EMPLOYMENT TRIBUNALS

Claimant:	**Mr M Stringer**	
Respondent:	**The Chief Constable of South Yorkshire Police**	
Heard at:	**Sheffield**	**On: 4, 5, 6 and 7 September 2018** **1 November 2018 (in chambers)**
Before:	**Employment Judge Brain** **Mrs J Lancaster** **Mr D W Fields**	
Representation		
Claimant:	Mr Lewinski, counsel	
Respondent:	Mr Dixey, counsel	

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is:

1. The claimant's complaint that he was unfavourably treated by the respondent for something arising in consequence of disability fails and is dismissed.
2. The claimant's complaint that the respondent was in breach of the duty to make reasonable adjustments succeeds in part upon the following matters:
   2.1. The car parking issue.
   2.2. Issues around the claimant's workstation.
   2.3. Issues concerning access to adequate toilet facilities.
   2.4. The personal emergency evacuation plan.

REASONS

1. The Tribunal heard evidence in this case over four days between 4 and 7 September 2018 inclusive. Following the conclusion of the respondent's evidence, there was insufficient time for submissions. Accordingly, the

Tribunal gave directions for the filing and service of written submissions. The Tribunal then deliberated in chambers on 1 November 2018.

2. The claimant pursues complaints of disability discrimination against the respondent. The complaints are brought under sections 15 and 20 of the Equality Act 2010: that is to say, the claimant claims that he was unfavourably treated for something arising in consequence of disability and that the respondent failed to comply with its duty to make reasonable adjustments. Such discriminatory conduct is made unlawful in the workplace under section 39(2) and section 39(5) respectively.

3. The respondent accepts that the claimant is a disabled person because of his right knee condition. The respondent raises no issue upon the question of knowledge of the claimant's right knee condition or of the substantial disadvantage caused to him in the workplace because of it (in comparison with non-disabled comparators). The respondent denies that it treated the claimant unfavourably for something arising in consequence of his disability and denies that it failed to make reasonable adjustments for him.

4. This matter benefited from a private preliminary hearing that came before the Employment Judge on 27 March 2018. It was recorded that the issues in the case were set out in the agreed list of issues which had been filed before the private preliminary hearing took place. That agreed list of issues is at pages 38 to 43 of the bundle. Upon the first morning of the hearing, Mr Lewinski (counsel for the claimant) handed up an agreed list of issues which incorporated several amendments. No issue was taken with these by the respondent.

5. We shall firstly make our findings of fact. We shall then set out the relevant law before going on to record our conclusions upon the issues in the case. We shall therefore set out the issues in further detail in due course.

6. That said, it is useful at the outset to record the headline issues. The reasonable adjustments claim concerns the following matters:

    6.1. Hours of work.

    6.2. Car parking.

    6.3. Issues around the claimant's workstation.

    6.4. Issues concerning access to adequate toilet facilities.

    6.5. Issues around training.

    6.6. The personal emergency evacuation plan in place for the claimant.

    6.7. Issues around access to canteen facilities.

    6.8. Issues around sickness absence and sickness pay.

7. The section 15 complaint of unfavourable treatment for something arising in consequence of disability centred upon the application to the claimant of the respondent's unsatisfactory attendance procedure. In particular, upon the claimant's case, the unfavourable treatment consisted of the respondent threatening him with action under that procedure if he took any more sickness absence.

8. The Tribunal heard evidence from the claimant. The respondent called evidence from the following witnesses:

8.1. Scott Harrison. He is a detective inspector employed by the respondent. At the material time, he was the inspector within the Crime Support Hub ('CSH'). He was the claimant's second line manager during the claimant's time in the CSH between 16 October 2017 and 14 April 2018.

8.2. Catherine Parker. She is employed by the respondent as a senior HR operational partner.

8.3. James Smith. He is a detective sergeant employed by the respondent. He was the claimant's first line manager whilst the claimant was in the CSH.

We shall refer to DI Harrison and DS Smith as *'Mr Harrison'* and '*Mr Smith'* respectively. No disrespect is intended by us doing this and not referring to their rank for ease of transcription.

9. The claimant joined the respondent's police force on 5 November 2001. On 1 September 2016 he commenced what turned out to be a long period of sickness absence due to his knee injury. On 13 April 2017 Dr Adejoro, consultant occupational health physician, prepared a report (pages 55 to 58). This was addressed to Sally Ann Bamford of the respondent's human resources section. Dr Adejoro prepared the report in his capacity as a Selected Medical Practitioner engaged by the respondent to advise upon the claimant's condition.

10. Dr Adejoro noted that the claimant attributed his right knee problems to an injury at work which took place on 20 April 2005 when he was involved in an arrest. According to the report, the claimant suffered an anterior cruciate ligament injury which required surgery which took place on 11 August 2005. He was absent from work for 11 months and returned to work on restricted duties. Unfortunately, the claimant suffered further injury to his right knee in June 2008. A scan carried out at that time showed that the anterior cruciate ligament repair was intact. However, the claimant's knee condition continued to deteriorate. In June 2013 he sustained a further injury to his right knee.

11. Dr Adejoro's report of 13 April 2017 records the claimant complaining of "right knee pain (5- 6/10) in severity which is accompanied by stiffness, swelling intermittently, occasional instability and sleep disturbance". The claimant said that he "could walk with a stick for up to two minutes or 600 yards, stand up for two minutes, sit up for 10 minutes and use computers, laptops and phones without any problems. He was unable to run and avoided lifting, kneeling, crouching and bending. He was able to drive his manual car for no longer than 15 minutes and could use stairs as long as he walked sideways and held on to the handrail for support. He needed help from his wife when bathing and no longer played rugby or football. He used to be a karate champion for England but has had to give up this activity". Dr Adejoro observed that the claimant walked with a stick and with a discernible limp.

12. Dr Adejoro then (at pages 57 and 58) reviewed opinions that he had obtained from the claimant's GP, consultant in knee surgery and consultant in anaesthesia and pain management. The report concluded that the claimant has chronic right knee pain, all normal and appropriate treatment

options have been explored and exhausted without sustained improvement and the claimant was permanently disabled from performing the ordinary duties of a police officer by his right knee problems.

13. Dr Adejoro then completed a form for the purposes of the 2015 Police Pension Scheme (pages 59 to 63). This too is dated 13 April 2017. The claimant was assessed as being medically unfit for performing the ordinary duties of a member of the police force and that medical unfitness was likely to be permanent. The claimant was assessed as not being medically unfit for engaging in any regular employment and was capable of undertaking mainly office based work. The condition was said to be likely to have an adverse impact upon attendance due to flare ups. Suggested adjustments included part time work and flexible working undertaking office based duties.

14. On 12 May 2017, Jayne Downing, occupational health advisor, prepared a report (pages 73(1) and 73(2)). This was done in order to assist the respondent to decide whether or not to retain the claimant in an adjusted role. She said that the claimant would (in her professional opinion) be classed as disabled for the purposes of the 2010 Act. She reported upon the claimant's functional limitations (in particular that standing was limited to two minutes and that the claimant was able to walk for two minutes on the flat with a stick for support). Jayne Downing noted that at a case review held on 7 January 2017 (during the claimant's sickness absence commencing on 1 September 2016) the claimant had said that he felt that his only option was to apply for an assessment of his medical fitness for performing the ordinary duties of a police officer and did not feel able to return in any capacity.

