jamie Hill;
c. To post the Claimant to a Detective Inspector post at Mansfield local CID;
d. To post the Claimant to a newly created Violence Unit Detective Inspector post based at Mansfield Police Station.

11. The Claimant had contended originally that a further reasonable adjustment in respect of the above PCP would be to permit him to carry out the EMSOU MC role from an alternative location such as Ollerton, Retford, Newark, Worksop or Mansfield but that contention was abandoned during the course of the hearing in light of the evidence that had been given on behalf of the Respondent. It therefore no longer remained a live issue for us to determine.

12. Other complaints of a failure to make reasonable adjustments that had been pursued were also abandoned by the Claimant during the course of the proceedings and therefore we say no more about those matters as they are no longer live complaints that we are required to determine.

THE RESPONDENT'S POSITION

13. The Respondent denied that any of the acts relied upon by the Claimant amounted to discrimination arising from disability but, should the Claimant be found to have been subjected to unfavourable treatment as a result of something arising from disability, then the Respondent relied upon a justification defence.

14. The Respondent relied upon the legitimate aims set out immediately below (see pages 99JJ of the hearing bundle) in respect of that justification defence and contended that any action taken was a proportionate means of achieving the same. The legitimate aims relied upon for these purposes were:

a. Of allocating resources available to the Respondent, (including constables), so as to provide an effective service to the public;
b. Of providing as effective a service to the public as possible with the resources available to the Respondent;
c. Of managing resources to accommodate all operational requirements of the Respondent Force;
d. Of providing proper management and development to all Constables; and
e. Of managing sickness absence.

15. Insofar as the remaining complaint of a failure to make reasonable adjustments was concerned, the Respondent denied that it had failed to make reasonable adjustments for the Claimant and contended that an appropriate adjustment had been made to ameliorate the effects of the PCP relied upon by way of allocating the Claimant a temporary role in the Telephone Investigations Bureau and later in Public Protection. The Claimant's claim in this regard, it was said by the Respondent, amounted to him seeking to cherry pick a role when suitable and appropriate adjustments had already been made.

THE HEARING, WITNESSES & CREDIBILITY

16. The claim first came before us for hearing on 13th October 2016. For reasons set out in the Tribunal's Order sent to the parties on 18th October 2016, that hearing was adjourned. It was agreed that a longer listing was required and arrangements were made for the hearing to resume on 6th March 2017 for an 11 day hearing, including a further day reading in on the first day.

17. Prior to the adjournment of the first hearing, the Claimant withdrew his complaints of indirect discrimination and victimisation in their entirety. Those complaints were dismissed on withdrawal in a Judgment sent to the parties on 18th October 2016.

18. During the course of the hearing, we heard evidence from the Claimant and from his Police Federation Representative, Sam Wilson, on his behalf. We also heard evidence from the following individuals on behalf of the Respondent:

    a. Detective Inspector Andy Gowan – the Claimant's former line manager;
    b. Detective Superintendant Robert Griffin – also a former line manager of the Claimant;
    c. Former Detective Chief Superintendant Helen Jebb – the officer tasked with dealing with posting decisions and who dealt with the Claimant's detective inspector posting;
    d. Detective Chief Inspector Brian Foster – the Claimant's line manager within the Telephone Investigations Bureau ("TIB");
    e. James Woodthorpe – Human Resources officer;
    f. Chief Superintendant Steven Cooper – the officer who dealt with the Claimant's first stage grievance;
    g. Superintendant Paul Burrows – the officer who dealt with the Claimant's appeal under the Unsatisfactory Attendance Policy ("UAP")
    h. Detective Chief Inspector Hayley Williams – officer based in the East Midlands Special Operations Unit ("EMSOU").

19. We were also furnished with a witness statement from Detective Inspector Andrew Bateman. However, Mr. Roberts elected not to call Mr. Bateman on the basis that his evidence would not add to the case given earlier evidence heard. We have therefore not taken Mr. Bateman's statement into account in our determination of the claim and, indeed, we are satisfied that there was no need for us to do so on the basis of the other evidence before us.

20. We make our observations in relation to matters of credibility in relation to the witnesses from whom we have heard below.

21. In addition to the witness evidence that we have heard, we have also paid reference to the documentation to which we have been taken during the course of the proceedings and also to the helpful oral and written submissions made by both Counsel.

22. Despite the parties having assisted the Tribunal with regard to timetabling, a number of events resulted in there being insufficient time within even the

extended 11 day listing to allow the Tribunal to give an ex tempore Judgment and reasons. However, as we have already observed, the Claimant remains a serving officer within the Respondent Force. There continues to therefore be an ongoing relationship between the parties and a desire, therefore, on the part of both of them to know the outcome of this claim in order to be able to move forward. Whilst time therefore did not afford us the ability to provide full reasons, we agreed at the request and agreement of the parties to take the relatively unusual, but in this instance necessary, step of delivering our Judgment on the claim but reserving our reasons for that Judgment.

23. As embodied within the Judgment sent to the parties after the hearing, our decision was to dismiss the claim in its entirety. We therefore now take the opportunity to set out the full reasons for our having done so.

24. One issue that has invariably informed our findings in respect of the complaints before us is the matter of credibility and we should therefore say a word about that matter now.

25. We begin with the Claimant whom we found to be an entirely unsatisfactory witness. Indeed, we did not consider that the submission of Mr. Roberts that the Claimant was near enough the worst witness that he had ever seen to be at all unreasonable given what we had ourselves observed during his evidence.

26. The Claimant was, throughout the vast majority if not all of his evidence, evasive and lacking in candour. When faced with difficult cross examination questions, the obvious answer to which would be damaging to his case, the Claimant adopted either a somewhat hazy recollection of matters (in contrast to other less difficult areas of his evidence) or he simply elected not to answer the question put to him and to answer some other question entirely. That was despite it being made clear to the Claimant by the Tribunal at the outset that he must answer the questions put and, indeed, the Claimant having to be reminded of that by interventions by the Tribunal on a number of occasions during his evidence.

27. When, not unreasonably given his style of dealing with cross examination, pushed by Mr. Roberts to answer the question put it was also a feature of the Claimant's evidence to refuse to concede any point at all even when it was as plain as a pikestaff that the point being made should be one that required such a concession. A particular hallmark of the Claimant's evidence in that regard was that he would simply adopt a stock answer of "*if you say so"* when asked a question by Mr. Roberts that he did not want, or found difficult, to answer.

28. This had the result that the Claimant had to be asked questions multiple times before he would eventually, and still extremely reluctantly, accept the obvious.

29. In short, we found the Claimant's evidence to be nothing short of woeful, a matter entirely reasonably summarised by Mr. Roberts in his submissions. Whilst Ms. Niaz-Dickinson reluctantly had to accept that the Claimant had been somewhat evasive (a matter which is a significant understatement as to his performance in our view) she asks us to take into account the fact that he was consistent in his evidence. Whilst that is true to some degree, that is in

fact only because of his persistent refusal to either answer the question put (and instead to embark upon a reiteration of his case or evidence that we had already heard, sometimes several times) or his dogmatic refusal to accept any point put to him, no matter how reasonable the proposition.

30. Ms. Niaz-Dickinson also points to the length of time that the Claimant was cross examined and that that might account for his performance. We do not agree. The length of time that cross examination continued for was entirely a matter of the Claimant's own making given the issues that we have identified above. Moreover, as a reasonable adjustment we implemented a system of regular breaks in evidence and also made it clear to the Claimant that he could and should request breaks outside those which had already been scheduled if he required one. The Claimant availed himself of that opportunity and we do not consider that there is anything in the time frame which he was cross examined that affected his performance as a witness.

31. We have considered whether that performance as a witness might be due to nerves or the stress of proceedings as we are alive to the fact that witnesses, and parties particularly, can often perform badly under cross examination due to the unfamiliar and stressful circumstances. We also take into account here that the Claimant has suffered from mental health issues in the past although we should note that it has not been suggested to us that there were any health issues at play as to his performance and we did not observe for ourselves any matters that gave us cause for concern in that regard.

32. However, we are satisfied that such matters did not affect the Claimant's performance as a witness in this case. The Claimant exhibited no sign of nerves at all and at times adopted a somewhat strident approach when under cross examination. We have already identified above one particular example in that regard of adopting the term "if you say so" as a response to questions that he did not wish to answer.

33. Moreover, the Claimant is an experienced and relatively senior police officer of some considerable years standing operating at Detective Inspector level. He is as such used to the Court process and has rather more affinity with the process of giving evidence than the majority of litigants and witnesses who appear before the Tribunal.

34. We are therefore satisfied that the Claimant's poor performance as a witness was not born from nerves, stress and/or inexperience or unfamiliarity with the process and we simply did not accept much of the evidence that he gave to us.

35. Invariably, as a result of the issues above, and his performance as a witness generally, we formed a negative view of the Claimant's evidence and the credibility of what he was telling the Tribunal. We simply did not find him credible, reliable or candid in much of the account that he gave to us. Whilst Ms. Niaz-Dickinson makes the point in her closing submissions that the Claimant did not deviate from his case or witness statement, as we have already observed that was due to his approach of simply refusing to deal properly with difficult cross examination questions and repeating aspects of his case which often did not relate to the question that he was being asked.

36. As a result, therefore, unless we have expressly said otherwise we have preferred the evidence of the Respondent's witnesses whom we found on the whole to be much more candid, open to the possibility of an alternative view point and accepting that, in some areas, things could perhaps have been done better. That acceptance was in stark contrast to the Claimant who steadfastly refused to accept that there might be another view point or explanation, even where that was otherwise entirely obvious for all to see.

37. Whilst we have therefore assessed the evidence of each of the Respondent's witnesses for ourselves and entirely separately from our views as to the credibility of the Claimant's evidence, we have generally preferred the evidence of the Respondent. Where we have not, we have set that out within these reasons.

38. We shall say a word here about the other witnesses from whom we have heard and begin that by mention of the Claimant's witness, Inspector Sam Wilson, who assisted the Claimant in her capacity as Police Federation Representative with many events to which the claim relates. We considered Inspector. Wilson to be an essentially honest witness but ultimately one whose memory may well have been tainted by her close relationship with the Claimant and his wife (although we should note that despite sharing a surname, they are not related) and her dedication to supporting him in this claim. We consider it more likely than not that that relationship coloured Inspector. Wilson's opinion and thus in turn her recollection of events. In short, it seems to us that she simply accepted what the Claimant told her without question. She is clearly his keen supporter – being close friends with both him and his wife and indeed living next door to him - and her evidence before us was such that she had no reason to doubt what the Claimant told her and that she essentially simply accepted it as being correct. We considered her to be essentially honest in account of what she believed had occurred but ultimately whether those recollections were accurate or ones that had been imprinted over the course of time from her continued involvement with the Claimant, his wife and this claim is another matter entirely. Ms. Wilson clearly found it difficult to be detached and impartial and we were accordingly hesitant in accepting some elements of her evidence as being reliable.

39. We were satisfied that the evidence of Andy Gowan, Paul Burrows, Steven Cooper and James Woodthorpe was straightforward and to the point. None gave us any areas of concern as to credibility or the reliability of the evidence that they gave.

40. Similarly, we had no concerns with regard to the evidence that we heard from Detective Chief Inspector Brian Foster. He was very complimentary about the Claimant's performance as an officer in the Respondent Force and we viewed Detective Inspector Foster as an honest, straightforward and reliable witness who highlighted no areas of concern in the evidence that he gave to the Tribunal.

41. We were also satisfied with the evidence that we heard from Detective Chief Inspector Hayley Williams. We considered her to be an honest and straightforward witness. She was willing to see things from both sides, again in stark contrast to the Claimant. Ultimately, we had no concerns over the evidence that she gave to us.

42. Similarly, we were particularly impressed with the evidence of Detective Superintendant Rob Griffin and indeed we found him to be an extremely credible witness. Again, he was very complimentary about the Claimant. He made concessions when such were sensible and proper but remained consistent on the key areas of disagreement with the Claimant's case.

43. We considered Detective Superintendant Griffin to be an extremely straightforward witness who was firm and consistent on central issues. Ms. Niaz-Dickinson's criticisms of Mr. Griffin as made in her closing submissions are in our view not well founded and, indeed, she was not able to articulate what particular concerns she had over his evidence other than the fact that he would not agree with her on the central issues. On the points highlighted by Ms. Niaz-Dickinson-Dickinson in her closing submissions, we are satisfied having consulted again our notes of cross examination that all questions were answered by Mr. Griffin. The fact that he did not agree with her is not to the point – he gave his answers. The matters relied upon in this regard by Ms. Niaz-Dickinson-Dickinson were not obvious points for concession, unlike the points highlighted by Mr. Roberts as to the Claimant's refusal to concede even the most clear cut point until he had no alternative but to do so. We therefore remained impressed with the evidence of Mr. Griffin and considered him to be a credible and reliable witness.

44. The same could not be said of now former Detective Chief Superintendant Helen Jebb, however, with regard to the reliability of the account that she gave to the Tribunal. Akin to Ms. Wilson, we considered Mrs. Jebb to be an essentially honest witness but a clearly rather poor historian. Her desire to provide an answer to questions asked, even when her recall was clearly somewhat poor, had the result that her evidence, if essentially honest, was somewhat less than reliable to say the least.

45. We do note in this regard that Mrs. Jebb retired from the Respondent Force in December 2016. We do not doubt as a result that these proceedings, and the events with which her evidence was concerned, have perhaps diminished in their importance and with that their clarity. We have little doubt that they are not matters that continue to be at the forefront of Mrs. Jebb's mind following her retirement. She was seeking to recall events against that background and from some considerable time ago and it was clear to us that whilst she clearly could not recall matters with anything approaching accuracy, she was nevertheless determined to provide an answer to questions asked. Mrs. Jebb needed on occasions the prompt of consulting her witness statement to deal with questions put and we consider that whilst essentially an honest account, hers was not one which was in all likelihood providing an accurate recall of events. As such, we viewed her evidence against that background and considered it to have the hallmarks of being unreliable.

THE LAW

46. It is necessary before turning to our findings of fact, as set out below, to say a little about the law to be applied to claims of this nature.

Equality Act 2010

47. The remaining complaints brought by the Claimant are of discrimination arising from disability and a failure to make reasonable adjustments. The relevant statutory provisions dealing with those complaints are contained within Sections 15, 20, 21 and 39 Equality Act 2010 (EqA 2010).

EHCR Code

48. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

49. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

(1) An employer (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(2)An employer (A) must not discriminate against an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(3)An employer (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(4)An employer (A) must not victimise an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(5)A duty to make reasonable adjustments applies to an employer.

(6)Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a)unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b)if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7)In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a)by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b)by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

Discrimination arising from Disability

50. Section 15 deals with the question of discrimination arising from disability and provides as follows:-

"(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."

51. There is no requirement in a Section 15 complaint for there to be identification of a comparator. All that is required is that the Claimant is able to show unfavourable treatment, in that regard some detriment, and further that there are facts from which it can again be established that that unfavourable treatment was in consequence of something arising from disability. The Code assists in the interpretation of the term "unfavourable" treatment and provides that it requires the employee to have been "put at a disadvantage" (paragraph 5.7 of The Code).

52. It is not sufficient, however, to simply show that a person is disabled and receives unfavourable treatment, that unfavourable treatment must be in consequence of something arising from the disability.

53. Equally, the unfavourable treatment in question is not the disability itself but must arise in consequence of the employee's disability – such as disability related sickness absence. This means that there must be a connection

between whatever led to the unfavourable treatment and the disability (paragraph 5.8 of The Code) and which can be referred to as the "causation" question.

54. The Employment Appeal Tribunal provided a useful analysis with regard to the causation question in the context of a Section 15 EqA 2010 claim in **Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305**. **Weerasinghe** sets out a two-stage approach and that, firstly, there must be something arising in consequence of the disability and secondly, the unfavourable treatment must be "because of" that "something".

Failure to make reasonable adjustments

55. Section 20 EqA 2010 provides that:

> *"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.*
>
> *(4)The second requirement is a requirement, where a physical feature 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.*
>
> *(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.*
>
> *(6)Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.*
>
> *(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.*

(8)A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9)In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a)removing the physical feature in question,

(b)altering it, or

(c)providing a reasonable means of avoiding it.

(10)A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a)a feature arising from the design or construction of a building,

(b)a feature of an approach to, exit from or access to a building,

(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d)any other physical element or quality.

(11)A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12)A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13)The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

56. Section 21 provides that:

"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."

57. It will therefore amount to discrimination for an employer to fail to comply with a duty to make reasonable adjustments imposed upon them in relation to that disabled person (paragraph 6.4 of The Code).

58. However, the duty to make reasonable adjustments will only arise where a disabled person is placed at a substantial disadvantage by:

- An employer's provision, criterion or practice ("PCP").
- A physical feature of the employer's premises.
- An employer's failure to provide an auxiliary aid.

59. Where the claim relates to a PCP, this "should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions" imposed by the employer (paragraph 6.10 of The Code).

60. Matters resulting from ineptitude or oversight on the part of the employer will not, however, amount to a PCP (see ***Newcastle Upon Tyne Hospitals NHS Foundation Trust v Bagley UK EAT 0417/11***).

61. The duty to make reasonable adjustments only arises insofar as an employer is required to take such steps *as it is reasonable to take* (our emphasis) in order to avoid the substantial disadvantage to the disabled person. A Tribunal is required to take into account matters such as whether the adjustment would have ameliorated the disabled person's disadvantage, the cost of the adjustment in the light of the employer's financial resources, and the disruption that the adjustment would have had on the employer's activities.

FINDINGS OF FACT

62. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of this claim. We have inevitably, therefore, not made findings on each and every area where the parties are in dispute with each other if that is not necessary for the proper determination of the remaining complaints before us.

63. The Claimant is a long standing Police Officer in the Respondent Force, having commenced his service in this regard on 13th February 1989. He currently holds the rank of Detective Inspector, having been promoted to that rank in June 2009.

64. The Claimant suffers from Type 2 Diabetes and also high blood pressure. The latter condition was diagnosed in or around 2004 and the former in or around 2008. The Claimant did not at that time disclose to the Respondent that he had been diagnosed with either of those conditions. He had only told Inspector Sam Wilson, a fellow officer, close friend, next door neighbour and his Federation Representative, about the medical conditions which he had been diagnosed with. Inspector Sam Wilson was aware that he had not disclosed those conditions to the Respondent and she likewise said nothing about them to anyone else.