15. She then concluded as follows (page 73(2):

    "In terms of assessing his fitness for an adjusted role, the force should consider as to whether they feel that following adjustments are reasonable and whether they can be accommodated. Adjustments could include a reduction in contracted hours, an office based role close to home, flexible working, regular posture breaks as well as him being allocated more time to complete tasks. However, it is my opinion that should he be retained by the force, due to his ongoing medical condition, his sickness levels will be above average due to flare ups in his condition. The best indicator of future sickness absence is past sickness levels. It would also be difficult to predict at this time, even with the adjustments outlined above in place as to whether he would manage to be able to do an office based role."

16. Sally Ann Bamford prepared a report upon receipt of Dr Adejoro's report (pages 65 to 73). She noted in her report that the claimant wished to retire. She opined that "it is unlikely a role could be identified which would meet PC Stringer's individual medical needs".

17. On 20 June 2017 the respondent decided to retain the claimant. He said (at page 74):

    "I have considered this matter and conclude that PC Stringer's services should be retained. I note the reported injury and the assessment of permanence which clearly implies that the officer will of necessity be permanently restricted. I do envisage however particularly given the current

expansion in certain functions (eg crime management) that a suitable and worthwhile position can be found within the organisation for this officer and that with reasonable adjustments to take account of his particular needs such a role will prove beneficial to both the organisation and the public".

18. Mrs Parker says in paragraph 7 of her witness statement that the respondent's reference to crime management was with the establishment of the CSH in mind.

19. Mr Harrison fairly accepted that this was a decision taken by the respondent cognisant of Dr Adejoro's opinion that the claimant was permanently disabled from performing the ordinary duties of a police officer by reason of his right knee problems and that his condition was likely to have an adverse impact upon attendance due to flare ups. He also accepted that it was a decision taken with cognisance of Jayne Downing's advice of 12 May 2017 about the functional limitations upon the claimant (in particular upon standing and walking).

20. On 13 July 2017 Jayne Downing prepared a further report (pages 82 and 83). In her opening paragraph she observed that "the Selected Medical Practitioner *[Dr Adejoro]* assessed PC Stringer as being permanently disabled from the normal duties of a police officer on 13 April 2017. The organisation has made the decision to retain him in an adjusted role".

21. She examined the claimant on the day of her report. She says that she was told by the claimant that he can walk for 20 metres and can stand for up to two minutes and sit for short periods. However, sitting is uncomfortable as "he needs to constantly change his posture and position". She reported that the claimant was unable to run, lift, kneel, crouch or bend. He was able to drive his car for 15 minutes at a time. He walks with a stick. He was in possession of a disabled badge. He walked with a discernible limp.

22. Jayne Downing then made several recommendations. These were:

    - That the claimant contact Access to Work to arrange transport to and from work. Alternatively, on days that he felt able to drive he should be able to park in a disabled parking bay. She repeated that the claimant was in possession of a disabled badge.
    - The claimant should return to work on a phased basis. She said that, "on his first set of shifts, he should work three 4-hour-days. This can gradually be increased over the forthcoming 12 weeks. The increase in his hours should be dependent upon his progress and in consultation with his supervision."
    - He should be allowed breaks through the working day.
    - Upon returning to work a risk assessment should be performed locally and which should include a personal emergency evacuation plan.
    - His office should be allocated close to a toilet.
    - His office should be allocated within 20 metres of where he will be required to park or the front door of the building if he arrives by taxi.

23. Jayne Downing also observed that "due to his ongoing symptoms and the side effects of his medication, *[the claimant]* is experiencing some short-term memory loss and finds it difficult to concentrate at times. I would

therefore recommend that he is allocated longer to complete work tasks. In addition, I would recommend that the work that he does is initially checked by a supervisor".

24. On 5 July 2017 the claimant emailed Mrs Parker (pages 74(1) and (2)). He told her that he had completed an Access to Work request through the government website and was awaiting a response. He said that his sick note was due to expire on the Friday of that week. (She says in paragraph 12 of her witness statement that the claimant was about to go down to half pay). He said, "I feel it is in everyone's interest if I don't obtain another note and return to work in some capacity". He expressed concerns that "coming back into the workplace is going to be extremely hard and made worse by not knowing the type of role I'm heading to. I'm worried that my pain will just be too bad to enable me to perform a suitable role and I am worried that the only way I can be alert enough to do a job in a clerical type environment is to lower the amount of painkillers I take to enable me to be fully alert, or alternatively take more to be able to cope with the pain. Either way, my circumstances will be aggravated and made worse by returning".

25. The claimant then turned to the issue of shift patterns. He said that, "the most appropriate shift pattern would be a six on four off to dovetail with Jessica's pattern, so limiting the impact of our family issues *[we interpose here to say that Jessica is the claimant's wife and who also works for the respondent].* I propose that the best way for me to see if I can in fact return to work in any office type capacity would be to start by working 3 x 4 hour shifts during the first 6 on 4 off period this giving a recovery period to see if there is any impact on me physically. I expect this to be very hard. The next set of shifts would then increase by adding a further shift and continue until I was working 6 on 4 off. I would then look to increase the shift length, building it up over time".

26. The claimant said that he was "concerned that the Chief Constable is not acting in my best interest and that his decision to retain me and go against the advice of everyone concerned is purely based around pension costs, and not about the welfare of me as an individual. Anyone can see that I'm physically not well and no matter how this is dressed up as a reasonable decision, it isn't and I feel I am being somehow punished for being injured on duty". The claimant suggested that he return to work on 10 July 2017. He asked that a health and safety risk assessment be completed for him on his return as well as a risk assessment of the environment in which he was to work and a personal emergency evacuation plan. (This is known as a 'PEEP').

27. Mrs Parker responded on 10 July 2017 (page 77). She said that the CSH was not yet live and that the respondent would need to look at options in the interim. It is not clear from the evidence when the claimant was informed of the plan that he works in the CSH. However, it is not in dispute that this was the common intention that he should return to work there.

28. Mr Harrison gives us some useful background information about the CSH. He says this in his witness statement:

"(4) In June 2017, whilst a temporary detective inspector, I was tasked with the creation of the Crime Support Hub. I was involved in the logistical planning of the Crime Support Hub. The purpose of the Crime Support Hub

is to triage new reports of crime that are made by members of the public. When the public call the police through the 101 number the crime recording bureau handles their call and once the information is collected, it is sent to the Crime Support Hub for investigation.

(5) When a crime is sent to the Crime Support Hub, it will be reviewed by an officer in the team who will conduct a "desk top" investigation to establish how the force should investigate the crime. The officer will then allocate it to the appropriate department within the force. The aim is to ensure efficiency within the process of dealing with crime, whilst providing a victim led service. The early assessment and triage of crime frees up frontline resources to be used in a more effective way on more high risk matters. Since its inception in September 2017, the Crime Support Hub has increased to capacity for the uniform frontline whilst at the same time not affecting victim satisfaction. I am very proud of the results and hard work of the officers in the Crime Support Hub. They have achieved quite astonishing results in a relatively short space of time.

(6) The Crime Support Hub has provided a potential role within the organisation for officers who are restricted from confrontational duties due to personal reasons. The Crime Support Hub is not exclusively a team made up of restricted officers; it has a blend of officers bringing all different types of experiences and knowledge to enable the team to provide a quality product. The Crime Support Hub does however proportionately have a larger number of officers who are restricted than not.

(7) When the force was planning the set-up of the Crime Support Hub it has a number of key decisions to make, including the location, processes and organisational structures. Very early within the project it was decided that the majority of staff would come from the Sheffield District, key factors were that we needed a location that could accommodate 31 members of staff, had good transport links and was close to the current specialist crime services ("SCS") management team. I fully supported Snig Hill police station as the chosen venue as it accommodates the majority of needs for the officers who were set up to join the Crime Support Hub including those on adjusted duties who were unable to travel great distances.