65. The Claimant's position is that he did not disclose his medical conditions to the Respondent because he feared what he termed as reprisals or victimisation. Although it is possible that the Claimant may hold that view or have formed that perception, ultimately there is nothing at all before us to suggest that that perception was based on anything tangible at all. Indeed, we find it surprising that nothing at all was mentioned in that regard to seek to substantiate what is a serious allegation of, in effect, institutional discrimination against those who are disabled within the Respondent Force. That is particularly surprising given the detail and length of the Claimant's witness statement, running as it does to some 69 closely typed pages. If, therefore, the Claimant did genuinely hold that perception, then there is nothing before us to suggest that it was one that was well founded.

66. However, it is nevertheless common ground that at that time at least, and for whatever reason, the Claimant did not disclose to the Respondent that he had been diagnosed with either high blood pressure or diabetes.

67. In May/June 2015 the Respondent carried out a restructuring exercise of the Criminal Investigation Department ("CID") within the Force which was to come into effect on 1st September of that year. The County CID was, at that time, where the Claimant was based as a Detective Inspector. He was allocated to the Bassetlaw, Newark and Sherwood local area and operated mainly out of Worksop police station. In this regard, the local CID operations fell into three areas – Mansfield/Ashfield; Bassetlaw, Newark and Sherwood (known as "BNS") and "South Notts". Each of those local areas had a Detective Chief Inspector and two Detective Inspectors allocated to them prior to the restructure. The Claimant was allocated to BNS along with Temporary Detective Inspector Andy Hill who operated mainly out of Newark/Sherwood police station.

68. However, the restructuring was to take effect from 1st September 2015 and would see a new structure in place in terms of the resourcing and allocation of members of the CID team. The structure was to be revised so that post 1st September 2015 there would be a reduction from three Detective Chief Inspectors ("DCI's") to two DCI's. Thereafter, one DCI would have responsibility for the three local areas referred to above (namely Mansfield/Ashfield; BNS and South Notts) whilst the other would deal with a newly created "Violence Unit". As indicated above, each of the three DCI's prior to September 2015 had had two Detective Inspectors ("DI's") allocated to them (i.e. a cadre of six DI's) but post the restructure, that would be reduced to four DI's in total. Again, three of those DI's would be allocated to the "local CID team" (one each to Mansfield/Ashfield; BNS and South Notts) and the remaining DI to the newly created Violence Unit.

69. Both before and after the restructure, the CID team was headed up by Detective Superintendant Rob Griffin. The restructure arrangements are shown at page 666 of the hearing bundle and we are satisfied that those are accurate, save as for an error which occurs in respect of the Claimant's positioning pre-September 2015 which should reflect the fact that he was based at BNS.

70. The restructure of the CID came at a similar time to a review of senior postings within the Respondent Force which was carried out by the Senior

Detectives Panel ("SDP"). The SDP were responsible for allocating DCI and DI resources within the Crime and Intelligence division of the Respondent Force. That included those within the CID team. The SDP had been introduced in September 2013 and was intended to be an annual process of review. The purpose of the SDP was to ensure succession planning and that adequate resource was in place in key areas of risk within the Respondent Forces' operations. It was introduced as a result of a report undertaken by then Detective Chief Superintendant Helen Jebb. That report appears at page 100 of the hearing bundle.

71. As part of the SDP process, senior detectives were asked to complete a profile detailing their aspirations for their career. The profile preferenced the divisions, roles and areas that an officer was looking for in terms of their career progression, which would then be taken into account by the SDP when considering where DCI's and DI's should be allocated. However, we accept that the preferencing was just that and ultimately it was a matter for the SDP to decide where an officer should be placed. Whilst they would try to allocate according to preference, we accept that that was not always possible and the SDP ultimately had to allocate resources where they were needed and according to risk to the public and their strategic needs. We have set out below details of some officers who gave a preference but who were ultimately posted elsewhere other than where they had indicated that they wished to go.

72. Prior to the SDP determining allocations, the Claimant completed a preferencing form. That form appears at page 172 of the hearing bundle and it set out that he aspired to be promoted to DCI level, to complete the Senior Investigating Officers Course ("SIO Course") and to work in homicide (i.e. dealing with murder cases) based in the north of the county. Homicide investigation is undertaken within a division of the East Midlands Special Operations Unit ("EMSOU") which is an inter-Force collaboration dealing with the investigation of certain types of crime. One such division, EMSOU MC (major crime) dealt with the investigation of homicide.

73. However, whilst the Claimant indicated a preference for a role in the north of the County, he also said this:

"Geographical positioning is important to me at this stage of my career, however this needs to be balanced with the potential for any promotion opportunities" (page 177 of the hearing bundle).

74. What the Claimant did not say at that time was that he wanted a position in the north of the county in order to limit the amount of his commute time as an increased commute would negatively affect his energy levels as a result of his disabilities. Indeed, the Claimant did not disclose his disability or make any reference to the impact that the same would have on him in terms of the location of his posting at this stage.

EMSOU

75. As set out above, EMSOU is the East Midlands Special Operations Unit, which is a collaboration of five regional forces – namely Nottinghamshire, Lincolnshire, Derbyshire, Northamptonshire and Leicestershire. There were

two available roles in EMSOU which had to be allocated to DI's by the SDP in the annual review with which we are concerned.

76. There are two divisions within EMSOU – EMSOU MC which deals with major crime and EMSOU SOC which deals with serious organised crime. The investigation of homicide takes place within EMSOU MC. As indicated above, the Claimant had indicated on his preferencing form a desire to work in homicide and that investigation was only undertaken within EMSOU MC.

77. It is now common ground that at the time that the SDP posting decisions were made, EMSOU MC only operated from West Bridgford police station, which is situated in the South of the County. However, at the time that the Claimant completed his preferencing form, he believed that there were other EMSOU MC bases such as St Ann's and also in Grantham. It is now accepted on behalf of the Claimant, however, that he was mistaken about that and that the only base at the time with which we are concerned was at West Bridgford.

Posting decisions and the posting of the Claimant to EMSOU

78. The SDP made their determination regarding posting decisions in or around June 2015. The SDP was led by Detective Chief Superintendant ("DCS") Helen Jebb who made the decisions on postings which were then ratified – or as she put it in her evidence rubber stamped – by the Assistant Chief Constable. In dealing with the posting decisions, Mrs. Jebb heard from various heads of the investigative functions as to the needs of their particular areas and those within their control at that time. However, we accept that they provided that input in an advisory capacity and did not play any other part in the decision making process. As part of that process, Detective Superintendant ("DS") Rob Griffin (as the head of the Respondent Force CID team) gave some input and advice to DCS. Jebb regarding those within his team. That included the Claimant. We accept the evidence of DCI Griffin, however, that he did not have any further input and certainly did not make the decision as to where the Claimant was to be allocated by the SDP.

79. At the time that the SDP was taking place, the Claimant was of course posted on the County CID. The planned restructure of CID with effect from 1st September 2015 meant that the SDP had less available DI posts available within the County areas to post DCI's and DI's to and that had to be taken into account in posting decisions.

80. The decision of DCS. Helen Jebb on behalf of the SDP was that the Claimant was to be allocated to one of the two vacancies for DI's in EMSOU MC. The other DI selected by the SDP to be posted to EMSOU MC was DI Justine Dakin. Although she had not preferenced EMSOU MC in her preference form and had expressed a wish to remain in her then posting in Public Protection, it was determined by the SDP that operational needs required her to be posted to EMSOU MC. This provides an example of the fact that the preferencing forms, whilst taken into account by the Respondent, were not determinative of a posting decision which was dictated primarily by operational need.

81. The decision of the SDP, therefore, was that both the Claimant and Justine Dakin were therefore to be posted to EMSOU MC and were to commence

their PIP3 qualification. We deal further with the matter of PIP3 qualifications below.

82. The posting decisions were to be communicated locally by the then line manager of the officers concerned. At that time, as the Claimant was within the CID team, DS Rob Griffin was responsible for communicating the Claimant's posting to him along with the decisions in respect of other senior officers in his team.

83. DS Griffin dealt with that by way of telephone calls undertaken on 22nd June 2015. We accept the evidence of DS Griffin that those calls were kept very brief on the basis that he had a number of calls to make and that immediately the gossip mill would begin as soon as officers found out their postings. He wanted to therefore deliver the news to each of his officers personally as soon as possible and before they worked out their postings from second hand information.

84. The Claimant was therefore informed by DS Griffin by way of a brief telephone call on 22nd June 2015 by that he had been posted to EMSOU MC.

85. The Claimant's position is that he was told by DS Griffin that he would be based at either West Bridgford or at St Ann's. He contends that this is evidenced by a note that he made of the conversation which is included in the hearing bundle at pages 208 and 209.

86. We do not accept that the Claimant was told that. Particularly, the Claimant's own note of the conversation does not appear to support that contention. On that note, the following is recorded:

"Asked re location not sure
if it is St Anns

Bridgford"

87. The word "Bridgford" – clearly a reference to West Bridgford where EMSOU MC was based – had been circled by the Claimant in his note. The Claimant's evidence on why that was the case was wholly unconvincing. Despite the Respondent's case being that there was no EMSOU MC base anywhere other than West Bridgford and this being the location that DS Griffin told the Claimant that he would be moving to, the Claimant continued to maintain that the circling of "Bridgford" on his own note was merely a coincidence and that he was not told at that time where the base was to be.

88. We do not accept that and found it to be another aspect of the Claimant's evidence that had little credibility. We find it far more likely, and prefer the evidence of DS Griffin on this point, that the Claimant was told clearly during this telephone conversation that the EMSOU MC base that he had been posted to was at West Bridgford. That is a normal reading of the Claimant's note. In this regard, as we have observed above the Claimant thought when completing his preference form that there were other bases for EMSOU MC and that one might be St Ann's. We find it far more likely that the Claimant enquired of DS Griffin as to the location and whether it might be St Ann's (as he was under the mistaken impression that that station was also an EMSOU MC a base) and that he was told that it was West Bridgford in response.

There is no other reasonable explanation to circle the word "Bridgford" and it is in our view a simply incredible suggestion that this was a mere coincidence.

89. Equally, we are reinforced in our finding that the Claimant was told that the posting was to West Bridgford bearing in mind that we accept the evidence of DS Griffin that he knew that there was no base at St Ann's and, indeed, that there had not been for some time. Indeed, we accept his evidence that when he himself left EMSOU MC in December 2014, he was very clear that the division of EMSOU that was based at St. Ann's at that time was closing. DS Griffin's evidence was that he believed that closure was likely to take place at some time between December 2014 and March 2015. Although he conceded in cross examination that this might have been as late as June 2015, there is still no reason for him to have told the Claimant that he did not know if the base was St Ann's or West Bridgford when he knew that St Ann's was at the very least closing imminently, if it had not in fact already closed. We cannot see any basis upon which DS Griffin would therefore have told the Claimant that he might be based at St. Ann's and we accept his evidence for all the reasons set out above that he made it clear that the base was West Bridgford.

90. Equally, we have in mind the evidence of Inspector Sam Wilson that she was told by the Claimant's wife prior to a meeting between the Claimant and DS Griffin on 23rd June that the posting was at West Bridgford. That is clear from the timeline that Ms. Wilson gives in her witness statement at paragraphs four through to eight where she recounts the conversation with the Claimant's wife and her later discussion with the Claimant about how he should approach discussion with DS Griffin about the posting to West Bridgford. It is clear from the final sentence of paragraph 8 of Sam Wilson's witness statement that she was referring to discussion at a meeting which took place on 23rd June 2015. It is therefore only logical in view of that timeline that the Claimant was told on 22nd June 2015 that his posting was to be to West Bridgford.

91. Finally, we have also taken into account in reaching our determination on this issue that the Claimant's own later appeal against his posting (to which we shall come further in due course) made reference only to a posting to West Bridgford. Nothing at all was mentioned about St. Ann's as would be expected if the Claimant understood that to be a potential location for his base (see page 234 of the hearing bundle).

92. For all of those reasons, we are entirely satisfied that it was made clear to the Claimant on 22nd June 2015 that his posting to EMSOU MC would be based at West Bridgford and that this was where he would be required to "book on" and use as his normal base. The relevance of that issue is, as we shall come to further below, that the Claimant would be required to commute from his home to West Bridgford prior to the commencement of his shift in order to book on at that location.

Meeting with DS Griffin on 23rd June 2015

93. The Claimant had a meeting with DS Griffin on 23rd June 2015 to discuss the posting. That meeting was held in an office within the command corridor at

Force Head Quarters ("FHQ"). The command corridor is the area where senior members of the Respondent Force have offices.

94. DS Griffin was not based at FHQ and as such he did not have an office there. However, he was at FHQ on 23rd June 2015 and had been allocated a free office space on the command corridor whilst he was there. It was therefore an obvious place for the meeting with the Claimant to take place given that it was the office space that DS Griffin was using on that day.

95. It is the Claimant's case that the location of the meeting – being as it was on the command corridor - caused him to feel intimidated. We did not accept that evidence at all and considered it to be a gross exaggeration. The Claimant was meeting with his line manager, DS Griffin, with whom he had a good relationship. Simply because that meeting took place in an office on the corridor where senior members of the Respondent Force had their offices does not make for an intimidating environment and the Claimant could not provide any satisfactory explanation as to his claimed views in that regard. We considered this to be a further aspect of his evidence which simply did not bear scrutiny.

96. We do not consider that the location of that meeting was likely to have caused him any angst at all but, even if it did, DS Griffin could not possibly have known that to be the case either before or during the meeting. We accept that the Claimant did not present to DS Griffin in any way concerned nor did the Claimant ever suggest that to him at any time.

97. The Claimant contends that he took notes of the meeting and that those notes appear in the bundle at pages 210 to 229 of the hearing bundle. His position is that he took notes in the meeting and then immediately expanded upon the same after the meeting had ended. We do not accept that evidence and prefer the evidence of DS Griffin that the Claimant did not take any notes during the meeting. DS Griffin gave an unprompted and detailed account of how the pair were sat at a low table and that he could not have failed to notice if the Claimant had been taking notes. Moreover, his evidence was that the Claimant had nothing with him to write on. As such, we do not find it likely that the Claimant had managed to take notes without DS Griffin being aware of it. We find it more likely that the whole of the notes on which the Claimant relies were made at some time after the meeting and we are not satisfied that they are an accurate representation of what occurred.

98. At that meeting, it is common that the Claimant raised a raft of personal reasons as to why he did not want to go to West Bridgford. Those included an impact on his family life, childcare reasons, additional travelling costs and the fact that his wife is disabled and he had caring responsibilities. We accept that those reasons were also ones that saw the Claimant not want to undertake the EMSOU MC role if it was to be based at West Bridgford.

99. However, there is a divergence of evidence between the Claimant and DS Griffin as to whether the Claimant made any reference at all to his disabilities during the meeting. The Claimant maintains that he did when he felt forced to do so after DS Griffin did not accept the personal reasons set out above for not wanting to be allocated to a base at West Bridgford. The evidence of DS Griffin is to the contrary and he contends that the Claimant made no reference at all to such matters.

100. The reference to the disability point is included within the notes that the Claimant contends that he made at the meeting with DS. Griffin. However, as we have already referred to above, we do not accept that those notes were in fact made at the meeting nor that they are accurate as to the events thereat.

101. We prefer the evidence of DS Griffin that the Claimant did not make any reference at all to disability or medical issues at the meeting on 23rd June 2015 and that his reasons for not wanting to go to West Bridgford were limited to the personal, family and time and cost issues that we have identified above. We are satisfied that had such a reference been made then DS Griffin would have recalled that, particularly in view of the fact that the Claimant had never disclosed medical issues previously and it would have therefore been somewhat memorable. We accept that the first time that DS Griffin was made aware of the Claimant's disability was when he later received an appeal against the posting which was sent by the Claimant to him and DCS Helen Jebb. We come to that appeal further in due course.

102. We have taken into account in reaching that conclusion the fact that DS Griffin's evidence was that had the Claimant "changed tack" during the meeting from an initial reference to personal reasons to then relying on the impact of his disability, then he would have challenged the Claimant on that.

103. Miss Niaz-Dickinson contends that DS Griffin's evidence is not credible on the basis that he would have challenged the Claimant if he had then "changed tack" the following day with regard to the content of his later appeal against posting, particularly as that was also sent to a senior officer, DCS Helen Jebb. We accept the evidence of DS. Griffin, however, that there would be a difference between challenging a change of tack in a one to one meeting to then taking steps to reply to the Claimant's written appeal to challenge why he had not previously raised the question of disability. We do not find therefore that that issue as raised by Miss Niaz-Dickinson undermines the account of DS Griffin as she contends.

104. We have also taken into account the issue raised by Miss. Niaz-Dickinson that the evidence of DCS Helen Jebb had been that DS. Griffin had told her about health issues after his meeting with the Claimant on 23rd June 2015. We have revisited our notes and the question posed to Mrs. Jebb in that regard came after a significant pre-amble, including reading long extracts from page 351 of the hearing bundle. It was therefore not an entirely straightforward question. Moreover, whilst Mrs. Jebb's initial evidence was that she had been informed about the medical issues by DS Griffin after the meeting, she then accepted immediately that she had made a mistake and that she could not recall if she had known about health concerns from DS Griffin on 23rd June or when she later received the appeal, which had been sent to both of them. A mistake of that nature, particularly having regard to the issues that we have set out in our discussion of reliability above, is not particularly unusual and especially when one takes account of the fact that these events occurred some twenty one months ago and Mrs. Jebb has since retired. We therefore take nothing from that mistake and certainly, neither alone nor indeed coupled with anything else, does it persuade us that the Claimant disclosed his disability to DS Griffin on 23rd June 2015.

105. We have further taken into account the evidence of Inspector Sam Wilson that the Claimant's wife had told her that reasonable adjustments had been discussed at the meeting with DS. Griffin and that he had suggested booking on from another station a number of times a week. Inspector Wilson's evidence was that she had been impressed that he had thought of that as she had not been able to think of any adjustments when she had previously discussed the West Bridgford posting with the Claimant. However, Inspector Wilson was not at the meeting and at best, she had a third hand account from the Claimant's wife at some point after the meeting. Inspector Wilson did not at that time see or speak to the Claimant directly and her account relates to what she recalls that she was told by Mrs. Wilson. It may be that Inspector Wilson misunderstood, that Mrs. Wilson had embellished or did not give an accurate account to her or that she has falsely imprinted this recollection based on her friendship and support for the Claimant and what she has later been told happened. Such false imprinting in this regard appeared for example at paragraph 12 of Inspector Sam Wilson's witness statement where she presented as a fact that DS Griffin had been "overruled" on reasonable adjustments but where, in fact, she had to concede in cross examination that she had no basis on which to say that he had ever taken a decision on that.

106. It is perhaps telling in this regard that when posed the question as to the fact that she would naturally accept what the Claimant was telling her because she was his friend, Inspector Wilson's evidence was *"if he* [the Claimant] *told me I would assume he's being accurate and truthful yes"*. Her thinking has, it seems to us, been infected by what the Claimant (and perhaps also his wife) has told her during the course of these proceedings and her desire to support him as a Federation Representative, close friend, colleague and neighbour. Therefore, although her evidence conflicts with the evidence of DS Griffin, we are satisfied that his is the more reliable account.

107. Given that we do not accept that the Claimant raised the issue of his disability at the meeting with DS Griffin, we in turn do not accept the Claimant's evidence that DS Griffin made any reference to the possibility of making reasonable adjustments such as the Claimant booking on at another station and thereafter travelling in working time to West Bridgford. Given that we are satisfied that DS Griffin was not made aware of the Claimant's disabilities at the meeting on 23rd June 2015, it follows that there was no reason for him to have raised the question of reasonable adjustments and we prefer his evidence as to the events of the meeting to that of the Claimant.

108. However, DS Griffin did advise the Claimant that he had grounds to appeal to DCS Jebb about the posting. We accept that that advice was given based upon the personal issues that the Claimant had raised at the meeting.

109. DS. Griffin also spoke to DCS Jebb after the meeting but we accept his evidence that he did not mention any matters concerning the Claimant's health given that we have already found that he had not been told about that at that time and was unaware of the Claimant's disabilities until receipt of his later appeal letter into which he was copied as a recipient. We shall deal with the content of the appeal letter later in this Judgment.

Postings e-mail

110. Later in the day on 23rd June 2015, DS Griffin sent an email to all relevant staff within the County CID for whom he was responsible (see pages 230 and 231 of the hearing bundle). The purpose of that email was to update them on the changes that were to take place within the County CID following the postings decisions by the SDP. That email referenced the fact that the Claimant was going to be posted to EMSOU MC.

111. The Claimant contends that that decision to send the email at that time was inappropriate, although it is in fact far from clear what it is said by the Claimant that DS Griffin should have done in the alternative. We accept that DS Griffin needed to update the CID team as to posting decisions by the SDP and we further accept that there was a need to make reference to the Claimant within that. If not, it is clear to us that the Claimant would have been conspicuous by his absence. If the Claimant had been left out of the email and therefore had been the only DI whose posting was not included, it appears to us that that would invariably have led to gossip and speculation as to why the Claimant had not been mentioned. Given that we have accepted DS Griffin's evidence that the rumour mill began to churn as soon as news of posting decisions was made known to individual officers, we have little doubt that the Claimant's absence from the email would have sparked a considerable degree of interest. It seems to us that that would have been rather more detrimental to the Claimant than his inclusion in the email, the content of which simply reflected what the posting decisions of the SDP were at that time.

112. We have to say that it seems to us that DS Griffin's assessment in his evidence before us that he would have been *"damned if he did and damned if he didn't"* in respect of this particular allegation is not wide of the mark as we have little doubt that had the Claimant been omitted from the email, that too would have been advanced as a criticism of DS Griffin's actions.

113. We would also observe here that at this stage, the Claimant had merely been told by DS Griffin that he could appeal the posting to DCS Jebb but no formal appeal had yet been submitted, let alone granted. The Claimant's posting at that stage, and as the email from DS Griffin reflects, was still EMSOU MC and there was nothing inappropriate about that posting being included in the email to the County CID team.

114. Moreover, there was some sense of urgency in notifying the County CID team as to the changes that were to take place given that it was intended that the postings would be taken up by the Claimant and others affected by changes in their substantive posts with effect from 1st July 2015.

Conflict of interest – advice on postings to TDI Andy Bateman

115. It is common ground that the Claimant was a Federation Representative and that DI Andy Bateman sought advice from him in that capacity relation to "gossip" surrounding personal issues which were said to have impacted on him not being posted to EMSOU MC, which had been his preference as set out on his preferencing form.

116. Although we have not heard from DI Bateman, it is common ground that the Claimant advised him in respect of those comments and, in the Claimant's evidence "left it to him" as to whether to challenge the decision not to post him to EMSOU MC. We agree with the submission of Mr. Roberts that this would have been a conflict of interest if, as the Claimant now contends, he himself was still actively seeking a posting to EMSOU MC with reasonable adjustments.

117. Inspector Sam Wilson, herself an experienced Federation Representative, accepted that this course would be somewhat unwise and that her advice to the Claimant, if she had been asked, would be that he should not advise DI Bateman. The Claimant was himself a Federation Representative of some years standing and we find it somewhat difficult to understand how, if the Claimant himself still wanted to pursue the EMSOU MC role, that he could not have perceived a difficulty or issue in advising DI Bateman in connection with it as he now contends.

118. It seems to us that his willingness to advise DI Bateman in that regard is rather more demonstrative of the fact that the Claimant was no longer interested in the EMSOU MC role at that time once he had discovered that it was based at West Bridgford and that, in fact, he did not become interested in the role again until he was posted to the Telephone Investigations Bureau. We shall come to details of that posting later.

119. DI Bateman did in fact appeal against his posting and was later appointed to the DI post in EMSOU MC that was left vacant when it was determined that the Claimant would not be required to undertake that role. We shall come to that decision later.

The Claimant's appeal against posting

120. The day after the Claimant's meeting with DS. Griffin, he formally appealed the posting to EMSOU MC to DCS Jebb (see page 233 to 235 of the hearing bundle). The appeal was sent to DCS Jebb and Sharon Ault of Human Resources and was copied to DS Griffin and to Inspector Sam Wilson. Inspector Wilson was, of course, assisting the Claimant in her capacity as both his friend and Federation Representative.

121. In this appeal, and we accept for the first time, the Claimant made reference to the fact that he suffered from both high blood pressure and also diabetes. He set out the effect of those conditions upon him and the coping strategies that he had put in place and went on to deal with the effect that an increased commute time to West Bridgford would have upon him. In this regard, he said this:

"On the 22nd of June 2015 I received a call from Det Supt Griffin informing me that I had been posted to EMSOU, my immediate question was where that was based as I knew this would be an issue. I was subsequently informed that this would be working from West Bridgford Police Station.

My current home to work distance is 10.4 miles which takes 10-15 minutes, this is not a coincidence and is something I have sought and prescribed in order to assist with my disability.

The distance between home and West Bridgford Police Station is 37 miles which having drove the distance as a test takes between 1 hour and 1 hour 10 minutes dependant on traffic flow. This is a 300% increase in travelling time and distance.

This can only be viewed as a punitive and negative placement having severe adverse effects on my disability, on my family financially and on my time and work life balance.

Due to my disability I would simply not be able to cope with the daily demands of travelling this distance and completing a full day's work within the demands of Homicide/Major incident investigation process.

As a 'career' detective I would relish the opportunity to work within the homicide department and hold aspirations for promotion to the next rank. I sincerely hope that my disability will not prevent me from achieving this.

I know this organisation and its culture of management style well, I have seen and can feel the rolling of eyes whenever the matter of disability is raised, I know that it can be perceived as a card to be played when staff are not happy with a posting or work circumstance. Let me assure you that this is certainly not the case, I genuinely covet my role as a Detective Inspector, it is something I enjoy immensely and have worked hard to achieve, since being diagnosed with my disability I have not sought any reasonable adjustments to my work life balance, opting instead to manage the condition and work circumstances myself.

I would request that this posting is reviewed having due regard to my disability, my future health and work life balance."

122. There are a number of important issues that arise out of that appeal document. Firstly, it is in our view notable that there was no mention made at all of the reasonable adjustments that the Claimant maintains that DS Griffin had suggested could be made just the day previously. If what the Claimant was actually seeking was a posting to EMSOU MC but with reasonable adjustments, such as booking on at a different station, it is somewhat unclear to say the very least as to why he would not have made any reference at all to such matters in the course of an otherwise detailed three page appeal document. His evidence that he had left that matter to DS Griffin to raise with DCS Jebb is simply not credible. It therefore further reinforces our view that there was never any discussion between the Claimant and DS Griffin on the question of disability or reasonable adjustments at the 23rd June 2015 meeting.

123. Secondly, having revisited the content of the appeal letter on a number of occasions we cannot accept the Claimant's evidence or the representations of Miss. Niaz-Dickinson that this appeal letter could only be read as the Claimant still wanting the EMSOU MC role. In fact, we consider that it is entirely to the contrary. The logical interpretation of what the Claimant was saying in that appeal letter is that he wanted the decision to post him to EMSOU MC to be reviewed. That is abundantly clear from both the header to his letter – the title of the document being "APPEAL AGAINST POSTING" and also the last paragraph of his appeal letter. He refers to the **posting** being reviewed. The posting was to EMSOU MC which was only based at

West Bridgford and it was the role itself and the location which made up the posting. The Claimant made no reference at all to any request that only the location of his posting be considered and, indeed, referred to the posting as being a "punitive and negative" one that he wished to be "reviewed".

124. The only proper interpretation of that appeal letter was that the Claimant was asking DCS Jebb to review the SDP's decision to post him to EMSOU MC. There is nothing at all to suggest that the Claimant was looking to be deployed to EMSOU MC but with any adjustments that he now contends should have been made.

125. Whilst there is some reference in the appeal document to relishing the opportunity to work within homicide and holding promotion aspirations, this cannot in our view be reasonably interpreted in light of the remaining content of the appeal letter as meaning that he still wanted the EMSOU MC post as the Claimant asks us to believe.

126. Equally, whilst the Claimant's preferencing document had highlighted a desire to work within homicide, we remind ourselves that that was submitted at a time when the Claimant was labouring under the misapprehension that EMSOU MC had other bases apart from West Bridgford. We are satisfied that once the Claimant became aware that the location of the posting was to West Bridgford, his position as to wanting a posting to EMSOU MC altered. Indeed, he had clearly raised a raft of personal issues with DS Griffin on 23rd June 2015 as to why the posting to West Bridgford was unsuitable – including family and caring responsibilities and additional travel costs. We accept the submissions of Mr. Roberts that even had the Claimant been able to "book on" elsewhere, those issues would not have been resolved.

127. We are also supported in our view that the Claimant at this time no longer wanted the EMSOU MC posting by the evidence of DCI Andy Gowan. DCI Gowan was at that time the DCI in charge of the BNS area of the local CID team in which he was based. He reported in to DS Griffin and had responsibility for the Claimant and Temporary DI ("TDI") Jamie Hill in his BNS County CID team. We accept the evidence of DCI Gowan that around the time that the posting decisions were made, he received a text message from the Claimant which said "EMSOU – wtf – not happening[2]". Whilst DCI Gowan no longer has a copy of the text message and we have not seen it for ourselves, we accepted his evidence that he could clearly recall the content. The abbreviation used by the Claimant in that text message is in our view a clear indication that he did not want the EMSOU posting once he had discovered that it was based at West Bridgford.

128. Finally, with regard to the content of the appeal letter, we remain unclear as to the basis upon which the Claimant had reached his conclusion that the EMSOU MC posting was a *"punitive and negative placement"* (see page 235 of the hearing bundle).

129. At the point that that posting decision was made, the Claimant had preferenced a desire to work in homicide. Homicide work could only be undertaken within EMSOU MC. The Claimant had not given any indication whatsoever to the Respondent Force that he would have any difficulty in

[2] Wtf is, it is common ground, an abbreviation for the term "what the fuck".

commuting to West Bridgford, whether by dint of disability, personal reasons or otherwise. At most, he had preferenced a requirement for a posting in the north of the county, but, as we have already observed he had qualified that with his comments that his career development was as important than geographical location (see page 177 of the hearing bundle and paragraph 73 above). There was nothing at all to begin to suggest to the SDP or to DCS Jebb that the there was any issue that might impede a posting to EMSOU MC in West Bridgford.

130. The Claimant's comments as to having been given a punitive and negative posting in view of the circumstances at that time quite simply made no sense and the Claimant has not provided any rational explanation for his having formed that view. It is difficult in that regard not to accept the thrust of the submissions made by Mr. Roberts that such comment was simply indicative of the Claimant's own negative attitude to the Respondent and infected his views of all processes and steps which were ultimately to follow.

131. DCS Jebb acknowledged the Claimant's appeal by way of an email sent on the same day, 24th June 2015, and indicated that she would discuss the content with Sharon Ault of Human Resources at the earliest opportunity (see page 236 of the hearing bundle). She also sent an email to DS Griffin explaining that she intended to process an urgent referral to Occupational Health ("OH") in order to assess any reasonable adjustments that might be able to be made.

132. DS Griffin replied to DCS Jebb's email on the same date. In that email, he said this:

"Given that condition[3], I am struggling to see how he could operate almost anywhere as DI in the force, given the reduction in numbers and requirement to travel.

The job that he currently holds (i.e. DI for Worksop) will not exist anymore?

Im struggling to see what "reasonable adjustments" can be made in respect of any DI role in the new force structure, where geography covered in almost all disciplines have expanded massively, to enable one to perform the role? (sic)

Maybe a complete re-think of posting is required?"

133. The Claimant is critical of the content of that email and it is contended on his behalf that this was an attempt to sway the opinion of DCS Jebb given that DS Griffin had acted in an advisory capacity to the SDP on the question of posting decisions. We do not accept that. The email is simply the setting out of DS Griffin's view at that time. He was best placed to know what the requirements of the County CID team would be after the restructure and we accept his evidence that he would not have sought to sway DCS Jebb and, even if he had, she would not have taken any notice given his position as a subordinate officer.

[3] The condition referred to being related to travel and commuting time.

134. We have also taken into account in the context of this email that the same came just one day after the Claimant and DS Griffin had met to discuss the posting and at the time that the Claimant contends that DS Griffin had made reference to reasonable adjustments being made such as booking on from an alternative station. If that conversation had occurred, then we cannot ascertain why DS Griffin would have had a complete change of stance just 24 hours later by "struggling" to think of any reasonable adjustments. Again, that reinforces our view that there was no discussion at all of that nature between the Claimant and DS Griffin on 23rd June 2015.

Referral to the Occupational Health Unit ("OHU")

135. As we have already touched upon above, upon receipt of the Claimant's appeal letter, DCS Jebb discussed the same with Sharon Ault of Human Resources ("HR") and determined that there should be a referral to OHU *"to assess how reasonable adjustments might be made".* At this stage, we accept that in DCS Jebb's mind the Claimant's posting was EMSOU MC and the purpose of the OHU referral was to see if any adjustments could be made to that role to allow the Claimant to fulfill it. That is supported by the terms in which DCS Jebb had written to DS Griffin in her email of 24th June 2015, the emphasis of which was on the question of reasonable adjustments.

136. That DCS Jebb was considering adjustments to the EMSOU MC post as the first port of call also fitted in with the fact that posting decisions were matters for the SDP rather than an individual officer and the posting decisions that had been made were strategic decisions into which a considerable amount of planning and consideration had been given. As such, the starting point for DCS Jebb was whether adjustments could be made to the EMSOU MC post to enable the Claimant to take it up. The OHU report would therefore inform the decision as to the Claimant's appeal.

137. The OH referral was made on behalf of DS Griffin on 24th June 2015 (see page 245 to 252 of the hearing bundle). It was completed by James Woodthorpe of HR on DS Griffin's behalf based upon information that the latter had provided. Despite the criticism of DS Griffin's earlier email to DCS Jebb, the Claimant did not contend in his evidence before us that the content of the referral was in any way inappropriate.

138. The referral attached a copy of the Claimant's appeal letter to DCS Jebb and asked the OHU to identify any reasonable adjustments which could be made in order to support the Claimant in the EMSOU role at West Bridgford or in any alternative role in which he might be placed.

139. The Claimant attended an OH appointment with the Force Medical Adviser, Dr. Booth, on 6th July 2015. He was not at that stage required to attend at West Bridgford in the EMSOU MC role pending the outcome of his appeal against the posting. In this regard, the Claimant should have been posted to EMSOU MC with effect from 1st July 2015 but he remained in his role on the County at that time until a decision was made in respect of his appeal. This could be accommodated on the basis that the restructure of the County CID was not due to take place until 1st September 2015.

The first OHU report

140. Following the examination of the Claimant, a report was sent by Dr. Booth to DS Griffin on 7th July 2015 (page 265 and 266 of the hearing).

141. The pertinent part of the report is the final paragraph which said this:

"In terms of capabilities, I have no hesitation in declaring that DI Wilson is considered as operationally fit. He can carry out all the aspects of his role, including driving, without difficulty whilst at work, utilising the coping strategies previously referred to. The commute between home and work is not part of the remit of Occupational Health, however it is obvious that the same effects from medical conditions and treatments will be seen during that time period as during any other. At present, with a short commute, there is no additional loading present, but with the planned deployment change, there is the expectation of a greatly increased commute time, which will thus have an unavoidable impact on energy requirements and usage, as well as on available energy for the rest of the working day. This additional impact may well upset the balance that DI Wilson has been able to maintain so far, with knock on effects on role capability."

The events of 8th and 9th July 2015

142. There is no dispute that following receipt of the report from Dr. Booth the Claimant was informed by DS Griffin that DCS Jebb had taken the decision that he would now not be going to EMSOU MC. The advice of Dr. Booth had, of course, been that an increased commute time – which would result from a posting to EMSOU MC at West Bridgford – may impact the Claimant and affect role capability. That mirrored the content of the Claimant's appeal letter. No reasonable adjustments in respect of the EMSOU MC role were suggested by Dr. Booth in his report.

143. The date on which the Claimant was informed about the fact that he would now not be posted to EMSOU MC is hotly disputed. The importance of that date is relevant to a meeting between DS Griffin and HR at which it is said that the report was discussed and thereafter the decision taken by DCS Jebb that the Claimant would not be posted to EMSOU MC. It is common ground that that meeting took place on 9th July 2015.

144. The Claimant contends that DS Griffin told him during a telephone call on 8th July – that is the day before the meeting – that he would not be going to EMSOU MC. If he is correct about that, then DS Griffin had obviously communicated the decision before the date on which he says that DCS Jebb made the decision not to post the Claimant to EMSOU MC and before the date of the meeting with HR. The position of DS Griffin is to the contrary. Whilst he cannot recall the precise date of the discussion, he is nevertheless adamant that it could not have been 8th July 2015 as the decision had not been taken by that stage and it only came after the meeting with HR on 9th July.