(8) Snig Hill police station is an operational police building shared by a number of different departments. The basement is for the parking of liveried police vehicles, other specialist vehicles and, at one time, it had disabled parking bays. The first floor is where the uniformed teams are based as this floor offers ready access to the basement where their vehicles are parked for emergencies. The second floor is for CID, Housing and the Protecting Vulnerable People team and Child Abuse teams. In addition there are now uniformed Response and Neighbourhood teams on that floor as well. The front of a second floor has the front counter, where the public may access the station and some interview/consultation rooms.

(9) The third floor is the SCS suite, which houses all of the management personnel and is largely shown in the diagram at page 491. Upon entering the double doors from the central stairs and lifts, to access the SCS you would turn left. If you turn right you enter the Crime Support Hub team's office. I believed that this location is the closest office space to the front door that could accommodate the Crime Support Hub".

29. In evidence given under cross-examination, Mrs Parker confirmed that the claimant submitted no more medical certificates that he was unfit to return to work following the expiry of the note the subject of his email of 5 July 2017. She fairly accepted that the CSH was not yet ready and that the respondent decided that the claimant may remain absent from work on full pay pending his return to work in the CSH. An email to this effect was sent by her to the claimant on 11 July 2017 (page 75). She confirmed that the respondent had "agreed to extend your full pay for up to a further four weeks to ensure we have the necessary support in place for your return to work. The Crime Support Hub (CSH) will not be live until the first week in September, so we need some interim arrangements in place until you can start this role".

30. Mrs Parker says (at paragraph 14 of her witness statement) that she discussed Jayne Downing's report dated 13 July 2017 (pages 82 and 83) with Mr Harrison. In evidence given under cross-examination Mr Harrison confirmed that he was shown a copy of Jayne Downing's report. He was therefore cognisant of her recommendations (set out at page 83 and recited by us above).

31. Mr Harrison accepted that Jayne Downing's recommendation that the claimant's working hours be increased *"dependent upon progress"* was a reference to the claimant's progress following his return to work. He was also cognisant of her recommendation that the claimant's desk should be placed as close as possible to his point of arrival within the office with a view to minimising the need for the claimant to walk and that a requirement for him to walk excessively would affect his state of mind.

32. On 20 July 2017 Mrs Parker emailed the claimant (page 83(1)). She said that she had been liaising with Mr Harrison about the logistics of him (the claimant) returning to work in the CSH. The claimant was told that Mike Trees, business manager for specialist crime services, was reviewing the number of disabled car parking spaces available for blue badge holders. She said that Mr Harrison would update the claimant upon this issue. She wondered whether Access to Work may be able to help with paying for parking "as a backup". The projected return to work date at this stage was 7 or 14 August 2017. She said that, "there also remains the option of using some of the annual leave you have accrued if you wanted a period of annual leave prior to starting in CSH. This will also mean your pay remains unaffected". The *"go live"* date for the CSH was still early September 2017.

33. Mrs Parker gives evidence (at paragraph 16 of her witness statement) that the claimant attended work in August 2017 in order that Access to Work could consider his workstation. She was not present at the meeting. The Access to Work meeting is referred to in the chronology of events. However, no actual date is given for this. The claimant appears to make no reference to it in his witness statement.

34. At all events, following this meeting Access to Work approved a grant in favour of the claimant. The letter to this effect dated 31 August 2017 may be found at pages 86 to 88. The grant covered an award for specialist aids and equipment. This included an ergonomic chair and adjustable double leg rest stool together with a sit/stand adjustable desk. Access to Work also made financial provision for the purchase of IT equipment. The claimant

accepted that all of the items listed were provided to him (although he could not recall anything about the PreTect IT software).

35. Mrs Parker's evidence (at paragraph 17 of her witness statement) is that, "unfortunately, the Crime Support Hub took a little longer than anticipated to set up and Mr Stringer did not return to work until October 2017. During his absence – for which Mr Stringer remained incapable of carrying out his substantive role due to illness – Mr Stringer remained on full pay and his absence was not formally managed through the force's unsatisfactory attendance procedures".

36. Mr Harrison says (in paragraph 10 of his witness statement) that the CSH went in fact went live on 11 September 2017. He said that over the period leading up to the claimant joining the team he had kept in contact with Catherine Parker and the claimant. A meeting was held which all three were present on 16 August 2017. Mr Harrison says (at paragraph 11 of his witness statement) that, "It was at this meeting Mat updated me as to the background of his disability, his needs and his fears of returning to work. The meeting was held in the office space identified as being allocated to the Crime Support Hub, during the meeting I personally took Mat around the key areas of the third floor. This included the location of the office, the proposed location of his desk … the printer, the restroom and the kitchen. At this point the engineers had not finished all the work within the Crime Support Hub but at no point did Mat object to the position of his desk or raise any concerns about the office set up". He goes on in paragraph 12 to say that, "I think that during this meeting Catherine Parker had enquired as to whether we could allocate Mat a disabled parking bay. I tasked enquiries as to whether this was a possibility and remembered the result being that it would be inappropriate for SYP to dedicate any of these spaces to one disabled person as it would in effect be prioritising the needs of one blue badge holder over another".

37. Mr Harrison makes mention of the fact that "in the lead up to the creation of the Crime Support Hub, parking matters had been discussed further with Gemma Priest (project manager), Mike Trees (business manager), and Simon Mellor (equality lead). A copy of the email chain is at pages 83(3) to 83(7). At that time we had five disabled bays available, and this satisfied the regulatory requirements as suggested by Simon Mellor". (We refer to paragraph 13 of Mr Harrison's witness statement).

38. Returning to the meeting of 16 August 2017, Mr Harrison's evidence (at paragraph 17 of his witness statement) is that, "I also explained to Mat that the room located opposite my office, and opposite the kitchen, would be used as a restroom and Mat was welcome to use it if he did not want to eat at his desk or in any other area of the police station. Whilst I cannot be precise on the date, at some point in December 2017 a sign titled "restroom" was placed on the door of that room (even though a number of officers had embarked on using. However this sign simply confirmed the existing position as the room as a restroom prior to the sign being positioned). In my opinion, Mat was fully aware that the room was available to eat in upon his commencement in the Crime Support Hub and to be clear, at no point was Mat ever required to eat at his desk if he did not want to, although it is not uncommon for officers to do so. Mat is very familiar with the police station layout, having been a police officer in Sheffield for a number of years

and would know where other locations were in the building, or within a short walking distance of the lifts".

39. Mr Harrison also makes reference to the Access to Work recommendation for a sit/stand desk. He says in paragraph 19 of his witness statement that, "It was determined that Mat needed a bigger desk than the desks already ordered for the Crime Support Hub, he required one which he could adjust to a sit/stand position. I decided along with the project team that Mat's desk would be most conveniently placed in the wider corner of the office. This also gave the most access to power points for the additional equipment (including the desk which was adjustable by electronics). To my knowledge, neither Mat nor Access to Work had an issue about the location of the desk at that time."

40. On 10 October 2017 Mr Harrison and Mrs Parker met with the claimant. The purpose of the meeting was to discuss his return to work. Mrs Parker prepared a phased return to work plan (pages 84 and 85). This suggested that the claimant work four hours per day over three, four and then five days respectively in the first three weeks following his return followed by a gradual build-up of hours for each of the five working days of the week between the 4th and 11th weeks following his return. The other workplace adjustments were noted at the bottom of the plan. These included the allocation of a disabled parking space or assistance with travel to work by taxi through Access to Work.