145. Miss. Niaz-Dickinson raises in support of the Claimant's position that DS Griffin was present during the Claimant's cross-examination when it was put to him that the date in question was 9th July 2015 but that DS Griffin did not correct Mr. Roberts that he was not sure that that was the correct date.

146. We do not take anything from that. DS Griffin was candid in his evidence before us that cannot recall precisely what the exact date was other than to say that it was certainly after the meeting on 9th July as DCS Jebb had not informed him that the Claimant was not going to be posted to EMSOU until after that time. What he can say with certainty is that it was not 8th July 2015, and that was not at all inconsistent with the questions put in cross examination by Mr. Roberts.

147. The evidence of the Claimant is that he can recall precisely the date on which the discussion occurred as he was at home that day having been given the day off as TOIL by DCI Andy Gowan (see page 254 of the hearing bundle) and that he had written a note of the conversation on the first thing that came to hand, namely his son's timetable, rather than in his day book as he would have if he had been at work. He also points to the fact that he made a note of the discussion and that that note is dated 8th July 2015.

148. On balance, and for the reasons that we have already given as to credibility, we prefer the evidence of DS Griffin on the point and accept that the Claimant was not told until on or after 9th July 2015 that the decision had been made not to post him to EMSOU MC. It may be that the Claimant is mistaken about the date but whatever the position, we accept that he was not told on 8th July that he was not going to be posted to EMSOU MC. Aside from the credibility issues set out above, that in all events makes logical sense given that we accept the evidence of DS Griffin that he was told on 9th July 2015 at the earliest by DCS Jebb that she had made the decision not to post the Claimant to EMSOU MC. The evidence that he gave to us in this regard was entirely consistent with that which was set out in his witness statement at paragraph 29. If the Claimant had been told that he was not going to be posted to EMSOU MC on 8th July, the meeting with HR on 9th July would have been both contrived and completely pointless. It would, quite simply, make no sense to have held it.

149. As we have already touched upon, following receipt of the OHU report from Dr. Booth DS Griffin had a meeting with HR to discuss the report on 9th July. The notes of that meeting appear at pages 273 and 274 of the hearing bundle. Thereafter, DS Griffin had a discussion with DCS Jebb over the telephone to update her as to what had been said at the meeting. The relevant points that had arisen at the meeting were as follows:

- The Claimant was at that time posted to BNS (and booking on at Worksop police station), which was a short commute from his home address. A posting to West Bridgford would increase travelling time to the base station by an hour;

- The restructure of the County CID would take place as at 1st September 2015 with a reduction in DI's on the County from six to four. Three DI's would be based in the local County CID structure at West Bridgford, Newark and Mansfield with a third being placed in the newly created Violence Unit based at Mansfield;

- Consideration was given to whether a reasonable adjustment could be made to the EMSOU role based at West Bridgford by allowing the

Claimant short breaks during travel and on arrival at the station. That was discounted on the basis of the following rationale:

"When considering if this would be a 'reasonable adjustment' two issues are pertinent. Firstly it is likely that further driving will be required during the shift due to the nature of the regional role and secondly, the nature of the role demands an immediate response from the postholder, service response would be hindered by additional short breaks which may delay the investigative process. Following consideration of these two points it was concluded that the MCU WB[4] post was not suitable for DI Wilson."

- Postings within the County CID were thereafter discussed and were not considered to be suitable. The following rationale in this regard was discussed in the meeting:

  "In the current structure, there are 6 DI posts, and DI Wilson holds one of those posts, based at Worksop. The OHU report makes clear that he is perfectly able to perform his role, and with the routine he has developed, it does not impact on his health or operational effectiveness. As such, it was felt that whilever (sic) *this role was available, it remains suitable.*

  On 1st September, however, the whole picture on the County will change, because the newly designed structure will commence. This structure involves the reduction in DCI's from 3 to 2, and a reduction in DI from 6 to 4.

  The DI's are currently spread 2 per CSP area. The reduction will mean 1 per area, and 1 concerning the whole BCU as a thematic lead for violence. There is therefore an immediate and obvious resilience issue. When one adds this to extractions through leave, course, sickness, additional responsibility etc, resilience is stretched even further. The reduction in DCI's only exacerbates the position.

  In addition, the locations at which the 4 DI's will be based will also change: there will no longer be a base for a DI at Worksop for example. The new bases will be: Violence: Mansfield. M&A[5] CSP – Mansfield. BNS CSP – Newark. South Notts CSP – WB[6].

  When one considers the additional geography or responsibility, the need to cover the whole BCU at times, in the context of other resilience issues, the demand on travelling is expected to increase hugely.

  The WB post is not suitable for the same reason as the MCU posting.

  The Violence posting, while based at Mansfield, requires the DI to spend equal time between the 3 hubs: WB, Newark and Mansfield,

[4] This is a reference to the Major Crime Unit based at West Bridgford.
[5] Mansfield and Ashfield
[6] West Bridgford

and often to be between the 3 in a day. As such it is not really suitable on the same basis.

The other two postings, whilst not requiring the same degree of travel on such a firm footing, will inevitably require an ability to travel widely, and frequently, particularly in light of the resilience issue alluded to above.

In short, the new CID structure in the County means that the likelihood of driving across the country during the working day is high. Dr Booth has stated that increased travel is likely to impact on energy levels with a knock on impact on capability. Again, the nature of the role demands an immediate response from the postholder, service response would be hindered by additional short breaks which may delay the investigative process.

It was concluded that a DI post in the new CID structure would not be suitable for DI Wilson."

- Thereafter, consideration was given to alternatives. It was agreed that the most suitable posting would be a Detective role but one which was *"not unreasonably further from home than his current base, and where the need for extensive travel during the working day is limited or small".*[7] Debbie Orrell of HR was to identify all acting temporary and acting DI posts to enable a review of the available opportunities.

150. As set out above, those matters were fed back to DCS Jebb by DS Griffin during a telephone call after the meeting. Either during that telephone conversation or otherwise by way of an email dated the following day, 10th July 2015, (page 274A of the bundle) DCS Jebb instructed DS Griffin to inform the Claimant that he was not going to be deployed to EMSOU MC.

151. Thereafter, and on or after 9th July 2015, DS Griffin therefore contacted the Claimant to advise him of the decision taken by DCS Jebb.

152. The Claimant contends that during that telephone call he was told that he was not going to EMSOU and "that's that". DS Griffin does not accept that he was as blunt as the Claimant contends and certainly did not make such comment in the context that the Claimant suggests. We accept the evidence of DS Griffin that when he imparted the news to the Claimant that he was under the impression that it would be good news given that all pointers led to the not unreasonable conclusion that the Claimant did not want the EMSOU MC posting because of the location. The "that's that" or words to that effect comment would, we accept, have been used in the context of DS Griffin wanting the Claimant not to worry about having to go to EMSOU and we are satisfied that he delivered that message in a positive way. Given that it was clear to us that DS Griffin held, and continues to hold, the Claimant in high regard, we do not accept that he was anything less than positive and

[7] We would stress here the inclusion of the word "extensive" – a reference which we must observe was repeatedly omitted by Miss. Niaz-Dickinson in her cross examination and submissions (see for example the selective quotation at paragraph 10 of the Claimant's skeleton argument.

supportive in his dealings with the Claimant and we did not accept the Claimant's evidence to the contrary.

153. The Claimant was informed that an alternative posting would be sought now that he was not to be deployed to EMSOU and until that time he would remain in the County as a DI. That was a possibility at that time given that the restructure of the County CID team was not due to take place until September 2015 and therefore the Claimant could continue his substantive post at that time. Had the Claimant been able to take up the EMSOU posting following the SDP decision, he would have transferred with effect from 1st July 2015, but given the gap between that time and the restructure, he could be retained on the County where he had previously been posted whilst the Respondent investigated alternative posting options (see page 231 of the hearing bundle). However, as we shall come to further below, we do not accept that that vacancy continued after 1st September 2015 and that the Claimant could therefore have been retained there permanently.

Consultation

154. The Claimant contends that the decision taken by the Respondent as to whether he should be deployed to EMSOU MC or not was taken without consultation with him on the report of Dr. Booth. We accept that that is accurate.

155. However, the Respondent did have the Claimant's detailed appeal and the medical report from Dr. Booth of which the Claimant had had prior sight and, as we shall come to, no amount of consultation could have identified an adjustment which was reasonable and would have allowed the Claimant to take up the EMSOU MC post. As set out above, the Respondent had concluded that any adjustment, such a breaks in travelling, would have the potential for a detrimental impact on the investigative process within EMSOU MC (see paragraph 149 above) and as we shall come to, that would also manifest itself with the adjustments that the Claimant now contends should have been made to the role.

156. Whilst it would clearly have been better for the Respondent to have met with the Claimant to discuss the content of Dr. Booth's report, we are satisfied that that would not have changed anything and, in all events, we are entirely satisfied from the evidence before us that at that juncture the Claimant did not want to go to EMSOU MC. Against that background, it is difficult to see what would have been achieved by a meeting.

157. The Claimant does contend, however, that the Respondent had misunderstood the position in Dr. Booth's report given the reference to what might best be termed "working day travel" as he contends that that would not have impacted upon his energy levels at all as he would take breaks before and after travel to refresh as part of his overall coping strategies. However, whilst that may well have been able to have been accommodated within the existing structure on the County CID, we accept that there was to be a considerable change in the travelling requirements post 1st September 2015. DS Griffin was best placed to understand what those requirements would be as head of the County CID team. It was not unreasonable for him to take increased travelling issues into account when determining what role would best suit the Claimant's requirements, particularly in view of the fact that Dr.

Booth's report focused on the Claimant's coping strategies with regard to his existing role. Post the restructure, that role would no longer exist and, as set out above, there would be the capacity for considerably more travel to be undertaken. There was, in our view, nothing wrong with DS Griffin taking that into account.

158. The Claimant has, during the course of these proceedings, adduced mileage claims to demonstrate that he was undertaking what he contends to be considerable "working travel" and that this could therefore have continued on a revised County DI role under the new structure. We do not accept those records as being determinative of the issue and, particularly, note that a number of the entries appear to relate to appointments for which work related travel would not have applied.

EMSOU MC – the reasonable adjustment question

159. It is not disputed that there is a requirement for officers to "book on" at the police station to which they were posted. This is the "PCP" relied upon by the Claimant in the context of part of his complaint of a failure to make reasonable adjustments.

160. The Claimant contends that a reasonable adjustment that the Respondent should have made to allow him to take up the EMSOU MC post would have been to allow him to "book on" elsewhere for three quarters of his weekly shifts and then travel to West Bridgford. This would only work, however, if the Respondent allowed the Claimant to use travel time between booking on at a station more proximate to his home and West Bridgford as part of his normal shift. That is, the travel time would form part of his 8 or 9 hour normal shift and he would not be required to travel after booking on in his own time.

161. That is the only logical way in which the Claimant's suggestion would work as otherwise; he would in fact be undertaking a longer commute by diverting elsewhere to book on and then travelling to West Bridgford in his own "commute" time. As the Claimant accepted, the real issue in respect of his disability was the length of time from leaving the house in the morning to returning home after his shift. Therefore, the only way in which his proposed adjustment would assist would be for him to undertake onward travel in working time. We accept that that was what the Claimant would expect to occur – and that he would expect to also be paid for that travelling time which, as we shall come to, would not be time that could be fully and productively utilised.

162. That arrangement would have the result that the Claimant would not be at West Bridgford for the whole of his shift as would normally be the case where an officer booked on at the location at which they were normally stationed. He would be travelling therefore for part of his shift to West Bridgford and also again he would have to leave West Bridgford earlier than the end of his shift to "book off" at the alternative station more proximate to his home address so as to limit his end of day commute.

163. The Claimant's evidence was that this arrangement would not have had to be one that was put in place all the time, but only when he felt that the effects of his commute on his condition would become too much. Although somewhat vague initially, his evidence was that he felt it likely that he could undertake

somewhere in the region of seven to ten days commuting into West Bridgford each day before he felt the impact and where his existing coping strategies would no longer sustain him.

164. Following that period, he would need to book on at an alternative station more proximate to his home address until he was sufficiently recovered from the commute to resume travelling to West Bridgford. That cycle, he contends, should then have continued and this would have amounted to a reasonable adjustment.

165. Having considered the evidence and submissions on this point very carefully, we are satisfied that whilst the proposal that the Claimant makes would amount to an adjustment, it would not be a reasonable one in the context of the EMSOU MC role.

166. EMSOU MC deals with the investigation of murders – one of, if not the most, serious crimes that are dealt with by the Respondent. Murders occur in Nottingham on average of one a month and although varying from incident to incident, we accept the evidence of the Respondent that the first two weeks, or possibly longer in complex cases, after the incident are key in terms of evidence gathering and investigation. If the Claimant would experience difficulties travelling to West Bridgford – where we accept the whole of the EMSOU MC team are based – for more than seven to ten days at a time, this potentially left the very real risk that there would be periods of key time in the early stages of murder investigations where the Claimant was not on site at West Bridgford to give directions to his subordinates who would be looking to him for guidance. As we shall come to, that absence when taking into account the length of the Claimant's working day, would be quite considerable. We accept that the Claimant could not operate remotely and it was necessary for him to be "on the ground" in West Bridgford – particularly during the crucial early stages of a murder investigation.

167. The Claimant was asked during his evidence about the length of time that it would take him to travel onwards to West Bridgford from each of the bases where he contends that he could have "booked on". The Claimant's evidence in this regard was that it would take the following length of time for onward travel for each of the proposed bases where he could "book on":

    a. Ollerton – one hour to an hour and ten minutes;
    b. Retford – one and a half hours (depending upon traffic conditions);
    c. Newark – 35 to 40 minutes;
    d. Worksop – one hour and 40 minutes;
    e. Mansfield – one hour.

168. Clearly, the "nearest" onward base to West Bridgford would have been Newark which was a distance of approximately 20 minutes drive from the Claimant's home.

169. If the Claimant had booked on at Newark this would have had the result that he was spending 35 to 40 minutes at the start of his shift in his car travelling to West Bridgford and he would then have to leave West Bridgford 35 to 40 minutes before the end of his shift in order to undertake the reverse journey. The Claimant would therefore be losing 70 to 80 minutes per day of his 8 or 9 hour shift when he would not be on the ground in West Bridgford but would

instead be travelling to or from that location. That would result in somewhere in the region of 15% of the Claimant's working time being lost to travel in an average 8 hour shift. If the Claimant required to book on from Newark for a period of one working week, he would in that five day period be losing somewhere in the region of six and a half hours of work per week. We accept that during the first stages of a murder investigation particularly, those hours where the Claimant would not be available on the grounds could be crucial and have the potential to damage the investigation.

170. The Claimant's evidence before us was that he could have still been as productive when travelling by car to and from West Bridgford as he would have if he had been on the ground there leading his team in their investigations. We do not accept that evidence at all. Particularly, in reaching that view we have taken the following matters into account:

a. Whilst travelling between bases it is clear that the Claimant would not be able to undertake anything other than giving basic directions on the telephone. He could not, for example, view evidence such as CCTV footage. Whilst he might feasibly have been able to do so at another base station before travelling onwards to West Bridgford; that would assume that the queries of his team presented themselves at such a time before he had departed. In addition, he would not have been able to view the CCTV promptly and when in the same room as his subordinate officers which, we accept, would diminish the prospect of good communication on the issue on which guidance was sought;

b. When travelling the Claimant would not be able to look at physical exhibits which would be situated at West Bridgford. That would have to wait until he arrived at West Bridgford, with the potential to delay investigations and instructions to his team;

c. Any instructions that could be given over the telephone would be, as the Claimant accepted in cross examination, subject to him having sufficiently good reception; and

d. Being in the car travelling – at which time the Claimant would also be required to be concentrating on driving – was no substitute at all to being physically present to give instruction to his team and to involve himself in the investigations on the ground.

171. Indeed, the same sorts of issues manifest themselves as were identified by DS Griffin in the meeting with HR of 9th July as discounting adjustments to the EMSOU MC role (see paragraph 149 above).

172. We accept in view of the foregoing, the submissions of Mr. Roberts that it would not have been feasible either for the Respondent to make the adjustment that the Claimant now contends should have been made nor – due to the potential repercussions – trial the arrangement to, in effect, see how it went. The possibility for compromising investigations into the most serious of crimes was, quite simply, too high. It is clear that that was not and could not be operationally viable.

173. Moreover, as we shall come to, there were other much more viable alternatives for deployment of the Claimant which the Respondent was able to identify which did not impact his disability and did not compromise the Respondent's operations.

174. We should observe here that we did not accept the evidence of DCS Helen Jebb that she had actually considered the issue of booking on elsewhere and then travelling in work time to West Bridgford when she determined that EMSOU MC was not viable. As we have already observed, we did not consider her to be an accurate historian and there was no contemporaneous evidence to support any considerations in that regard. Moreover, it was not an issue that was considered at the 9th July meeting and it was the outcome of that meeting that had informed her decision that the Claimant should not be posted to EMSOU MC.

175. We equally did not accept that there was any communication on the subject of reasonable adjustments on the EMSOU MC role between DCS Jebb and the head of EMSOU MC itself. We did not accept Mrs. Jebb's account that this had occurred. There was no supporting evidence to demonstrate a discussion in this regard nor, if there was, what the position of EMSOU was on the issue. However, we accept that despite that there was in fact no need for any discussion on the matter. DCS Jebb herself had previous experience of working within, and thus the requirements of, EMSOU MC as had DS Griffin who had substantial experience in that regard, having worked there for a period of approximately three years. They were perfectly well placed to consider the issue without involvement of the incumbents of EMSOU MC at that time.

176. We should observe here, however, the evidence of DCI Hayley Williams who would have been the Claimant's line manager had he taken up the EMSOU MC posting. Miss Niaz-Dickinson contends that the evidence of DCI Williams supports the Claimant's contention that reasonable adjustments could have been made to the EMSOU MC role. However, having consulted our notes again of DCI Williams' evidence, it appears to us that the position as relied upon by Miss Niaz-Dickinson is not a fair representation of what was said. In this regard, our notes record that DCI Williams' evidence was as follows:

"I was the person doing the job before and would have discussed with Ash how it would work…. it would make sense to involve me if reasonable adjustments were made I'd be involved. If he'd [the Claimant] involved me it may have been something I could have sorted out. My preference would have been if he had told me at the beginning it may have been something I could sort out and it may never have got to appeal."