41. Both the claimant and Mr Harrison said that this plan was presented to them at the meeting by Catherine Parker. They each said that they first saw it on 10 October 2017. Mr Harrison said that the work pattern had in fact been devised by him and Mrs Parker (although he had not seen the plan itself).

42. It was suggested to Mr Harrison that the claimant did not agree with the suggested work pattern. Mr Harrison said that the claimant did not object to it. He did not go so far as to say that the claimant positively agreed with it. The height of the respondent's case therefore appears to be that the absence of objection from the claimant signified consent.

43. Mrs Parker maintained that the plan was consistent with Jayne Downing's recommendation (summarised at paragraph 22 above) that upon his first set of shifts the claimant should work for three days doing four hours per day and that this may gradually be increased over the forthcoming 12 weeks. She characterised the work pattern at page 84 as a discussion document. She said that she (and the respondent) accepted that the claimant needed a high degree of flexibility. Her evidence (at paragraph 19 of her witness statement) was that this was put into practical effect because the claimant was not criticised or subject to formal or informal management action for being unable to work four hours in a single day or for not increasing his hours back up to four hours in the 12 weeks period following his return to work.

44. The claimant returned to work on 16 October 2017. He kept a diary of events which is at pages 73(7) to 73(13). He says in the diary that he was anxious about returning to work and about finding a parking space. He was able to manage to *"get parked"* (as he put it in the diary) on his first day back. It is clear from the diary that the claimant had a very uncomfortable

day at work and in fact was unable to complete the scheduled four hour shift. He went home after two hours and 40 minutes. In evidence given under cross-examination the claimant fairly accepted that it was in fact rare for him to work a four hour shift and that the average was probably "around three hours" following his return.

45. On 18 October 2017 the claimant had an initial one to one meeting with Mr Smith (pages 224 to 227). Mr Smith says (in paragraph 8 of his witness statement) that, "During the meeting I recall Mat raising his concerns to me about his ability to do the role. He told me about the injuries that he had sustained and how he felt he ought to have been retired on the grounds of ill health. Mat had a clear opinion on how he felt he had been treated by SYP in relation to retirement and it was not a secret that he would rather have been retired than retained. At the end of the meeting Mat agreed to send the various reports prepared by occupational health to me so that I could see what support was needed".

46. We observed earlier that the claimant remained on full pay between the expiry of his sick note in early July 2017 and his return to work in the CSH on 16 October 2017. However, the claimant was aggrieved that this period was treated as absence by reason of sickness. He complained to Mr Smith about this at the meeting of 18 October 2017. The claimant was concerned about the impact of his sickness record should he have further periods of sickness absence.

47. Mrs Parker comments upon this issue at paragraph 9 of her witness statement. She said about this period that, "As there was no Crime Support Hub role for Mr Stringer to go to, Mr Stringer was still attached to the local policing team and his illness made him incapable of carrying out that role. At this time, SYP did not record or authorise any form of disability leave as distinct from sickness absence, and therefore, I do not believe that Mr Stringer's sickness should have been specially categorised as "disability leave" just because Mr Stringer was unable to carry out his role. It was reasonable for the force to regard this absence as sickness. Mr Stringer was not disadvantaged by the label that was attached to the leave. He had accrued enough sickness absence prior to July 2017 for the force to take action to manage the sickness absence, and cut Mr Stringer's pay to half pay. However the force did not do so in recognition of the fact that the Crime Support Hub was not yet live."

48. Other issues were discussed at the meeting of 18 October 2017 with Mr Smith. In summary these were:

    48.1. The PEEP.

    48.2. That the claimant's workstation must be within 20 metres of his car or from the front of the building. Mr Smith acknowledges (in paragraph 10 of his witness statement) that the claimant's desk was in fact more than 20 metres away from both.

    48.3. The claimant's concerns about car parking, the failure to follow Jayne Downing's recommendation that the claimant should work four hours upon three days during his first week back. The claimant had in fact (contrary to Jayne Downing's recommendation and Mrs

Parker's plan of 10 October 2017) been rostered to work five four hour shifts during week commencing 16 October 2017. He left work after having worked 3.5 hours on 18 October 2017 and was then absent from work on 19 October 2017 (that being the fourth working day of that week).

[Mr Smith observes at paragraph 12 of his witness statement that on 15 November 2017 (as recorded in the rolling log that he was keeping) the claimant informed Mr Smith that he was to raise a grievance about this issue. Mr Smith fairly observes in paragraph 12 of his witness statement that "looking back it is clear that Mat would have struggled with a 3 times 4 hour phased return to work in the first week". Mr Harrison had in fact charged Mr Smith with the management of the claimant's welfare. Mr Smith was asked to keep a rolling log of the tasks that were set for the claimant from day-to- day. Mr Smith's log is at pages 93 to 184 of the bundle. The first entry in the log is a brief record of the one to one conversation held on 18 October 2017 (which of course was more fully recorded at pages 224 to 227).]

49. On 15 October 2017 (the day before the claimant's return to work) Mr Harrison emailed Mr Smith and Lee Nesbeth (page 90). Mr Nesbeth is a detective sergeant in the Crime Support Hub. Mr Harrison set out the objectives for the claimant in the first three weeks following his return to work.

50. Amongst other things, Mr Harrison observed that the claimant needed a PEEP. Mr Smith appears to have been assigned the task of drafting that document. Mr Harrison also made reference to the assignment of a work buddy which was an issue to be considered during the second week following the claimant's return to work.

51. Mr Smith sought advice from Clare Aldridge from HR. He understood that she would take responsibility for their preparation of the PEEP. In the event, Mr Smith was told that this was a task that he had to complete. He therefore prepared a draft and on 26 October 2017 sent it to Stephen Connor for consideration. The email is at page 268 and the draft plan at pages 270 to 274. The email to Mr Connor was copied into a number of individuals including Mr Harrison. Mr Smith sought advice on "how many persons are needed to be trained or need to be assigned buddies for each person that falls within PEEP criteria. Also are there any current best practice models that we can adopt around relevant staff within the CSH and previous evacuation plans specified to the third floor at Snig Hill. Are there any already trained and suitable staff within SCS on the third floor which we could potentially utilise within the department in the event of an emergency".

52. The issue of the PEEP will be further dealt with later in these reasons. The PEEP was one of several issues that arose following the claimant's return to work: these being the issues in the summary above at paragraph 6. It is expeditious to deal with them in turn.

53. Before doing so, it is convenient to refer to a further report from Jayne Downing dated 29 November 2017 (pages 350 and 351). Jayne Downing, in the second paragraph of the report, gives a summary of the claimant's perception of matters following his return to work. She said:

"As you are aware, Mat returned to work on 16 October 2017, following a substantial period of sick time. His role is in an office at Snig Hill. He tells

me that he is able to drive to and from work. The journey totals 10 minutes each way. I understand from Mat that he has a blue disabled badge, however is not always able to park in a disabled bay as these are often taken by the time he arrives at work. Mat tells me that his office is on the third floor of the building. He uses the building's lift to get up and down floors. He tells me that the office in which he works is situated a substantial distance away from the lift exit. He tells me that at times he struggles to walk this distance. He also stated that there are no disabled toilets close to where his office is. However, I understand that a handrail has been placed in the standard toilets. His concern is that should he need assistance there is no buzzer to press for help. Mat tells me that he has been provided with the appropriate equipment which includes a specialised chair, footstool, a desk that moves up and down and an ergonomic mouse and keyboard. This equipment was recommended by a specialist from Access to Work".

54. She reported that the claimant's functional capabilities were unchanged from April 2017. The claimant struggles, she said, to work beyond two to three hours a day. She recorded that the claimant "tells me the plan is that he should be at work for five days a week, however he rarely managed to achieve this. I understand from Mat that he has used a combination of sick leave and annual leave to break up his working week".

55. She made a recommendation that the claimant be allowed to work closer to the disabled toilets and to the lift exit. She also wondered whether it was possible for the claimant to be provided with a disabled parking space.

56. Mrs Parker attended a welfare meeting on 13 December 2017 to discuss the claimant's progress in his new role. A copy of her note is at page 408. By this stage, Mrs Parker had obtained the report from Jayne Downing of 29 November 2017. Further, the respondent had agreed to refer the claimant back to Dr Adejoro for a re-assessment of his case. Mrs Parker wrote to the claimant to this effect on 11 December 2017 (page 387).

57. Mrs Parker prepared a report addressed to Dr Adejoro (pages 421 to 424). She referred to the claimant keeping a "pain diary". This is the document at pages 73(3) to (6).

58. Dr Adejoro opined in his report dated 23 January 2018 that the claimant's functional capability had deteriorated since he saw him in April 2017. Dr Adejoro's report is at pages 437 to 439. He said that "it is unlikely that he will be able to render regular and reliable service in the [CSH] role".

59. On 13 March 2018 the respondent wrote to the claimant. He said, "following the requested medical re-assessment it now appears that further reasonable adjustments are impractical which mitigates against South Yorkshire Police's ability to retain your services, therefore on behalf of the Pension Authority I have now authorised your retirement from the police service with the provision of an ill health pension. Your medical retirement will take effect from 14 April 2018. This of course means that your last official day as a serving police officer will be 13 April 2018".

60. We have so far made factual findings about the claimant's return to work on 16 October 2017 (and the prevailing circumstances), the events immediately following his return to work and the circumstances leading up to the respondent's decision to retire the claimant upon ill health grounds in

March 2018. It is necessary now to make findings of fact about the issues that arose during the time that the claimant was in work between October 2017 and March 2018. The fact finding exercise lends itself more to dealing with these matters issue-by-issue rather than chronologically.

61. We shall therefore start where we left off with the issue of the PEEP. It will be recalled that Mr Smith had prepared a draft PEEP on 26 October 2017. An amended PEEP was prepared on 11 November 2017 (page 572). The same day, Mr Smith emailed the claimant (page 291). The claimant was asked to "*cast his eyes"* over the revised PEEP. He was also told that "there is only one EVAC chair trained person currently at Snig Hill who I have emailed and will try and meet next week". The claimant was told that Mr Smith, Mr Nesbeth, Mr Harrison and Gav Johnson will act as the claimant's "buddies" and accompany him out of the building if required in an emergency. The claimant was asked to familiarise himself with the evacuation procedures and exit routes.

62. On 13 November 2017 the claimant emailed Mr Smith (page 295). He expressed concern that only one person was trained to use the EVAC chair and that she may not in fact be in the building at the same time as the claimant should an emergency arise.

63. A further PEEP was prepared and sent to the claimant on 17 November 2017 (pages 304 and 305). The claimant was now told that there was in fact no suitably trained EVAC chair staff or officers at Snig Hill. He was told that in the meantime "this is an interim agreement and plan in place if we have to evacuate". A further iteration of the PEEP was sent on 10 December 2017 to the claimant (page 381) with a final draft sent on 13 December 2017 (pages 392). The final version was agreed by the claimant on 13 December 2017 (page 401).

64. The claimant was sufficiently concerned to have been informed that there was in fact no EVAC chair trained staff at Snig Hill that he raised a near miss report (pages 219 and 220). The claimant complained that he requested that a PEEP be completed prior to his return to work after long-term ill health and that this had not taken place. He said that "disabled employees at Snig Hill, including myself are now placed at a disadvantage and an elevated risk as a result of this failure to act". It was suggested by the respondent's counsel that the claimant had *"a bee in his bonnet"* about this issue. The claimant maintained that he had well-founded concerns as he was "a health and safety trained fire safety representative."

65. Under cross-examination, Mr Smith accepted that this was an inadequate way to proceed. Mr Smith described the situation as involving or entailing a "dynamic risk assessment". By this, we understood Mr Smith to be saying that pending the completion of the formal PEEP the risk to the claimant would be assessed as and when an emergency arose. It was put in cross-examination that Mr Smith's suggestion was to the effect that it was satisfactory or acceptable for the respondent to assess the risk to the claimant presented by an emergency *"on the hoof".* Mr Smith did not accept this. He said that a buddy system had been put in place to help the claimant. Mr Smith did however fairly accept that this in itself was inadequate as was reflected in the later iterations of the PEEP that he prepared.

66. A response to the claimant's near miss report was prepared (pages 330 and 331). It would appear that this was done on or around 2 December 2017. It was identified that the third floor at Snig Hill was short of appropriately trained staff "following a review of fire wardens and EVAC chair trained staff". This presented a risk of delaying the evacuation of persons with reduced mobility. Mr Trees recorded that arrangements had been made "for staff out of ticket to be re-trained and additional staff from the CSH had been assigned training courses". Mr Smith conceded that the respondent's handling of this matter was "not an adequate way of dealing with it". It appears from the PEEP at pages 381 and 382 that Mr Trees had identified himself as being trained in the use of the evacuation chair. Mr Smith could not explain why it had been such a difficulty to identify those properly trained to use this important piece of equipment.

67. The claimant's belief (which appeared not to be under challenge) was that the training courses were provided on 19 December 2017. It was suggested to Mr Smith that there was ample time to organise training before the claimant returned to work in October 2017 in circumstances where the respondent was aware that the claimant was fit to return (albeit on restricted duties) in July of that year.

68. The claimant fairly acknowledged that Mr Smith himself was placed in a very difficult position in dealing with this issue. As Mr Harrison conceded, Mr Smith was effectively starting from scratch and had no experience in undertaking a task of this kind. Mr Smith acknowledged that the completion of the PEEP took a long time and said that it was a question of "practicality".

69. The first issue identified in our summary above concerns hours of work. We have already made findings of fact upon this issue (at paragraphs 40 to 48) In particular, the claimant had to take sick leave on his fourth day back (that being 19 October 2017). On 20 October 2017 the claimant felt unable to drive into work. He got a lift instead. The entry in his diary at page 73(7) says that he was able to work nearly four hours but then (according to his witness statement at paragraph 24(1) he had to ask his wife to come to collect him from work.

70. As noted by Mrs Parker (in paragraph 28 of her witness statement) there was an ongoing issue with the claimant's pain getting progressively worse throughout the day and that this prevented him increasing his hours back to normal full-time hours. Mr Harrison observed that the hours worked by the claimant were "generally less than the four hours that we had discussed or had been recommended". (This is referred to in paragraph 39(1) of his witness statement). Mr Smith says at paragraph 13 of his witness statement that "Mat struggled to work four hours on any shift due to the pain he expressed he was in. In the whole time he was in CSH he was unable to work more than four hours a day".