177. The evidence of DCI Williams was therefore to the effect that it may have been something that she could have resolved if she had been asked about that by the Claimant. Two issues arise from that. Firstly, her evidence was not, as is suggested, that reasonable adjustments could have been made – only that she might have been able to resolve matters. In addition, it was not put to DCI Williams what her views were in relation to the adjustments that the Claimant says now should have been made to the role. She was given no opportunity to comment on that. Secondly, that assumes of course that the Claimant actually wanted the EMSOU MC role which, as we have already set out above, we are satisfied that at that time he did not.

PIP3

178. Of relevance to the Claimant's contention before us in this claim that posting him elsewhere other than EMSOU MC was detrimental to his career progression is the issue of the PIP3 qualification.

179. PIP3 forms part of the Senior Investigating Officers Development Programme. On completion, the PIP3 qualification allows officers to take a senior role in the investigation of major crimes – such as homicide. Without that qualification, that role cannot be undertaken and it is common ground that those who are posted into EMSOU MC are placed as a matter of course on the PIP3 programme. Indeed, as we have already observed above both the Claimant and DI Justine Dakin were to commence their PIP3 qualification when deployed to EMSOU MC.

180. The requirements for obtaining PIP3 qualification include the requirements for the officer to be PIP2 qualified (which the Claimant was) and also that they are able to demonstrate investigations into major crime.

181. As we understand it, a candidate would need to have run at least two murder enquiries and have thereafter submitted a portfolio of work based on those enquiries to DS Griffin. DS Griffin, who is himself PIP3 qualified, would then review the portfolio to determine if the officer had shown sufficient to be deemed as PIP3 competent. If so, they would be "signed off" by DS Griffin as PIP3 qualified.

182. At the material time with which we are concerned, that requirement to show investigations into major crime could only be fulfilled from working in EMSOU MC. We understand that that position has now changed and can also be achieved by working out of EMSOU SOC (the division of EMSOU dealing with "Serious Organised Crime") and that there are ongoing discussions to determine if that might be extended to other areas of the Respondent's operations in the future.

183. We accept that as the Claimant was not posted to EMSOU MC he was unable to undertake the PIP3 qualification which would have been a mandatory requirement had he been posted to that division. The Claimant's position is that PIP3 is a prestigious qualification to hold and that without that, his promotion chances are diminished.

184. We do not accept that position and prefer the evidence of DS Griffin on the point. His evidence was that PIP3 was not a part of the essential criteria for promotion and was not in fact taken into account on promotion boards. He was able to provide practical and personal evidence on that point in that he himself had recently made an application for promotion and had not been successful despite holding the PIP3 qualification when the eventual appointee did not.

185. The Claimant has adduced no evidence to substantiate what is otherwise nothing more than his general opinion that his career prospects have been damaged by the fact that he will not be able to attain a PIP3 qualification in his present posting (which we shall come to below) and we accept the

evidence of DS Griffin, whose own experience is better placed to deal with that, to the contrary.

Posting to the Telephone Investigations Bureau (TIB)

186. As we have already observed, the Claimant remained in his DI post on the County CID pending a determination as to his future posting by DCS. Jebb. As we have already observed, that was a possibility as the restructure of the County CID was not due to be implemented until 1st September 2015. During that time, therefore, the Respondent continued to explore what other deployment options might be suitable for the Claimant.

187. On 28th August 2015 the Claimant was informed by DS Griffin that he was to be posted to the Telephone Investigations Bureau "TIB". The term "TIB" has been the reference used during the course of these proceedings to that particular department, but in fact there had been an amalgamation of the TIB with the Contact Resolution Team ("CRT") prior to the Claimant's posting there to create the newly formed "CRIM" – which was the Contact Resolution and Incident Management. We shall continue to use, for consistency, however, a reference to "TIB" in respect of this posting.

188. During the conversation of 28th August 2015, DS Griffin explained the posting to the Claimant and we are satisfied that he stressed to him the importance of the role to the Respondent (see page 284 of the hearing bundle). Whilst the Claimant has very different views as to the role – effectively viewing it as something of a "non-job", we are satisfied that the Respondent did not view it that way and we shall come further to those matters below.

189. The TIB is based at Mansfield and was therefore within a reasonable and manageable commuting distance from the Claimant's home. The Claimant's evidence in this regard was that this would take approximately 35 minutes each way and, indeed, was an ideal distance therefore for him to have to travel each day by way of a commute. At the time of the Claimant's posting to the TIB, the department was headed up by DCI Brian Foster. The Claimant contends that the promotion of DCI Foster to take up a temporary DCI role in the TIB came about only as a result of the Respondent wishing to force the Claimant to go there. We have dealt with that issue further below.

Business Plan for the TIB and the need for a DI

190. We have been taken to a detailed business plan which was created by DCS Helen Jebb so as to advance the role of the TIB within the Respondent Force (see page 125 to 152 of the hearing bundle). It is clear to us both from the evidence of Helen Jebb and DCI Brian Foster (who heads up the TIB) that contrary to the Claimant's perceptions, the unit is highly valued within the Respondent Force and, particularly, by senior officers who see it as being at the forefront of a new way of policing.

191. As it stood at the time, we accept that the decision of DCS Helen Jebb was that the TIB required a substantive DI in place. Whilst the Claimant does not agree that that was a reasonable decision, his evidence did not appear such that he did not accept that it was her decision to take and that she did require a substantive DI. He simply appears to indicate that it is not a decision that he agreed with. However, we accept that it was one that DCS Jebb rather

than the Claimant was best placed to determine given that she had created the business plan to oversee the new policing structure that the TIB was to herald. That requirement for a DI within that team is also borne out by the Business Plan for the TIB and the fact that the first incumbent into the post was Brian Foster – a substantive DI at the time.

192. As we shall come to, Brian Foster was later promoted to temporary (and thereafter substantive) DCI, which, we would observe, does not support the Claimant's suggestion that those within the TIB were not valued or had their promotion prospects damaged.

The role of DI in TIB and the work

193. We accept, as we have already touched on above, that the TIB was seen as an integral part of the Respondent's operations so as to drive efficiency and to direct the policing resources that the Respondent had to the incidents that they needed to be directed to. It was, to coin the phrase used in the hearing before us, a "new way of policing".

194. In very simple terms, the TIB acted as a "triage" for the incidents reported to the Respondent and ensured that they were sent to the relevant part of the Force to be dealt with and investigated.

195. Whilst the Claimant did not and does not accept the importance of the TIB, we are satisfied from the evidence of Brian Foster, who was best placed to provide his views on that, that the TIB did important work and that there was work for a DI to do and to take forward, even after his temporary promotion to DCI.

196. The only real evidence that the Claimant has adduced to suggest that the work in the TIB was not valued as "real police work" was a text message sent to him around the time of his posting there asking if he had been sent to the TIB for "being naughty". That is woefully insufficient to detract from the evidence that we have heard from the Respondent as to the operational importance of the TIB.

197. It is fair to say that the work in the TIB was a different role to that of a County DI, but that does not mean that it was a lesser role as the Claimant contends. Had the Claimant taken the opportunity to engage with work in the TIB rather than eschew it on the basis of his unfair pre-conceptions, he may well have formed the same view as Brian Foster did once he had settled into the DI role (and later the DCI role) within the unit.

198. Whilst the Claimant had alleged that those within the TIB were placed there as a result of medical restrictions or for issues relating to misconduct there is, quite simply, no evidence at all to support that which the Claimant has been able to adduce. Again, we did not consider him to be credible on the point and we did not accept that the Claimant's disability was the reason why he was placed in the TIB nor was he placed there to "punish him" as he still appears to contend. It is clear from the evidence of Brian Foster and Helen Jebb, and the Business Plan to which we have been taken, that the Claimant was placed in the TIB because there was an existing DI vacancy that needed to be filled; the Claimant was a DI who would be suited to the role and it also ticked all the boxes in terms of a limited commute time.

199. Whilst the TIB may be a unit which is able to accommodate medical restrictions more readily than "front line policing" (depending upon the restrictions concerned) that does not equate with it either being a punishment posting or one that was only made on medical grounds. Indeed, we accept the submissions of Mr. Roberts that as the Claimant could not undertake the EMSOU MC post for medical reasons and there were no reasonable adjustments that could be made to the role; any posting alternative thereafter for the Claimant would ostensibly be on medical grounds.

Temporary promotion of DCI Brian Foster

200. The Claimant contends that DI Foster was only promoted to temporary DCI so that he himself could be moved into a then freed up DI spot in the TIB.

201. In this regard, the Claimant relies upon the fact that a possibility of his move to the TIB was first raised during the meeting of 9th July 2015 which took place between DS Griffin and Human Resources and which was to explore issues relating to the Claimant's posting. DS Griffin asked that the reference to a possibility of a TIB posting be removed from the minutes of the meeting on the basis that there might not be an available vacancy in the TIB as this was dependent upon an ongoing promotion exercise (see page 275A of the hearing bundle). If Brian Foster was to be appointed as a temporary DCI, then this would create a vacancy for a DI at the TIB. As we have already observed, we are satisfied that the Respondent had identified that they wanted a substantive DI in that position and that that was a decision that the Respondent was entitled to make.

202. The TIB was, therefore, a possibility for the Claimant even at that early stage, although we accept DS Griffin's evidence that he did not wish it to be included in the minutes at that stage as the vacancy would only arise if Brian Foster was appointed to the DCI position as a temporary promotion. If he was not, then he would remain as the substantive DI in post and there would be no vacancy for the Claimant. Who was to be appointed as TDCI was still to be determined at that time.

203. There is nothing in the Claimant's allegation that Brian Foster was only given the opportunity to "act up" in a temporary capacity in order for a vacancy to be created at the TIB. We accept that he was given the acting up opportunity on merit and on business need.

204. In this regard, Brian Foster applied for the DCI post on 4th August 2015 and was interviewed on 21st August 2015 (as confirmed both by his own evidence and that of Superintendant Paul Burrows who interviewed him). He was successful in the application and was appointed with effect from 1st September 2015. He had previously been in the TIB post as a DI since 1st July 2015 following the decision to permanently post him to TIB made by the SDP.

205. We accept that the DI post for TIB had not been on the SDP preference forms, a matter on which the Claimant places significant reliance as part of his case that it was not a "proper DI role", but we accept that the reason that it was not included was on the basis that it was a new role which Brian Foster had recently been appointed to and which he was bedding into. Changing

that posting would have resulted in unnecessary disruption and so we accept that it was logical not to include the TIB DI role on the SDP preferencing forms. In all events, it is a quantum leap in our view to say that simply because the TIB role was not on the preference form, it was not a "proper DI" posting. It clearly was as Brian Foster, a substantive DI, had been appointed to it as per the business case.

206. It is clear that once it was determined that Brian Foster was to be promoted to the temporary DCI post, this freed up the DI post and DCS Helen Jebb was keen to allocate that to the Claimant as it was the most suitable of the other available posting options (see pages 283A and 314AA of the hearing bundle).

Development of the TIB

207. Brian Foster has overseen the development of the TIB and, we accept, has done so successfully so as to challenge any negative image of the same (such as that held by the Claimant) to a division which is now actively sought out by other areas of the Respondent for assistance.

208. Unfortunately, the Claimant did not engage with the Respondent in respect of TIB even, as we shall come to, at the time when he did return to work there. We would observe that having accepted what DCI Brian Foster has said about that, it is a shame that the Claimant did not engage as it would have given him the opportunity to be disabused of his unfair and unjustified pre-conceptions as to the department and the work done within it. In addition, he could well, we accept, have carved out a successful position for himself as a result of work within the division as Brian Foster has. We note in this regard that Brian Foster is no longer a TDCI and has now been promoted to a permanent DCI position.

Suitability of the DI TIB Posting

209. For the reasons that we have already given, we therefore accept the evidence of the Respondent that the TIB was an established and substantive DI post, even if the Claimant did not agree and still refuses to see that. The creation of the department and the requirement for a DI post therein had arisen from a detailed business plan undertaken by DCS Jebb. We accept that it was necessary in the Respondent's view to develop a new way of working with regard to the investigation of crime and that DCS Jebb – as is clear from the business plan – put a considerable amount of time and effort into developing the TIB as the forefront of that new way of policing.

210. Whilst we accept that the Claimant may not have cared for a posting to the TIB and saw it (unfairly and unreasonably in our view) as somewhat beneath him, that rather misses the point in this case. The Respondent was perfectly entitled to make that posting decision and it was a solution which was a reasonable one to impose in the circumstances. Whilst the Respondent would always, we accept, work with its officers if they had difficulties with posting decisions – as indeed was clear from DS Griffin's approach at the 23rd June 2015 meeting – ultimately the posting decision was one for the Respondent (albeit via the medium of DCS Jebb) and one that he was entitled to impose. There is no reasonable argument that this was a "punishment posting" as the Claimant has contended.

211. The posting to the TIB was a reasonable adjustment for the Respondent to have made in order to take into account the fact that the Claimant was unable to take up the EMSOU MC post due to the commuting requirements given that it would have been necessary to "book on" at West Bridgford. The TIB was based at Mansfield and therefore within easy commuting distance for the Claimant.

212. A posting to the TIB was no different to a posting to the County DI post which the Claimant contends would have been a reasonable adjustment in respect of the commuting issue. The TIB was no different to any County DI roles on the Claimant's own case, other than the fact that Claimant did not want to be posted to the TIB because he had preconceived ideas about the work that was carried on there and somehow viewed it as being beneath him. The Claimant's unreasonable approach to the TIB role cannot equate to a conclusion that it was not a reasonable adjustment or that it was an act of unfavourable treatment to post him there. Indeed, the Claimant accepted in cross examination that the TIB role would be a reasonable adjustment **if** (our emphasis) it was a *"proper DI role"*. We are satisfied that, contrary to the Claimant's assertion, it was a "proper DI role" and therefore this posting alleviated any issues of a lengthy commute and constituted the making of a reasonable adjustment.

213. The Claimant's argument in this regard amounts to no more than cherry picking by setting out the roles only that he would be prepared to undertake without consideration of what roles it was, in fact, reasonable to assign him to and what the operational needs of the Respondent actually were.

Alternative posting decisions

214. The Claimant contends that there were a number of other more suitable roles to which he could have been posted other than the TIB. We shall deal with each of those posts below although, it has to be said, this element of the Claimant's claim rather misses the point that he accepts (albeit grudgingly) that posting decisions are a matter for the Respondent and that it is not for an individual officer to dictate which posts they should or should not be allocated. The completion of the preference forms are just that – the expression of a *preference*.

The County DI roles

215. As we have already observed, the restructure of the County CID team was to take effect from 1st September 2015 and until then transitional arrangements would apply (see pages 230 and 231 of the hearing bundle).

216. The result of the restructure was, we remind ourselves, to reduce the number of DCI's on the County from three to two and the number of DI's working under them from six to four. Prior to the restructure, the BNS role was covered by two DI's (see again page 666 of the hearing bundle), namely Temporary DI ("TDI") Jamie Hill and the Claimant.

217. Following the restructure, the County CID team would be structured as set out at paragraph 68 above. So as to ensure adequate cover for extractions (i.e. sickness absences, annual leave etc.) there would be greater

requirement on the DI's within the County CID to travel to different stations within the County. Despite the Claimant's assertions to the contrary, we accept the Respondent's position that this would necessitate considerably more travel than had previously been the case on the County. Whilst the Claimant's coping mechanisms had previously enabled him to manage his County role, the requirements within the County would substantially change following the restructure and it was entirely reasonable for the Respondent to have reached the conclusion that the County roles may not be best placed for the Claimant given the increased travel that would be likely to result. That could include increased commute time to "book on" at stations other than the one to which an individual officer was normally allocated when dealing with extractions.

218. We accept that the Respondent had also – and extremely importantly - determined that the County roles could be filled by temporary DI's who were "acting up" into that post whereas there were other areas of operations where that was not operationally possible or desirable. We accept that the County DI roles were ones where temporary DI's – or TDI's – could be posted to act up on the basis that there was plenty of peer support from other DI's in the team and also a cadre of DCI's to oversee and support those who were acting up as TDI's.

219. We further accept that the Respondent had determined that a TDI could not be allocated to some divisions where such a wealth of support was not prevalent and this included the TIB.

220. The Claimant contends that there was no reason that he could not have remained on the County as a DI rather than posting him to the TIB. He points to the fact that the structure post 1st September 2015 saw temporary DI's remain on the County and, in essence, that as he was more experienced and qualified it would have been the obvious solution for him to have remained there and for the temporary DI's to have been posted off the County and elsewhere in the Respondent Force – including any vacancy at the TIB.

221. Whilst the Claimant does not agree that TDI's were appropriate to be posted on the County (as he contends that as a substantive DI he should have been posted there in preference to a TDI), we accept the Respondent's evidence that this was one such role where a TDI could be accommodated. We would note that all TDI's who were appointed to roles on the County were experienced and were existing TDI's who had already been acting up for some time (see page 1022 of the hearing bundle) and that of course they also had the support of their peers and DCI's on the County. We accept that DCS Jebb had determined that the County could manage perfectly well with TDI's (as ultimately there were not enough DI's to go round and be placed in all the available DI postings) but that a TDI could not fill the substantive DI post in the TIB. That view is supported by the fact that there was an initial posting of then DI Brian Foster into that role and the later posting of the Claimant. Both DI Foster and the Claimant were of course substantive DI's.

222. Nevertheless, upon it having been determined that the Claimant could not take up the EMSOU MC post, DS Griffin held back the Mansfield DI post as a possible posting for the Claimant (see page 283 of the hearing bundle). DS Griffin could not, however, post the Claimant into the Mansfield DI role unless

he was posted to the County by DCS Jebb. This was on the basis that unless he was posted to the County for allocation by DS Griffin, the Claimant would not have been within the cadre of officers appointed to DS Griffin and we accept that he would have had no authority to take any posting decision in respect of him. Whilst DS Griffin would have preferred to have the Claimant within the County due to his experience, that was only something that he was able to do if DCS Jebb chose to post the Claimant to the County. If the Claimant was posted to the County, the decision as to where to post him stood then with DS Griffin and hence the reason why he left open the Mansfield position as being the best possible option (it being the shortest of the County commutes) if he was posted to the County by DCS Jebb. Whilst the Claimant contends that he was still part of the County at that time and could therefore be posted by DS Griffin accordingly, it was clear that that was on a temporary basis under the transitional arrangements until his posting question was resolved.

223. However, DCS Jebb determined that she would not post the Claimant to the County as a role within the TIB had became available on the temporary promotion of DI Brian Foster to TDCI. DCS Jebb, as per the business plan, wanted a substantive DI to fill the now vacant DI role in the TIB. The Claimant, as an available substantive DI without a posting fitted the bill for the TIB. As we have already observed, DCS Jebb was satisfied that the County roles could, if necessary, be filled with temporary DI's (unlike her views of the TIB role) and so DS Griffin was left to backfill those posts from appropriate and available temporary DI's.