71. We now turn to the issue of car parking. The claimant says (in paragraph 7(2)) of his witness statement) that, "The respondent provides dedicated parking spaces for police officers of certain rank and some disabled bays. It in effect operates a *[provision criterion or practice]* of prioritising rank over disability when it comes to the reserving of car parking spaces with all other staff having to find a parking space on a 'first come first served basis'. The photographs of the car park at Snig Hill on pages 527 and 529 show these

disabled bays already full on my arrival at work. Page 527 shows marked police vehicles occupying these disabled bays. My limited mobility etc gave rise to a substantial disadvantage. I had to find a parking space at the beginning of each shift which often resulted in me having to park on double yellow lines and then come out again and move my car again within three hours. Although I am a blue badge holder the disabled parking spaces were often full, due to the number of disabled staff working at that site and non-disabled staff parking in them, including marked police vehicles occupying the bays. I understand that after I retired an email was sent by Mike Trees to staff about that … this is now in the bundle at pages 462(5) and (6) and see also pages 441(1) and (2)."

72. Upon the issue of Access to Work provision, the claimant says that he was not unfit to drive and therefore did not need assistance with transportation to work. He did not apply for taxi provision from Access to Work. The issue was the parking upon arriving at Snig Hill rather than the journey itself.

73. We referred earlier to Mr Harrison's witness statement at paragraphs 10 to 13 where the issue of disabled parking was raised. Mr Harrison went on to say in paragraph 14 that "by the time that Mat joined the Crime Support Hub, the force had increased the number of disabled bays to seven, although one of the seven is within some "hash marking" and does not have a disabled logo painted on the ground. All of the disabled parking bays are located outside of the main door at Snig Hill police station. There used to be disabled parking bays in the lower car park but they are no longer in use due to another police station closing down and Snig Hill needing to accommodate an increased number of marked vehicles. The diagram at the top of page 493 shows the number of parking spaces available outside of the police station. The diagram is no longer accurate as all of the spaces closest to the building are now disabled bays, together with one of the spaces on the opposite side. As a result including the top parking layer (shown in the bottom diagram on page 493) there were 38 parking spaces and as a percentage 18% … of the entire parking spaces are disabled bays and reserved for blue badge holders."

74. Mr Harrison went on to give evidence in paragraph 15 of his witness statement that, "As a blue badge holder, if Mat had difficulties in finding a parking disabled space and all other spaces were taken, he had a number of options available to him:

    74.1. He was able to park on the double yellow lines on the ramp into the car park – I am aware that he had been approached by the security guards at the magistrate's court on one occasion but he was legally entitled to park there if he wanted.

    74.2. He could block another car in and inform the staff on the front desk; or

    74.3. He could call his sergeant who would assist in finding a space or remove any potentially inappropriately parked vehicles."

75. Mr Smith accepts that the claimant was never provided with a designated car parking space whilst at Snig Hill. He said that the car parking spaces closest to the entrance to the station needed to be available for all disabled officers to use. Mr Smith clarifies that the disabled spaces are on the lower

level of the car park and which are closest to the entrance to the police station. Mr Smith said that it would be inappropriate to designate a car parking space upon the upper level of the car park because this would be too far for the claimant to walk. The lower level was therefore more suitable and it is upon this level where the disabled car parking spaces are to be found.

76. Mr Smith denied that the respondent prioritises the provision of spaces by rank. He says that many of the parking spaces upon the upper level (which is not suitable for the claimant anyway) are reserved for officers who need to travel as part of their role. Mr Smith fairly acknowledges that these users are often senior in rank but rank is not a criterion by which the spaces are allocated. Mr Smith acknowledges that parking is an issue at Snig Hill "as there are generally more officers who need parking than there are available spaces. It is fair to say that there are also more disabled officers than staff members who have disabled parking permits than there are disabled spaces. For this reason, disabled spaces are often full".

77. Upon this issue, the following emerged from the cross-examination of the claimant:

    77.1. The claimant maintained that some of the spaces on the upper level are reserved by rank. However, the claimant appeared unsure for whose benefit certain spaces were reserved.

    77.2. The claimant said that he was asked to move his vehicle on 21 November 2017 when he parked on double yellow lines near to the adjoining magistrates' court. The claimant said that he was approached by a member of the security staff at the magistrates' court in the presence of others. The claimant said that he found this episode and the need to explain mobility issues to a member of security staff to be embarrassing. The claimant completed a report about the incident (pages 324 and 325).

    77.3. Although not required to drive to work, the claimant said that he found it beneficial as it was "one of the few things that I can do which I enjoy".

78. The following emerged about the car parking issue from the cross-examination of Mr Harrison:

    78.1. That it would have been possible to designate more parking bays for disabled users but this would be to the detriment of visitors to the police station (including members of the public and solicitors).

    78.2. Mr Trees has attempted to enforce restrictions upon the use of disabled bays by non-disabled users. Within the bundle is a series of increasingly exasperated emails culminating in one dated 25 May 2018. This obviously postdates the claimant's departure from the respondent. However, Mr Trees complained to Simon Mellors, Fairness, Inclusion and Equality lead at the respondent, that he was *"waging a war single handed on abuse of disabled spaces".* He went on to say, *"I don't need you to do anything, but I need you to be aware. I have been at this for months now and can show you other emails, but the message isn't getting through".*

78.3. On 30 January 2018 (during the currency of the claimant's employment with the respondent) Mr Trees complained that "repeatedly I am faced with marked vehicles parked in the disabled spaces at Snig Hill (often because there is nowhere else to park). We do however have numerous staff at Snig Hill that are disabled and need these spaces. Preventing them from parking is wrong, unfair and potentially unlawful". Mr Harrison fairly accepted that Mr Trees had a valid complaint and that the incident of 30 January 2018 was not a one-off occurrence.

78.4. Mr Harrison accepted that there appeared to be a failure upon the part of the respondent to properly police the disabled bays.

78.5. He accepted that it would have been possible to create more disabled bays perhaps by increasing visitor provision upon the upper deck.

78.6. Mr Harrison acknowledged that a designated space could have been provided to the claimant although he said that that was not without difficulties given the demands for disabled parking spaces and there being more disabled officers and users than there were available bays.

78.7. Mr Harrison acknowledged that it was unsatisfactory for the claimant to park upon double yellow lines by the magistrates' court and be required to go out to move his car during the working day. Mr Harrison appeared to be unaware of whether or not the claimant in fact had an entitlement to park upon the double yellow lines by the magistrates' court.

78.8. Mr Harrison accepted that it was unsatisfactory for the claimant to block others in as they would not be able to move in an emergency unless they could find the claimant. Even then, that came with the risk of slowing down their departure.

78.9. Mr Harrison fairly acknowledged that the were problems with his solution of telephoning ahead so that his line manager may find a space for him. That was of course dependent upon line manager being available and him being able to find a space.

78.10. He accepted that a parking cone could have been placed ahead of the claimant's arrival but said that "would be difficult to achieve because of the demands of the service."

79. Mr Smith was asked relatively little about the car parking issue. He said that he did not look into the issue of the relationship between South Yorkshire Police and the magistrates' court when it came to the possibility of the claimant parking on the double yellow lines. Mr Smith acknowledged the deficiency in Mr Harrison's suggestion of the claimant asking for help in locating a car parking space. While Mr Smith said that this was "an option" he fairly accepted that it would depend upon Mr Smith's availability and that even if Mr Smith was available he could not "*magic up a parking space"* (as it was put by Mr Lewinski). Mr Smith fairly acknowledged this to be a chronic problem facing the claimant.

80. The next issue is that of the workstation. The claimant's complaint is that the respondent required him to walk a long distance from the lift upon his arrival for work and upon his departure from work.

81. The claimant says that the walk to his workstation was about 100 paces from the lift. The claimant referred to the plan at page 491. This is dated 5 July 2017 and is of the third floor at Snig Hill.

82. The lift area is in the centre of the floor. The claimant's route to his desk (marked with an X in the bottom left hand corner as we look at the plan) requires him to walk out of the lift, down a corridor and then turn right before arriving at his workstation. We have already referred to paragraph 19 of Mr Harrison's witness statement. He says that he and the project team had decided that the claimant's desk would be most conveniently placed in the wider corner of the office. His reasons were as follows:

    82.1. "The corner is a wider area of the office and it offers the most space for Mat to get up when he needs to take a posture break.

    82.2. The corner is in the middle of the room and therefore as close to the kitchen area, the restroom and the printer facilities as it was to the toilet and the lift. (We observe that the restroom and kitchen were reached by walking to the right at the end of the second corridor along which the claimant would walk to reach his desk).

    82.3. It offered the best degree of ventilation which would help Mat if he felt tired or fatigued.

    82.4. It was the least congested part of the office and was therefore more hazard free.

    82.5. The corridor to that end of the room was screened and offered Mat an element of privacy when walking to and from his desk.

    82.6. It was close to the desk where his supervisor (DS Smith) was positioned.

    82.7. It was the quieter end of the office in comparison to the end closest the door where there is a higher concentration of staff positioned there.

    82.8. It was next to an officer identified as a work buddy for Mat."

83. In the final paragraph of his witness statement Mr Harrison observes that, "although the distance from the front of the building to Mat's desk was more than 20 metres, for the reasons already explained I do not believe that the Crime Support Hub team could have been situated any closer to the front of the building. In addition, given the distance, I believe that Mat's desk in the Crime Support Hub was in the best location when considering all other factors (previously described)."

84. Mr Smith helpfully tells us that the distance from the car park to the CSH office is 48 metres. We refer to paragraph 22 of his witness statement. He gives very similar reasons to those of Mr Harrison for the location of the claimant's desk. Mr Smith says that the issue of moving the desk was discussed but that the claimant was satisfied that the matter be kept under review.

85. On 16 November 2017 Mr Smith emailed the claimant. He said, "there may be an option to re-position your desk within the office to reduce the amount of steps. However this will need to be further considered around moving other desks etc and I am also conscious of your concerns regarding being embarrassed within the office because of your ailments. If your desk was re-positioned you would be surrounded closely by other colleagues with more foot fall etc around your desk. In line with the adjusted duties assessment this should be considered as part of this meeting and then following this we can make a decision whether re-locating your desk is a reasonable option taking all factors into account".

86. It was put to the claimant in cross-examination that there was in fact no available office space within 20 metres of the disabled parking bays. The claimant took issue with the respondent's assertion that it was 48 metres from the car parking bay to the claimant's desk. The claimant maintained that it was about 100 paces. It is perhaps unfortunate that the parties did not produce any plans containing the measurements in question for the benefit of the Tribunal.

87. The claimant fairly accepted that there was an issue about reducing his embarrassment in walking to his workstation. He accepted this to be a valid concern upon the part of Mr Harrison.

88. In evidence given under cross-examination Mr Harrison acknowledged that the claimant was positioned more than 20 metres away from the car parking bay and therefore on the face of it the respondent was acting in breach of Jayne Downing's recommendation.

89. The following emerged from the cross-examination of Mr Harrison upon this issue:

    89.1. It was suggested that the CSH could have been placed upon the second rather than the third floor of Snig Hill. Mr Harrison said that there had been a general move around of various sections. Further, it was appropriate for the Response team to be upon the second rather than the third floor in order to reduce the time taken to get out of the building and respond to an emergency. Mr Harrison fairly accepted that this would be a fairly negligible time saving (being a matter of several seconds). Mr Harrison accepted that other sections upon the second floor (such as the Neighbourhood team) did not have a rapid response requirement. He said that the Response team had in fact been moved from the first to the second floor.

    89.2. It was suggested that the claimant's needs could have been taken into consideration when deciding where to locate the CSH. Mr Harrison said that a number of individuals were involved in the decision as to where to locate the various sections. He accepted that he was not aware that the claimant's needs had been taken into account when making these decisions. He did accept that the office space upon the second floor was sufficiently large to accommodate the CSH. This brought with it the advantage of the claimant having access to the designated disabled toilet. The position of the lifts and kitchens is the same upon both floors.

89.3. Mr Harrison said that he had not sought the advice of Access to Work upon the question of the location of the claimant's desk.

89.4. He said that Mr Smith had raised with him concerns raised by the claimant about the location of the desk. The supportive management action log records this at page 163 (being an entry dated 10 November 2017). Re-location to an area at the end of the first corridor (being the optimal position from the respondent's point of view) would have saved the claimant walking around 15 metres which Mr Harrison acknowledged was a significant amount in the context of the claimant's disability.

89.5. In an email of 12 November 2017 we can see that Mr Harrison was supportive of this move subject to checking that there were enough electrical points to enable the desk to function and that it would fit without creating an obstruction (given that the desk is wider than others). The move in fact never took place. Mr Harrison says that he did chase matters up with Mr Smith. This was done verbally and the feedback was that the claimant did not want to move because the proposed new area would take him further away from the kitchen, printer and rest area. However, Mr Harrison did not have any discussion with the claimant around this time.

89.6. It was suggested to Mr Harrison that his evidence was in fact contrary to the record at pages 164 and 165. This shows that on 22 November 2017 there was a discussion between Mr Smith and the claimant about re-locating the claimant's desk. The record shows that the claimant still wished to move because reducing the number of steps would assist with reducing his pain. The record goes on to say that the claimant was satisfied that the matter be kept under review.

90. The following evidence emerged from the cross-examination of Mr Smith. He said that he had no involvement in any decisions as to which sections moved on to which floors. Like Mr Harrison, Mr Smith fairly accepted that locating the claimant's desk near to the end of the first corridor would result in a reduction in the distance walked of around 15 metres. Mr Smith said that the claimant was not asking to move the position of his desk but acknowledged that the claimant was complaining about the distance from the entrance door to his desk. A complaint to this effect was noted in Mr Smith's log at pages 116 and 117. We have already observed that Mr Smith noted the claimant's concerns about the desk in the email of 16 November 2017.

91. Mr Smith said that moving the desk would present other problems as the claimant would have to walk further to the kitchen and restroom and also to Mr Smith's room for meetings with him. Mr Smith also said that the alternative position was busier with more officers around and more trip hazards. While acknowledging that the claimant wished to move Mr Smith said effectively that he had to act in the claimant's best interest even if that was not what he wanted.

92. Mr Smith acknowledged that visiting the toilet and getting to the lift were greater priorities than were going to the kitchen and using the restroom.

He acknowledged that the location of the desk remained an issue throughout the claimant's time in the CSH. Mr Smith said (in particular by reference to the entry at page 165) that the claimant was content for the issue of the position of the desk to be kept under review.

93. We now turn to the issue of toilet facilities. There are no disabled toilets on the third floor at Snig Hill. The disabled toilets are upon the second floor. It was fairly accepted by the respondent's witnesses that the toilet facilities on the third floor are not as good for disabled persons as those on the second floor as the space is more confined. There is a cubicle upon the third floor with grab rails. However, as Mr Smith conceded, this cubicle is in the toilets used by everybody and therefore the floor area is more likely to be wet and slippery than in the bespoke disabled toilet facilities on the second floor. The slippery surface plainly presents a great risk of falling for a disabled person using a walking stick. Furthermore, the cubicle fitted with the two handrails upon the third floor does not have an emergency chord as does the disabled toilet on the second floor.