224. On 13th August 2015, DS Griffin had written to the County team with an update about posting decisions (see page 283 of the hearing bundle). This dealt with the posting of TDI Jamie Hill to the BNS role based at Newark. At this stage, there remained a question mark over the Claimant's posting (given that he had appealed against the EMSOU MC posting) but if he was to be posted to the County then, as above, a role at Mansfield had been earmarked for him. That would have created no issue in terms of commute time (although the problem of cover for extractions still remained) and was therefore a potential position for DS Griffin to have identified **if** the Claimant was posted by DSC Jebb to the County. It is not the case, as the Claimant contends, that TDI Jamie Hill was given "his post". TDI Hill had been in post as part of a team of two DI's (along with the Claimant) in the BNS area before the restructure but there was a reduced need for DI's post the restructure and it was that single DI role into which TDI Hill was slotted on 13th August 2015. That role was not the Claimant's role.

225. The same applies to TDI Dave Bola who was appointed to the newly created Violence unit, which had a requirement to cover all three County hubs, including South Nottinghamshire. Whilst he was slotted into that role by DS Griffin, it remained the case that had DCS Jebb decided to post the Claimant to the County, then he would have allocated him to the Mansfield post. There can be no reasonable suggestion that that was inappropriate or that the roles into which TDI's Jamie Hill or Dave Bola had been slotted should have been kept free in preference to the Mansfield role.

The Mansfield post

226. Given that the decision was taken, however, by DCS Jebb that the Claimant was to be posted to the TIB, which as we have already said required a substantive DI, and the Claimant "fitted the bill" in that regard, the post that DS Griffin had been holding open at Mansfield in the event that DCS Jebb posted the Claimant to the County now had to be filled.

227. DS Griffin did not have a substantive DI posted to the County to fill the Mansfield role and so had to fill the vacancy from available suitable temporary DI's. He therefore allocated DS Becky Hodgman to act as a temporary DI.

228. Whilst the Claimant may have preferred that County role to the TIB position which was allocated to him, that is neither here nor there. He had been posted to the TIB which was a suitable role and one that required a substantive DI. That was not the case for the Mansfield and Ashfield DI role where DCS Jebb was satisfied that a temporary DI would be sufficient.

229. Whilst the Claimant was dissatisfied with the posting to the TIB, we would observe that there were other individuals who were not allocated to their first preference of roles either. For example, as we have already observed DI Justine Dakin had not preferenced EMSOU MC and had expressed a wish to remain in Public Protection. However, she was posted to EMSOU MC as it was considered that she had spent too long in Public Protection and a move was therefore desirable for operational reasons.

Temporary and Substantive DI's

230. We should mention here the position in respect of those who are given temporary promotions. In this regard, the Respondent allows officers of certain ranks to "act up" to a higher rank for a period or to undertake the full range of duties of such a higher rank as a "temporary promotion".

231. Those appointments are dealt with under the Respondent's Police Officer Acting Duties and Temporary Promotion Procedure (see page 1022 of the hearing bundle) which states as follows:

"Temporary promotion applies when:

- *there is a requirement to undertake the full range of duties at a higher rank AND*
- *there is a short-term need which is longer than 56 days, with a foreseeable end date normally no longer than one year."*

232. However, whilst the policy provides that temporary promotion will usually be limited for no longer than one year, we accept the evidence of the Respondent that in practice temporary promotions are often for a much longer period. Indeed, that is the case given that the policy envisages that there will be sufficient substantive officers, which is not necessarily always the case.

233. We do not therefore find it unusual that the Claimant was not retained on the County when temporary DI's were allocated there. As we have already said,

DCS Jebb had determined that the County was able to manage with an allocation of temporary DI's given the support network of experienced officers but that the TIB required a substantive DI in post.

234. We therefore accept, for the reasons that we have already given, that a posting to the TIB was a suitable posting for both a substantive DI and for the Claimant.

The aftermath of the TIB posting decision

235. On the same day as the Claimant was told that he had been posted to the TIB, he received a call from Brian Foster who was by that time of course the temporary DCI ("TDCI") under whom the Claimant would be working. He had contacted the Claimant to say that he had heard that he would be joining him. The Claimant's reply was "Brian, don't hold your breath". We consider that a remarkable comment for the Claimant to have made given that he was well aware that posting decisions were ones for the Respondent and he did not have any basis other than his own preconceptions upon which to conclude that the TIB was not an appropriate role. It is, in our view, simply symptomatic of the Claimant's dogged determination that he would not accept a posting decision to the TIB.

236. On 28th August 2015, the Claimant wrote to DS Griffin making a number of enquiries about his posting to the TIB. DS Griffin forwarded that email to DCS Jebb who provided her responses into the body of the text used by the Claimant and DS Griffin duly forwarded those replies to the Claimant on 1st September 2015 (see page 314 of the hearing bundle). That reply confirmed that the Claimant's posting to the TIB remained due to commence on 1st September 2015 and also included the rationale for the Claimant having been posted to the TIB itself. That set out as follows:

"Substantive detective inspector post, currently vacant and suitable bearing in mind the need to accommodate reasonable adjustments for the individual".

237. There is no reasonable basis on which to criticise that rationale. The TIB post was a substantive DI post. It was suitable. Particularly, it was based in Mansfield, which was a reasonable commute for the Claimant to undertake bearing in mind the opinion of Dr. Booth that he may be negatively impacted by a long commute.

238. Whilst the TIB was a different role to that which the Claimant had previously undertaken, the same, in fact, could be said for Brian Foster when he was appointed to that role. Simply because the role was different does not make his posting there "unfavourable treatment". The role was a substantive DI role in a new department that was an important part of the Respondent's operations and was central to their new way of working. The fact that the Claimant would not and could not recognise that and had an unreasonable and negative view of the TIB does not make the role detrimental.

The Claimant's grievance

239. On 1st September 2015 the Claimant raised a grievance regarding the decision to post him to the TIB. The grievance was a detailed document running to some six and a half pages. It is telling in our view that the

Claimant did not make any mention at all within the grievance of the reasonable adjustments that he contends that DS Griffin made reference to on 23rd June 2015. We consider it inconceivable in such a detailed grievance that he would not do so when one takes into account the fact that this is now a cornerstone of the Claimant's case. Given the detail in that document, it is not plausible that he would not have mentioned it had that comment actually been made and we do not accept the Claimant's suggestion that this was on account of his attention at that time being focused on the TIB issue. This gives further weight to our finding that DS Griffin did not mention at any time the possibility of taking the EMSOU MC role and booking on elsewhere other than at West Bridgford on 23rd June 2015.

240. The Claimant sent his grievance to DS Griffin and it was subsequently forwarded by him to DCS Jebb. The initial response to the Claimant's grievance came from DCS Jebb by way of a detailed letter sent on 4th September 2015. The Claimant is critical of that on the basis that his grievance concerned a decision which DCS Jebb herself had made. We do not share that criticism. It is clear that DCS Jebb was dealing with matters on an informal footing by explaining her decisions to the Claimant as he had in fact requested in an earlier email that he had sent to DS Griffin on 30th August (see page 300 of the hearing bundle). Moreover, the response from DCS Jebb did not deprive him of having the matter determined by a fresh pair of eyes given that, as we shall come to below, the grievance was passed on to Chief Superintendant Steven Cooper to deal with and the Claimant received a substantive response from Mr. Cooper on 10th November 2015 (see page 421 and 422 of the hearing bundle).

241. A copy of the initial response from DCS Jebb appears at page 350 of the hearing bundle. The Claimant particularly takes issue with the following passages of the reply from DCS Jebb (see pages 352 and 353):

"Dr. Booth indicated in your OHU report that an increased commute and associated additional working travel would have an impact on the balance of your diabetes and a potential impact of your ability to perform in the role.[8]"

And:

"Dr Booth indicated in your OHU report that an increased commute and associated additional working travel will have an impact on the balance of your diabetes and a potential impact on your ability to perform in the role. It was therefore determined that a reactive CID role was not a post which could accommodate these adjustments without having a detrimental impact upon your health or ability to carry out the role effectively. However some roles could clearly accommodate this and take advantage of the skills and experience you have".

242. As indicated above, the Claimant's grievance was subsequently passed to Chief Superintendant Cooper to investigate. Prior to his investigation, the Claimant had, via Inspector Sam Wilson, indicated that there were four points that he wanted to have resolved in respect of the issues arising from his grievance (see page 362 of the hearing bundle). Those were as follows:

[8] This being the EMSOU MC role.

(i) An apology from DCS Jebb/the Force for the way that he had been treated;
(ii) A posting which reflected his skills and abilities;
(iii) The discounting of his period of sickness absence in relation to any policies or opportunities;
(iv) An assurance that he would not be victimised in relation to any acting opportunities[9] on account of having raised a grievance.

243. Chief Superintendant Cooper dealt with each of the Claimant's points and set out his findings in respect of the grievance in a detailed report running to some eight and a half pages (see pages 423 to 431 of the hearing bundle). He concluded that he was not able to resolve the grievance, save as for offering the Claimant reassurance (as the Claimant had requested) that he would not be victimised. He did, however, make recommendations in respect of taking the situation forward.

244. The recommendation made by Chief Superintendant Cooper in this regard was that there should be a meeting between the Claimant and DCS Jebb to seek to resolve what he referred to as the discrepancies between them and that there should be a further review of the Claimant by Occupational Health. The purpose of the further Occupational Health review was said to be to seek clarity on the question of travel/shift/commute time and the effect on the Claimant's health.

245. As we shall come to below, there was a further Occupational Health review undertaken in accordance with the recommendation made by Chief Superintendant Cooper.

The Force Review

246. Part of the Claimant's complaint concerns the fact that a review of the alternative DI posts had been recommended by the Respondent but had not been carried out. The Claimant confirmed in his evidence that this is a reference to the review referred to in the response to his grievance which came from DCS Jebb and which was sent to the Claimant on 7th September 2015. That section of the grievance response said this (see page 354 of the hearing bundle):

"The Force Investigations Model has changed significantly and the Force will be assessing the retained Detective Inspector roles on a continuous basis. This places an increased uncertainty around available postings. The significant changes to the Force Investigations Model will include a review of all Detective Inspector and DCI roles within the Force, assessing both the responsibilities of the post holder and the requirement for the role in future operating models.

With this level of uncertainty, in addition to the changing nature of the reactive CID Detective Inspector role, I am unable to identify a substantive posting for you at this time. You may be aware that the T/DCI post has only been agreed for 3 months at this time[10] - this is owing to uncertainty about

[9] This related to any opportunities to "act up" into a more senior role.
[10] This was a reference to the TDCI role that had been given to DI Brian Foster within the TIB.

the future. As such there is an opportunity to review your post at that time with Occupational Health following the completion of the posting within the TIB. This will allow Det Supt Griffin to assess the impact of the new investigations Model, the demands of the new roles and your current health assessment".

247. It is common ground that the Force wide review of DI postings as referred to by DCS Jebb did not occur. The Claimant contends that to be an act of discrimination contrary to Section 15 EqA 2010. However, it was, and regrettably remains, entirely unclear how this particular allegation is said to have anything to do with anything arising from the Claimant's disability. Unfortunately, despite asking Miss Niaz-Dickinson to assist us further with that point during her submissions, she was unable to do so save as to suggest that it flowed from what was contended to be a discriminatory posting to the TIB. Put simply, this allegation in the context of a section 15 claim quite simply makes no sense and we address it further in the context of our conclusions below.

The further referral to OHU

248. As indicated above, one of the recommendations made by Chief Superintendant Cooper was that there should be a further referral to Occupational Health. That took place shortly after the recommendation was made and the Claimant attended an Occupational Health Assessment on 24th November 2015. The report generated by that attendance did not deal with the question of commute/travel time but focused on the Claimant's ill health absence on account of stress and anxiety. The relevant part of the report in this regard said this:

"Unfortunately, no amount of medical support can solve the non-medical causation in this case. DI Wilson described a feeling of being undervalued by the recent change of deployment, and is currently making representation regarding a reconsideration of the deployment decision. This aspect of the case is obviously outside the remit of Occupational Health, and I can only reiterate my view expressed in the last report, that I consider DI Wilson to be capable of a rapid return to operational fitness once the current psychological ill health that has arisen from the current situation has been resolved. This statement would obviously also be equally applicable to DI Wilson's capability to carry out the role in TIB."

249. The Claimant was sent a copy of Dr. Booth's report and requested clarification on the question of his operational fitness. Dr. Booth provided two emails dealing with the clarification that the Claimant had requested, the relevant parts of which said this:

"I was trying to get across my opinion that I consider there to be no medical reason to prevent you being at work in whatever capacity. You meet all the criteria for operational fitness, as also stated in the previous report; and the reason for your symptoms are non-medical in origin. Removal of these non-medical causes would I am sure result in the symptoms abating quite rapidly, allowing the underlying operational fitness to prevail."

"Operational fitness is an absolute, and refers to the core characteristics of the "ordinary duties" of a police officer rather than being rank specific. It is

either achieved or not, and an officer cannot rely on adjustments in order to achieve it. Driving is not one of those characteristics, even within the role, and the assessment certainly does not take into account any commute to work – to be able to be declared operationally fit, an officer has to be fully deployable and be able to carry out the full role once deployed. The belief that I have expressed, both in the last report and this one, is that you would be capable of this, once the current anxiety issues have been resolved, and it is the wording of this aspect that I was going to look at again.

The suggested adjustment in the previous report was to the specific role of Detective Inspector, and not to operational fitness. The report was carefully worded to state that the commute is not part of the remit of Occupational Health, but nevertheless pointed out that the additional impact of a longer commute may "upset the balance" that you have achieved, as you stated, with the potential for affecting role capability."

250. Dr. Booth produced an amended report in light of the Claimant's comments which was received by the Respondent in late January 2016 and which incorporated comments made by the Claimant on 21st January. The incorporated comments in this regard were as follows:

"In short I agree with the content of the reports dated 7th July and 24th November 2015 and these need to be considered together. I agree that both conditions meet the legal definition of disability within the meaning of the Equality Act 2010 and that the main impact upon me is one of cumulative fatigue, such that a greatly increased commute time would impact upon my ability to carry out my role. However, as confirmed by Dr Booth, my disabilities do not prevent me from continuing in my work as a fully operational Detective Inspector, provided I am either posted to a suitable location or permitted to book on at a suitable location. Should these small, reasonable adjustments be made, then no other restrictions whatsoever are necessary. I am able to undertake whatever travel is required of me within my usual tour of duty.

As confirmed by Dr Booth, the posting to the TIB post in these circumstances has caused me further ill health, which is currently preventing me from returning to work. However, I am confident that now that the medical position has been clarified, a suitable operational posting can be found, thus improving my health and enabling me to return to work as quickly as possible."

The Claimant's ill health absence

251. On 2nd September 2015, the day after the Claimant had been due to commence work at the TIB, he contacted Brian Foster and we accept that he told him that he would "make it easy" for him and that he was going off sick with management induced stress. We accept that he made it clear that he would not be returning until "the matter" was resolved. That "matter" was the matter of his posting to the TIB and the fact that the Claimant did not like that posting decision.

252. We accept the submissions of Mr. Roberts that in taking that stance the Claimant effectively gave an ultimatum to the Respondent that he was not going to work in the TIB and that he was going off sick. We accepted Mr.

Foster's evidence as to what was said in the telephone call in that regard. He was able to give a detailed account of his recollection of that event and he told us that he had been in the car with his wife outside the Crown Court on hands free and she had queried after the conversation what the Claimant was "making easy" for Mr. Foster. We are satisfied that that conversation clearly stuck in the mind of Mr. Foster and it accords with his note of the discussion made thereafter (see page 316 of the hearing bundle). We have not been taken to any note of this conversation from the Claimant despite the fact that we have seen a number of notes of other discussions which would suggest a tendency to keep a note of each material interaction with the Respondent. It is difficult to see why this interaction would not have been similarly recorded by the Claimant.

253. As we shall come to below, the Claimant continued to be absent from work and this eventually led to the Respondent taking steps under the Attendance Management Procedure.

Meeting between DCS Jebb and Inspector Sam Wilson on 4th November 2015

254. During the course of the Claimant's ill health absence he continued to be assisted by Inspector Sam Wilson in her capacity as Police Federation Representative. She arranged a meeting with DCS Jebb in an attempt to seek to resolve the issues surrounding the Claimant's posting and that meeting took place on 4th November 2015.

255. The Claimant's complaint to the Tribunal includes the fact that during this meeting it is said that the Respondent gave *"little or no consideration to making reasonable adjustments to the EMSOU role".* As we have already observed, previous consideration had been given to whether adjustments could be made to the EMSOU MC role on 9th July 2015, but there were none that could be identified that would be operationally viable (see paragraph 149 above). Indeed, as we have already touched upon and as we deal with further in our conclusions below, there were in fact no adjustments that would have been *reasonable* (our emphasis) that could have been made to allow the Claimant to fulfil the EMSOU MC role. In addition, by that time DI Andy Bateman had already been appointed to the EMSOU MC role with effect from 20th July 2015 (following his challenge to his own posting decision after discussion with the Claimant) and there were no longer any vacancies in EMSOU MC in that regard. Justine Dakin had taken up one post and the other had now been filled by DI Bateman.

256. It was not unreasonable for the Respondent to have posted DI Bateman into that vacant post as the Claimant's appeal had, notwithstanding what he now says, made it clear that he did not want to go to EMSOU MC at West Bridgford. That remained, in fact, his position until he was told that he would be posted to the TIB and only thereafter did the Claimant's position on the EMSOU MC posting change and he began to reference reasonable adjustment vis-a-vis the location.

257. As we have already said, the only sensible reading of the Claimant's appeal letter – titled as it was "APPEAL AGAINST POSTING" – was that he did not want to go to EMSOU MC. Once it was determined that EMSOU MC was not a suitable posting and that an alternative needed to be found, that left a

vacancy at EMSOU MC that needed to be filled. DI Bateman had expressed a preference for EMSOU MC and had appealed against his own posting decision – partly in connection with advice provided by the Claimant. That appeal was successful and by 4th November 2015 when the meeting between DCS Jebb and Inspector Sam Wilson took place, Andy Bateman was already in post. It is difficult to see therefore what further discussion about reasonable adjustments for EMSOU MC as at this date could possibly have achieved (leaving aside the fact that there were in fact no reasonable adjustments that could be made to that role).

258. The Claimant also complains as to a comment that it is said was made by DCS Jebb at the meeting with Inspector Wilson in response to being asked why an acting DI could not be moved to accommodate the Claimant. We accept that it is likely that the note made by Inspector Sam Wilson was correct and that DCS Jebb did say words to the effect of *"What does it say to everyone else who didn't get 1st choice if he is accommodated?"* (see page 414 of the hearing bundle).

259. The evidence of Mrs. Jebb was that the comment was made in the context of talking to a Federation Representative and therefore what their stance on such matters would be, given the capacity for such decisions to affect their wider membership.

260. However, whether the comment was made in the context of the Federations stance or otherwise we do not see anything wrong with the comment made by DCS Jebb in this regard. The position is, as the Claimant accepts, that the Respondent is entitled to post officers where operational needs dictate. That was what DCS Jebb had done. The TIB was a vacant post that needed a substantive DI to fill it. It was a suitable post for the Claimant and one that met the adjustments that he needed in terms of commute time. Simply because the Claimant had preconceived notions about the TIB and did not want to be posted there was neither here nor there. We accept that if officers could simply dictate their postings based on what roles they did or did not want to do then that would send out completely the wrong message and could create serious operational difficulties if officers began to routinely challenge their postings based on their preferences not having been able to be accommodated. The comment made by DCS Jebb in her meeting with Inspector Wilson did nothing more than reflect that fact.

261. We should observe that prior to the 4th November meeting, the Claimant's wife had sent a rather curiously termed email to Inspector Wilson (see page 408 of the hearing bundle). That message said this:

"Yes I can't see her [DCS Jebb] *changing anything, which actually is the best thing really. She didn't even have TIB as a posting when she was sorting the DI's out (although we don't want to highlight that to her!!) thanks for going out of your way AGAIN Sam – it is appreciated more than you know xx".*

262. Mr. Roberts invites us to conclude that the meaning of that email was that Mrs. Wilson did not want anything to be resolved in terms of the posting decision on the basis that she and the Claimant were intent on litigation over the issue. We accept that it certainly seems that the reference to it being "the best thing really" if the posting decision was not changed suggest that resolution may not have been uppermost on Mrs. Wilson's mind. However,

we have not heard from her and the Claimant was not asked about the email in cross examination. We therefore make no finding that the Claimant was aware of what his wife's views might have been nor that, if Mrs. Wilson was more interested in litigation, that the Claimant shared that stance.

263. However, we are satisfied that notwithstanding the terms of the email, this did not influence the way in which Inspector Wilson dealt with the meeting with DCS Jebb and that she approached matters from the perspective of seeking to resolve the posting issue that the Claimant had. We do not question her motives in dealing with matters in the way that she did and we are satisfied that she did her best to try to assist the Claimant.

264. During the meeting, Inspector Wilson also raised with DCS Jebb the role of TDI Jamie Hill who had remained on the County in the BNS role following the restructure of CID. The Claimant contends that he (via Inspector Wilson) was misleadingly informed that the role did not exist. We are satisfied that what was said in that regard was not misleading. As we have already identified above, the role was not the same role as the Claimant had undertaken on the County. The Respondent had reduced the number of DI's within the BNS section from two DI's to one DI and that single DI would be required to cover a greater part of the County area on a more frequent basis. That was on the basis that the reduction in the number of DI's in all sections on the County meant that each section no longer had immediate cover for extractions in their area and would be reliant on cover from other parts of the County. Inspector Wilson's note records that DCS Jebb had told her that *"That role doesn't exist (that ash did")*. That was in fact correct as there was no second DI role left on the County as there had been when the Claimant was posted there.

265. What Inspector Wilson was told, therefore, was not misleading.

Attendance Management Procedure and the issuing of a Written Improvement Notice

266. The Respondent Force has in place an Attendance Management Procedure ("AMP") which is applied to those who are absent on the grounds of ill health (see page 958 of the hearing bundle).

267. The AMP sets out a three stage process to deal with sickness absence. Stage three of the process is usually dismissal for incapability. Stage one of the process is triggered for continuous long term absence of 28 days or more where an individual's medical incapacity is likely to be long term (see page 963 of the hearing bundle).

268. The Claimant was invited to a Stage one meeting on 1st February 2016. By that stage, the Claimant had been absent for 6 months, having signed himself sick on "BOBO" (the Respondent's electronic attendance system) on 2nd September 2016 and thereafter submitted Statements of Fitness for Work ("Fit Notes") from his General Practitioner. The Respondent could, in fact, have invoked stage one of the AMP procedure long before that and, indeed, after 28 calendar days of absence (again see page 963 of the hearing bundle). It was not, therefore, unreasonable to invoke the procedure at that stage, particularly when there was no indication that the Claimant would be returning to work in the near future.

269. The maximum outcome at stage one of the procedure is the issue of a Written Improvement Notice ("WIN"). The Respondent's policies set out circumstances when a WIN can be issued as follows:

"The formal process includes the outcome that a Written Improvement Notice (WIN) if the individual has unsatisfactory attendance and there has been no improvement can be issued (sic). *A line manager may issue a WIN for those individuals who are on long term sick, even if they have not returned to work, if the circumstances are appropriate to do so".*

270. Consideration at stage one was by TDCI Brian Foster (as he then was) as the Claimant's then Line Manager. Irrespective of the fact that he had not actually ever attended work by that stage in the TIB, the Claimant was nevertheless assigned there. The Claimant attended a meeting at stage one with TDCI Brian Foster on 9th March 2016, by which time he had been absent for just over six months. Following the meeting, the outcome of the stage one process was that TDCI. Foster did issue the Claimant with a WIN. The relevant parts of the WIN issued to the Claimant said this (see page 679 of the hearing bundle):

"Your current level of absence is considered unsatisfactory because your absence level is in breach of the attendance management policy (long term over 28 days) and has left the CRIM[11] without a Detective Inspector since 02/09/2016. Your continued absence further impacts on the department even though the posting was initially identified as one suitable for your disability.

I am happy to try to return you to work and will agree a recuperative return which will take into account your individual needs over shift lengths and exposure to a particular role.

I have set a date of 17th April 2016 (when your current fit note expires) as a realistic date for you to have returned to work by. I would expect you to maintain your attendance at work and would remind you that any further absences may constitute a further breach of the policy which would result in a stage two meeting (one absence subject to return to work meeting, two absences breach policy and possible progression to next stage meeting)."

271. The WIN was to remain valid for 12 months from the date of the notice.

272. We are satisfied that the issuing of a WIN was, in the circumstances, a perfectly reasonable option that was open to TDCI Brian Foster, as indeed was the later dismissal of the Claimant's appeal against the WIN by Superintendant Paul Burrows. The Claimant had been absent for an extended period of time without an indication as to when he might return to work. A WIN in the circumstances, was not unreasonable and was inside the terms of the Respondent's policy as set out above. Indeed, as we have already observed it would have been quite open to the Respondent to have commenced stage one of the AMP well before the six month period of

[11] In this context, this is a reference to the TIB in the way that that term has been used as interchangeable with the CRIM during these proceedings.

absence that the Claimant had before he was invited to the meeting with TDCI Foster.

273. Moreover, and more importantly in the context of this claim, the AMP (and thus the issuing of the WIN) was triggered by the Claimant's absence from work which was on the basis of stress and anxiety. The Claimant was **not** absent with diabetes or high blood pressure. His absences was not therefore "something arising" from his disability (the Claimant does not rely on stress and anxiety as a disability in these proceedings) but as a result of the unreasonable perception that he had in respect of the TIB and the resulting steadfast determination that he did not want to undertake the DI posting in that department. The posting was not discriminatory as claimed and it was therefore not an act of discrimination that caused the Claimant to be absent and, in turn, the WIN imposed. That resulted purely from the Claimant's ill health absence from stress and anxiety which arose from his dislike of the TIB posting.

274. We should finally deal here with the reference within the WIN to the Claimant's absence having caused the TIB (or CRIM as TDCI Foster more accurately referred to it – see paragraph 187 above) to be without a DI for the period of the Claimant's absence. It is the Claimant's case that this was demonstrative of the fact that there was no "proper DI" role within the TIB. If there was, says the Claimant, then a replacement would have been found to cover the DI role during his ill health absence.

275. We do not accept that position. It was clear from the evidence of DCI Brian Foster that during the period of the Claimant's absence assistance to cover the role was obtained from a uniformed inspector (Inspector Gallagher) and that he himself also took on elements of the work that the Claimant would have been doing (being familiar with it given that he was the former DI in the TIB) so that a replacement was not necessary. We further accept his evidence that whilst that position was manageable, it did result in the work in the TIB simply continuing at a static level rather than making the advances that TDCI Foster had anticipated had a permanent substantive DI been at work in the TIB team.

276. We do not therefore accept at all that the failure to draft in a replacement therefore supports the Claimant's case that there was no substantive DI role within the TIB and, as we have already observed, we accept that there was such a role and that it was manifestly suitable for the Claimant.

The Claimant's return to work

277. Following the issuing of the WIN, the Claimant returned to work at the TIB on 19th April 2016. His official return date had been 18th April 2016, but he had had his appeal against the WIN on that date and so it was agreed that he would return to work the following day. At this stage, the TIB was still a temporary posting for the Claimant pending him being allocated a permanent substantive post. The reason that the posting was temporary was on the basis that it had not at that time been determined whether DI Foster was to remain as DCI or whether he would revert to his DI position after his acting up period came to an end. If he was not to be made a permanent DCI, then he would revert to his substantive role as DI in the TIB.

278. The Claimant is critical of the fact that if his posting was a temporary one, why he was assigned there on what was referred to in email correspondence between Human Resources and Helen Jebb as "permanently" (see page 409C of the hearing bundle). However, we accept the evidence of the Respondent that the Claimant needed to be put on a "tree" on the Respondent's organisational structure for administrative purposes and this series of emails was no more than dealing with that issue. Indeed, as we shall come to, it is clear that TIB was never intended to be a permanent posting for the Claimant and he was assigned to a different division in May 2016 on a permanent posting which he still occupies to date.

279. The Claimant is also critical of the fact that DCS Helen Jebb required him to return to work in the TIB before allocating him an alternative permanent posting. However, there was, in the circumstances, no reason for her not to do so. Although the Claimant did not like the posting (and we are satisfied from the evidence of DS Griffin that there are a number of other officers who have similarly not liked posting decisions made in respect of them either) the TIB nevertheless remained the Claimant's posting and it was not for him to dictate where he was and was not prepared to work, particularly when he had been allocated to a suitable post which accommodated his commuting requirements. Moreover, the needs of the Respondent operationally dictated that the TIB needed a DI and the Claimant was able to fill that post. The fact that TDCI Foster had managed temporarily in the Claimant's absence did not alter that fact, particularly given that we accept that the TIB's operations had been treading water rather than advancing as they should have had TDCI Foster had a DI in place.

280. The Claimant was therefore required to return to work in the TIB. He complains that he was given little or no work to do in the short time that he occupied the DI post there after his return to work and, again, contends that that is demonstrative of the fact that there was no "proper DI post" in the TIB. However, we accept the evidence of then TDCI Brian Foster that the Claimant was not assigned any TIB work on the basis that he had said that he did not want to do that work. Indeed, the evidence of DCI. Foster was that the Claimant would not even set foot into the control room and as such it would not have been possible in all events to have assigned him any TIB work even if the Claimant had not made his position on such tasks clear. The evidence of DCI. Foster in this regard accords with the Claimant's steadfast refusal to entertain a posting to the TIB and his rather determined attitude generally. We therefore accept that the Claimant did make it clear that he was not prepared to countenance undertaking TIB work – given that he did not consider it to be "proper DI" work – and that this left TDCI Foster in difficulty with finding him work that he would be prepared to do.

281. As such, there was little that TDCI Foster could allocate to the Claimant for him to do, although we accept his evidence that there was work that the Claimant could have done in the TIB and which would have been useful.

282. The Claimant's criticisms, therefore, that there was no role for a DI in the TIB on the basis that he was given no work during the time that he worked within that division are ill founded on the basis that it was his insistence that he did not want to undertake such work that led to that position. We consider the Claimant's position in that regard to be somewhat disingenuous.

Permanent posting to Public Protection – Rape

283. In May 2016, the Respondent identified a permanent posting for the Claimant and he was posted to Public Protection ("PP") within the rape division. The Claimant commenced that role on 17th May 2016. He therefore spent only just under a month in the TIB on active duty (albeit not undertaking any TIB work) before he was posted on a permanent basis to PP Rape.

284. The Claimant continues in that post to date. Accommodations, as we understand it, have been made to allow the Claimant to fulfil that role and he experiences no difficulties in doing so. It was not a role, as Miss Niaz-Dickinson points out, that the Respondent asked Dr. Booth to review before posting the Claimant to it but nothing turns on this given that the Claimant makes no complaint about that particular posting.

CONCLUSIONS

285. Having made the findings of fact that we have above, we turn now to our conclusions in respect of the remaining complaints that we are required to determine.

286. We begin by considering the sixteen allegations of discrimination arising from disability contrary to Section 15 EqA 2010. We accept the submissions of Mr. Roberts at paragraph 9 of his Skeleton Argument that given the guidance in **Weerasinghe** this essentially requires us to consider and identify the following matters:

    a. What is the "something" relied upon by the Claimant;
    b. Does that "something" arise in consequence of the Claimant's disability;
    c. Was that "something" the reason for the treatment alleged by the Claimant; and
    d. Was the treatment unfavourable?

287. We shall deal with each of the complaints of discrimination arising from disability separately below:

(i) 23rd June 2015

288. The first complaint in this regard is that it is said by the Claimant that on 23rd June 2015 it was suggested in a meeting with Detective Superintendant Rob Griffin that reasonable adjustments could be made to the EMSOU MC role for the Claimant to only have to travel to West Bridgford once or twice per week, but that that was later effectively reneged upon by posting the Claimant to EMSOU MC without any such adjustments or adjustments at all.

289. We are able to deal with this aspect of the claim in very short order given that we are satisfied that at no time did DS Griffin ever indicate to the Claimant that adjustments could be made to the EMSOU MC role to allow him to "book on" at an alternative station and thereafter travel on to West Bridgford in working time. The posting of the Claimant to EMSOU MC before the Claimant had vocalised any issue relating to his disability (which only came as part of his appeal against the posting decision) was therefore entirely unsurprising.

290. It follows that this aspect of the Claimant's claim is not made out on the facts and therefore it is accordingly dismissed.

(ii) 8th July 2015

291. The second complaint is that on 8th July 2015 the Respondent received a report from Dr Booth which confirmed that the Claimant was operationally fit to carry out all aspects of his role but which stated that a greatly increased commute time might affect his energy levels with a "knock on" effect on role capability. The Claimant contends that without consultation he was informed that he was not going to be posted to EMSOU and "that was that".

292. The "something" in respect of this aspect of the complaint is said to be the Claimant's inability to accept the EMSOU MC role due to commuting requirements. We accept that that is a matter that arises from the Claimant's disability in that an increased commute time – which would be the result in "booking on" at West Bridgford – would increase his fatigue levels.

293. However, we are satisfied that the Claimant being told that he was not now going to the EMSOU MC role was not an act of unfavourable treatment. We accept the submissions of Mr. Roberts that it is clear that the Claimant did not want the EMSOU MC role. His appeal against his posting was absolutely clear on that as were his other actions around the same time (such as his text message to Andy Gowan). For the reasons that we have already set out in our findings of fact above, it is clear that the Claimant did not want the EMSOU MC role and, equally, the decision to post him elsewhere cannot be said to have negatively impacted his career or promotion prospects.

294. However, even in the event that we are wrong about that, there were no adjustments that could be made to the EMSOU MC role (as we shall come to further below) which would have enabled the Respondent to have confirmed the Claimant in that posting. If the adjustments sought by the Claimant had been implemented, this would have resulted in the possibility of compromised murder investigations and, thus, a poor public service. Accordingly, even if the decision not to post the Claimant to the TIB was an act of unfavourable treatment (and we are satisfied that it was not) then the allocation of DI Bateman to that post and the identification of an alternative post for the Claimant was a proportionate means of achieving the legitimate aim of providing as effective a service to the public as possible with the resources available to the Respondent.

295. That aim is clearly a legitimate one – particularly in view of the nature of murder investigations and the seriousness of that crime – and given the fact that the identified adjustments were not ones that could be reasonably or operationally accommodated, there was no less discriminatory means of achieving the stated aim. The Claimant was still allocated a substantive DI post and the balance of the scales tip in favour of the Respondent in respect of the proportionality exercise.

296. Therefore, insofar as the act complained of constituted unfavourable treatment (and again we have already found that it did not) then that treatment is more than capable of objective justification.

(iii) 13th August 2015

297. The third complaint is that on 13th August 2015 the Claimant was informed that he would be replaced in his existing post at Bassetlaw, Newark and Sherwood by Temporary Detective Inspector Jamie Hill who had significantly less experience and qualifications than the Claimant.

298. The first issue in relation to this complaint is that the Claimant was never to be "replaced" by TDI Hill and this part of the allegation is simply factually inaccurate. There had been a reduction in the need for DI's on the BNS team from two to one. TDI Hill had always been one of those two DI's. He did not replace the Claimant at all.

299. The allegation may therefore be more accurately put as to the fact that TDI Hill was retained on the County CID team. That was not, however, when viewed properly an act of unfavourable treatment. As we have set out above, the Claimant accepted that a role in the TIB was no different to a County DI role if the TIB position was a "proper DI" posting. We have found that it was. It therefore follows that allocating the Claimant to the TIB rather than to the County placed him at no disadvantage (other than his own unfair and unreasonable contention that it did) and was not an act of unfavourable treatment.

300. However, even if we had not made that finding then we would nevertheless have concluded that the decision to post the Claimant to the TIB and TDI Hill to the County would have been a proportionate means of achieving each of the legitimate aims set out at paragraph 14 (a) to (d) above. In this regard, we accept that operationally the Respondent was able to manage with TDI's in post on the County for the reasons that we have already given but that this could not be accommodated in the TIB posting. Thus, the posting decision enabled the Respondent to provide an effective service to the public and to utilise the cadre of DI's and TDI's that they had to the best effect and in the area that operations dictated that they were required. It also enabled DS's to act up and develop their experience (and thus career paths) as TDI's.