94. The claimant in fact provided a copy of the adapted cubicle upon the third floor. We see the photograph at page 526. It appears to be a standard cubicle size but with handrails fitted to each wall and also a handrail to the back of the door.

95. Mr Smith says in paragraph 30 of his witness statement that, "the nearest 'official' disabled toilet is located on the second (ground) floor opposite the lifts. This toilet is available only to disabled people and is accessible by way of a radar key and has an emergency pull chord. Mat has his own radar key, which he purchased through eBay. The toilet is directly below the third floor toilets. Although the toilets on the other floors were a greater distance away, taking out the travel in the lift where Mat would have been stationary, the distance that Mat would have to travel from his desk to the disabled toilet is approximately the same distance from his desk to the third floor toilets".

96. In cross-examination it was put to Mr Smith that the facility on the third floor does not give the same level of privacy as would the facility on the second floor. The reason for this is that others using the third floor toilet would be able to hear the claimant struggling whereas the second floor designated disabled toilet is a separate room on its own.

97. We can see from the claimant's diary that the issue of the toilet facilities quickly became a problem for him. He complained about being unable to use the small restricted third floor toilet on 20 October 2017. He recorded a complaint raised with Mr Smith on 23 October 2017 about the toilet facilities. In particular, his complaint was that there was no disabled facility on the third floor, the facility was in a single cubicle with no space and he felt embarrassed as others were able to see and hear him struggling. When taken to the entry of 23 October 2017 at page 73(8) Mr Smith said he had no particular recollection of that discussion but did not deny that one had taken place.

98. The log maintained by Mr Smith (of 15 November 2017 in particular at page 119) records that HR were to take up the issue of the toilet facilities. The claimant followed this up the following day in the email at pages 330 and 301. Mr Smith accepted that the first that he knew about the bespoke

disabled toilet was when he made enquiries following the claimant's complaints. He wrote to the claimant on 17 November 2017 (page 317) drawing his attention to the existence of that facility. He told the claimant that, "there is a lock on the door and the key is held at the front desk … I appreciate it is not on the third floor and currently the key is at reception which is not ideal for additional distance to walk etc". Mr Smith appears to have been under the impression that this was a unique key rather than a radar key.

99. Mr Smith was unclear whose responsibility it was to provide the claimant with a radar key. It appears from the record at page 165 that he told the claimant on 22 November 2018 that he (Mr Smith) would take responsibility for obtaining one for him.

100. The log at page 130 records Mr Smith emailing a request to have a key cut for the claimant to utilise the disabled toilet on the second floor. This email was sent on 5 December 2017. When questioned about this in cross-examination Mr Smith could not account for the delay. He was then taken to an entry in the claimant's diary of 7 December 2017. The claimant said, *"need the toilet as well but the walk is just ridiculous and I doubt I can manage it in this pain".* The claimant asked to leave work that day at 13.15. Mr Smith fairly accepted the impact that this was having upon the claimant.

101. On 14 December 2017 Mr Smith emailed the claimant (page 417). He said that the person whom he had emailed about the issue on 5 December 2017 had told him that the key was universal. The claimant responded about 20 minutes later to say that he had bought one from eBay. It was suggested to Mr Smith that there was no excuse for progressing this matter so slowly. Mr Smith said, "the progress is documented. That's the time it took". On 15 December 2017 Mr Smith emailed the claimant (page 416). He acknowledged that the claimant had bought a key himself but said that he thought that the claimant would have been provided with one free of charge.

102. Mr Harrison was not cross-examined in any great detail about the issue of the toilet facilities. He fairly acknowledged that there was an impact upon the claimant's dignity in expecting him to walk to reception to ask for a radar key in order to use the toilet facilities on the second floor which could have been avoided by providing him with a key in advance.

103. The next issue by the claimant is that of training. His complaint is that he was expected to take up his new role in CSH after a long absence from the workplace without any appropriate training or support being provided. In particular, the claimant says that he needed training in relation to email, CMS, Proclad and the Connect system.

104. The claimant gives evidence about this issue in paragraph 7(5) of his witness statement. He says-

"On my return to the workplace I found that most things had changed. The basic email system I used before had been replaced, and I had not been shown how to use or access the email system. I was left at a computer terminal on my first day, and asked to familiarise myself with things again. Due to my absence, I couldn't even recall how to turn the PC terminal on. Due to the length of my absence, I had forgotten all of my passwords, and

was tasked with gaining access myself to the various police systems by the inspector. I had to ask a colleague how to turn the computer station on, so I could try to access the police systems. These systems are very complicated to work and I couldn't remember how to access Proclad (this being the current incident log) or Lynx (the internal intelligence system), or CMS (the crime management page, where crime details are recorded). I had previously had to undergo specific training for all of these systems, in order to be then be given passwords to use them. Due to my absence, I could no longer recall how to do so, which left me asking for training courses. I was only ever given a very brief overview from DS Smith on how to open the systems up and was then asked to have to try to familiarise myself with them. After being absent from the workplace for near on a year, I found this an impossible task. I had to ask others including DS Smith how to use the email system, so that I could try to send emails asking for training on CMS. Those emails that I sent were never replied to. The CMS system in process of being replaced by a new system called Connect. I needed fully re-training on each of the police systems due to the length of time spent away from work, and the changes that had taken place since my absence. Role specific training was initially set for the Crime Hub staff, by approved trainers, and lasted for over one week (eight hours per day) yet I was initially given two short mornings of input (three hours per day) by Inspector Harrison only, who had invited me down while he told Atlas Court staff how the crime hub would be working. This wasn't a training input. This is not meant as a criticism of Inspector Harrison but just to outline that others were given a specific training package aimed to help them manage the various police systems in the role, and was something I never received".

105. Mr Harrison does not accept the claimant's account. He says that the claimant was a very experienced police officer and would be familiar with the task of investigating crimes and speaking to victims. He says that, "the role within the Crime Support Hub is no different from the day to day role as a police officer other than the fact that the Crime Support Hub works from a desk. Decision making around how crimes are dealt with is not a new phenomenon and I would expect all police officers to be able to draw on their experience to make sound decisions in relation to how crimes are dealt with".

106. Mr Harrison says that he created a refresher training plan for officers joining the CSH on its commencement on 11 September 2017. He says that, "unfortunately, Mat could not attend the training because his workstation had not arrived and he was therefore not ready to join the Crime Support Hub. In addition, this training took place between the hours of 8am and 4pm for the first five days of the Crime Support Hub. I was already aware that Mat could not fulfil this commitment and therefore I was pragmatic in designing an alternative plan for him, one that could be achieved at his own pace on a more one to one level with his own supervisor".

107. Mr Harrison says that upon his arrival in the CSH he personally briefed him and emailed Mr Nesbeth and Mr Smith a plan of action which included elements of training.

108. Mr Harrison also refers to a number of online e-learning packages. These are known as NCALT packages. He says that Mr Smith asked the claimant to review those.

109. Mr Harrison acknowledges that the claimant was unable to use the Connect system. Formal training was required. He says that Mr Smith had tried to set up training for the claimant but due to limitations in his working hours was unable to do so. Further, Mr Harrison says that "as matters progressed, Mat never did actually investigate a crime during his entire time in the Crime Support Hub". He also said that the claimant may have been able to obtain assistance from colleagues.

110. Mr Smith acknowledges, as did Mr Harrison, that the claimant was not given training on the new Connect system. However, he says that the claimant was not required to do any work which would have required use of that system during the time that he was within the CSH. He encouraged the claimant to undertake tasks which would enable him to become familiar with the systems. We refer to paragraph 43 of Mr Smith's witness statement.