301. All of those matters set out at paragraph 14 (a) to (d) are clearly legitimate aims and given that the Claimant was allocated a substantive DI post in a suitable division in the TIB, the allocation of TDI Hill where he was best accommodated was a proportionate means of achieving the aims relied upon. Again, the Claimant was still allocated a substantive DI post and the balance of the scales tip in favour of the Respondent in respect of the proportionality exercise.

302. Therefore, insofar as the act complained of constituted unfavourable treatment (and again we have already found that it did not) then that treatment is more than capable of objective justification.

(iv) 13th August 2015

303. The fourth complaint is that on 13th August 2015 the Claimant was informed that Temporary Detective Inspector Dave Bola would be posted to the violence team at Mansfield despite the Claimant being significantly more experienced and qualified as well as equally capable of carrying out that role.

304. There is no dispute of fact that TDI Bola was dispatched to the newly created Violence Unit.

305. However, this aspect of the claim falls to be determined in precisely the same way as with regard to complaint (iii) above and we therefore repeat here our conclusions at paragraphs 299 to 302 above in dismissing this complaint (iv).

(v) 28th August 2015

306. The fifth complaint is that on 28th August 2015 the Claimant was informed that he was being posted temporarily to the Telephone Investigations Bureau. This, in our view, is the real issue in the case.

307. We are entirely satisfied for the reasons that we have given that the posting of the Claimant to the TIB was not an act of unfavourable treatment. The Claimant may have had negative perceptions about that posting but his own unsubstantiated preconceptions in this regard cannot amount to unfavourable treatment. The role was one which required a substantive DI and was one which the Respondent was entitled to post the Claimant to. It ticked the boxes in terms of location and commute time and there can be no reasonable suggestion as the Claimant continued to maintain that it was a punishment posting. As we have already found above, the posting of now DCI Brian Foster to the TIB certainly did nothing to damage his reputation or career prospects; not least as he received a permanent promotion within a relatively short time of his deployment into the TIB. Equally, as we have already found, the fact that the Claimant could not complete the PIP3 qualification is not to his detriment in terms of promotion prospects as he contends.

308. We are therefore satisfied that this element of the claim does not get off the ground as it was not, when viewed objectively and reasonably, an act of unfavourable treatment to post the Claimant to the TIB.

309. However, even if we had not made that finding then we would nevertheless have concluded that the decision to post the Claimant to the TIB was a proportionate means of achieving the legitimate aim of managing resources to accommodate all operational requirements of the Respondent Force. Again, for the reasons that we have touched upon at paragraph 300 above, the TIB required a substantive DI. The Claimant was a substantive DI for whom the TIB was a suitable operational posting. A TDI could not fill the post in the TIB and meet the operational needs of the Respondent.

310. Thus, the posting decision enabled the Respondent to utilise the cadre of DI's and TDI's that they had to the best effect and in the area that operations dictated that they were required.

311. Therefore, insofar as the act complained of constituted unfavourable treatment (and again we have already found that it did not) then that treatment is more than capable of objective justification.

(vi) 1st September 2015

312. The sixth complaint is that on 1st September 2015 the Claimant was informed that his posting to the Telephone Investigations Bureau was for a period of three months on the basis that it was a substantive Detective Inspector post

that was vacant and suitable bearing in mind the need to accommodate reasonable adjustments "for the individual".

313. Again, this is a complaint which centres largely around the key issue in the claim – that is deployment to the TIB. We have already found above that the deployment to the TIB was not an act of unfavourable treatment and it is perhaps difficult to divorce this element of the claim from that which we have already dealt with at complaint five above.

314. However, the reason for the temporary deployment of the Claimant to the TIB was not as a result of something arising from his disability. He had been deployed to the TIB as a substantive DI was required there and there was a vacant role that the Respondent operationally needed to be filled. The reason that the posting was temporary in nature was on the basis that TDCI Brian Foster had a temporary promotion for a three month period. If that temporary promotion did not continue or was not made permanent, then Brian Foster would revert to being the DI in the TIB. The temporary nature of the posting therefore had nothing at all to do with the Claimant's disability or anything arising from it but from the fact that the promotion of TDCI Foster was for a temporary period and had not at that time been confirmed.

315. However, again even had we not made that finding we would have nevertheless dismissed this aspect of the claim on the basis that any unfavourable treatment that we had found to have existed by reason of the temporary posting decision would be objectively justified on the same basis as set out in paragraphs 309 to 311 above.

(vii) 28th August 2015

316. The seventh allegation is that on 28th August 2015 the Claimant became aware that Detective Inspector Brian Foster had been given the opportunity to "act up" in order for a vacancy to be created for the Claimant at the Telephone Investigation Bureau.

317. Again, this is an allegation that we are able to dispense with relatively swiftly on the basis that we have found it to be factually inaccurate. It is abundantly clear from the findings of fact that we have made above that Brian Foster was not given his temporary promotion simply in order to create a vacancy for the Claimant in the TIB. Brian Foster was given that temporary posting on merit and whilst this opened up a vacancy for a DI into which the Claimant was posted, that temporary promotion had nothing at all to do with the Claimant's disability or any matter arising from it.

(viii) 3rd September 2015

318. The eighth allegation is that on 3rd September 2015 the Respondent "appointed Detective Sergeant Becky Hodgman (who was less qualified than the Claimant and not fully qualified to Inspector rank in order to perform acting duties) as Acting Detective Inspector for Mansfield despite the Claimant being able to fulfil that role without any adjustments".

319. It is not disputed that TDI Hodgman took the Mansfield role on the County CID team.

320. However, this aspect of the claim falls to be determined in precisely the same way as with regard to complaint (iii) above and we therefore repeat here our conclusions in that regard in dismissing this complaint (viii).

(ix) 7th September 2015

321. The ninth allegation is that on 7th September 2015 the Respondent stated that it had been advised that an increased commute time and *associated additional working travel* would have an impact on the Claimant's ability to perform his role despite that not being the advice given by Dr. Booth. The Claimant was also informed that on that mistaken basis the EMSOU role and all other Detective Inspector roles across the Respondent Force were found to be inappropriate for him due to those travel requirements.

322. This allegation arises from the informal response to the Claimant's grievance which was sent to him by DCS Helen Jebb on 7th September 2015.

323. We are able to dispense with this aspect of the claim relatively swiftly on the basis of our findings of fact at paragraphs 157 and 158 above and our conclusions at paragraphs 293 to 308 and 318 to 320. We would therefore simply repeat here the same issues when dismissing this element of the claim.

324. It is correct to say that there is no reference to associated additional working travel within the report of Dr. Booth and that Dr. Booth had referred to the Claimant being operationally fit to carry out the role, including driving. However, that related to the role that the Claimant had been carrying out in the County at that time. This was set to change and there would be additional travel required as we have already observed. It was not an unreasonable conclusion to reach that that additional travel might also negatively impact upon the Claimant. We would note in this regard that the Claimant had already had to adopt and implement coping strategies as matters stood before the restructure of the County roles and the increased driving requirements that would result. This was precisely the discussion that was had at the meeting on 9th July 2015 (pages 273 to 274) and which assisted DCS Jebb in her decision that the Claimant should be posted to the TIB. The Claimant ticked all the boxes for the TIB and the TIB ticked all the boxes for the Claimant (albeit he refused and refuses to accept that that was the case). It was a substantive DI role within an acceptable level of commute. It was an appropriate posting for the Claimant.

(x) 7th September 2015

325. The tenth allegation relates to the fact that a review of alternative Detective Inspector posts was recommended by the Respondent but no such review was ever carried out. As we have observed already above, this was a reference to the review referred to by DCS Helen Jebb in her reply to the Claimant's grievance.

326. As we have already touched upon at paragraph 247 above, we have struggled to understand the basis of this complaint as one of discrimination arising from disability. The "something" is said to be the perception or mistaken assumption that the Claimant could only undertake a role where the need for extensive travel during the working day was limited or small.

However, despite Miss. Niaz Dickinson's attempts to assist us on the point, we cannot see how that "something" has anything at all to do with the failure of the Respondent to undertake a review of all Detective Inspector posts. In our view, this is a complaint that simply cannot be understood and does not get off the ground.

(xi) 4th November 2015

327. The eleventh allegation is that on 4th November 2015 the Respondent gave little or no consideration to making reasonable adjustments to the EMSOU MC role and that DCS Jebb also refused to accommodate the Claimant stating words along the lines of "what does it say to everyone else who didn't get their first choice if he is accommodated?".

328. Again, there is a factual issue in relation to this claim. As we have already set out above, not posting the Claimant to EMSOU MC in light of the fact that he had appealed against that posting was not an act of unfavourable treatment.

329. The Claimant could not undertake the post and there were no ***reasonable*** adjustments that could have made it so even had the Claimant wanted the post (which as we have already found we are satisfied that he did not given it's location at West Bridgford). It followed that the post at EMSOU MC had to be filled by another officer. By the time that 4th November came around, it had already been filled by DI Andy Bateman who the Claimant had in fact advised in respect of challenging his own posting decision. It was not an act of unfavourable treatment not to revisit the issue of reasonable adjustments for a role that the Claimant had made it clear that he was appealing against and did not want; had now been allocated to another officer and in respect of which in all events and as we shall come to there were no reasonable adjustments that could have been made to that role to allow the Claimant to fulfil it.

330. Turning then to the comment made by DCS Jebb, we are satisfied that this cannot, when considered objectively, be considered to be an act of unfavourable treatment. It was a mere statement of fact as we have already observed above.

331. Moreover, it is difficult to see how the comment engages section 15 on the basis of the complaint made by the Claimant. In this regard, it is said that the "something arising" from disability was the perception or mistaken assumption that the Claimant could only undertake a role where the need for extensive travel during the day was limited or small. The comment did not, however, arise from that. It arose from the fact that the Claimant had been posted to the TIB into a substantive DI post and he did not want to undertake that posting. It had nothing to do with anything arising from his disability but to his own stance that he would not go to the TIB and from DCS Jebb articulating what message that would send out to the remainder of the Respondent Force. Again, in our view this complaint simply does not work as an allegation of discrimination arising from disability given the context of the comment made.

(xii) 4th November 2015

332. The twelfth allegation is that on 4th November 2015 "the Claimant asked why he could not carry out his previous post which had been taken by Acting Detective Inspector Jamie Hill but was incorrectly/misleadingly informed that his previous role did not exist."

333. It is common ground as highlighted above that this was a reference to the comment made by Inspector Sam Wilson at her meeting with DCS Jebb as the Claimant was not present at that particular discussion.

334. Again, we can dispose of this allegation in fairly brief terms on the basis that, for the reasons that we have already given in our findings of fact above, the information given by DCJ Jebb to Inspector Wilson (and in turn by the latter to the Claimant) was not misleading. It was accurate having regard to the state of play in the County CID team after the restructure on 1st September 2015.

335. In all events, even had we found the information to have been misleading, it is difficult to see how the reason for that could have been said to be the "something" arising from disability – namely the alleged perception or mistaken assumption that the Claimant could only undertake a role where the need for extensive travel during the working day was limited or small.

336. For those reasons, we are satisfied that this element of the claim should also be dismissed.

(xiii) 10th November 2015

337. The thirteenth allegation is that on 10th November 2015 the Claimant's grievance was rejected on the grounds that it was unsubstantiated. It is common ground that Chief Superintendant Cooper did not uphold C's grievance. The outcome is page 429 of the hearing bundle.

338. Again, this allegation relies on the "something" arising from disability being the alleged perception or mistaken assumption that the Claimant could only undertake a role where the need for extensive travel during the working day was limited or small.

339. However, as set out above, the conclusion in respect of the Claimant's grievance that was reached by Chief Superintendant Cooper was that he was unable to resolve the same and measures for resolution moving forward were suggested. There was no rejection of the grievance based, as the Claimant suggests, on any alleged perception or mistaken assumption that the Claimant could only undertake a role where the need for extensive travel during the working day was limited or small. It was in fact expressly noted by Chief Superintendant Cooper that there had been a difference in interpretation of the comments of Dr. Booth between the Claimant and DCS Jebb and made recommendations for a meeting between them both to seek to resolve that issue.

340. Chief Superintendant Copper dealt with all of the points that the Claimant had required be dealt with (see page 362 of the hearing bundle). The fact that he concluded that there was a difference of opinion between the Claimant and

DCS Jebb as to the TIB role (which there was) and did not find in favour of the Claimant in that regard does not result in the decision being an unreasonable one. It was also a decision that had nothing at all to do with any matter arising from the Claimant's disability.

341. The rejection of the grievance, therefore, is unconnected with the "something" arising upon which the Claimant relies and we have little hesitation in dismissing this element of the claim.

(xiv) 1st February 2016

342. The fourteenth allegation in the claim relates to the fact that on 1st February 2016 the Claimant was invited to a meeting under the first stage of the Police (Performance) Regulations 2012 to address the issue of his unsatisfactory attendance under the Unsatisfactory Attendance Procedure.

343. As we have set out above, the reason that the UAP was invoked was on account of the Claimant's ill health absence. That ill health absence was not as a result of the Claimant's disability but as a result of stress and anxiety. Stress and anxiety is not relied upon as a disability in these proceedings.

344. The "something" therefore in this case is the Claimant's ill health absence but that does not arise from his disability but from an unconnected health issue. Whilst Ms. Niaz-Dickinson seeks to argue that the Claimant's absence was caused by a discriminatory posting on account of his disability and therefore "arises from" that disability, we do not accept that contention. Even if it was possible to make that somewhat tenuous connection, then the complaint would still not be made out on the basis of our conclusion that the TIB was not a discriminatory posting. It was not discrimination that caused the absence but the Claimant's unreasonable perception of the TIB role and his steadfast determination not to engage with the Respondent in respect of it.

345. The invoking of the UAP was therefore entirely unconnected with the Claimant's disabilities given that his ill health absence, which triggered the UAP, was nothing at all to do with those conditions but as a result of stress and anxiety upon which he does not rely as a disability.

(xv) 11th March 2016

346. The fifteenth allegation is that on 11th March 2016 a written improvement notice was served on the Claimant informing him that if his attendance did not improve within a 12 month period he would progress to the next stage of the attendance management policy and procedure and that the Claimant was reminded that the procedure may result in his dismissal.

347. Again, this allegation faces in our view precisely the same difficulties as allegation 14. In this regard, the WIN was issued to the Claimant as a result of the fact that he was absent on the grounds of ill health with stress and anxiety. Again, the "something" therefore was the Claimant's ill health absence but that did not arise from his disability. This complaint therefore also fails on precisely the same basis as complaint number 14.

(xvi) 20th April 2016

348. The sixteenth and final complaint relates to the rejection of the Claimant's appeal against the WIN on 20th April 2016. Again, this complaint faces the same difficulties as the fourteenth and fifteenth complaint; arising as it does out of the invoking of the UAP and the issuing of the WIN which were as a direct result of the Claimant's ill health absence with stress and anxiety and not for a reason arising from his disability.

349. Once again, therefore, this part of the claim fails on the basis that the "something" does not arise from the Claimant's pleaded disability in this case.

Failure to make reasonable adjustments

350. We turn then to the complaint of a failure to make reasonable adjustments.

351. We accept the representations of Miss Niaz-Dickinson that the PCP relied upon by the Claimant – that is being required to "book on" at the station where an officer is primarily based – is one that was operated by the Respondent. We similarly accept her representations that there was no real challenge to the Claimant's case that that placed him at a substantial disadvantage in terms of the EMSOU MC posting due to the extended commute time.

352. The duty to make reasonable adjustments was thus triggered and the Respondent was required to take such steps as were reasonable to ameliorate that disadvantage. We are entirely satisfied that the Respondent did in fact do so by posting the Claimant to an alternative post at the TIB.

353. The TIB was a substantive DI role. It was a role that was vacant and it was one that the Respondent operationally required to be filled. It was manifestly suitable for the Claimant and, in particular, it was only a short commute from his home address. Whilst it was different police work to that which the Claimant had previously undertaken, it was by no means a lesser posting or a punishment posting. Whilst the Claimant could not undertake PIP3 within the TIB, we have accepted that that was no bar to his promotion prospects and, indeed, it certainly did not hinder those of DCI Foster. The posting was, in fact, the most suitable available posting for the Claimant taking into account the duty to make reasonable adjustments in terms of commute time.

354. In this regard, whilst the Claimant has suggested a number of alternative postings that he might have preferred, none of those postings were as suitable with regard to the key issue of a reduced commute time or, otherwise, were not operationally viable and therefore were not "reasonable" adjustments.

355. As we have already set out in our findings of fact above, allowing the Claimant to "book on" at another Police Station and then travel to West Bridgford in working time was, quite simply, not operationally viable (see paragraphs 159 to 177 above). It could well have resulted in compromised or delayed investigations and the amount of time that the Claimant would have been travelling and therefore not as effective in detective terms was simply such that it was not a viable – and therefore not a reasonable – adjustment to have made.

356. The remainder of the County roles identified by the Claimant (including the newly created Violence post) all had the capacity to require additional travel to be undertaken; both in the working day and also by way of a commute in the event of extractions which required other County DI's to be deployed to other areas for cover. That was not an issue which presented a possibility with the TIB role. Moreover, there were not enough DI's to go around and there were posts which needed to be covered by TDI's rather than substantive DI's. The County posts were one such area whereas TIB was not. Amending substantially the Respondent's operational requirements for the TIB to substitute a TDI and allow the Claimant to remain in a post on the County which could be undertaken by a TDI was, again, in the circumstances not a "reasonable" adjustment.

357. What the Respondent therefore did was to select the most suitable role for the Claimant so as to reduce the need for a lengthy commute (or the possibility of one arising) and to meet the operational needs of the Respondent in doing so. We are satisfied that the Respondent therefore met their duty to make reasonable adjustments.

358. The sad fact of the matter is that the Claimant simply did not like the posting that was allocated to him. However, he was not alone in that as we have already observed. It is simply an occupational hazard. His unreasonable stance to the post does not, however, equate to the Respondent not having made a reasonable adjustment and it is difficult not to accept the point made by Mr. Roberts that the Claimant's complaint in this regard is little more than seeking to cherry pick a role.

359. Therefore, for the reasons that we have set out above we are satisfied that the steps taken by the Respondent in posting the Claimant to the TIB ameliorated the substantial disadvantage resulting from the PCP relied upon.

360. For the reasons that we have given, we are therefore satisfied that the Claimant's claim should be dismissed in its entirety.

JURISDICTION

361. Given the findings of fact that we have made and the conclusions that we have reached, it has not been necessary for us to determine the question of jurisdiction and we therefore say no more about that issue.

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Employment Judge Heap

Date 13th June 2017
RESERVED REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE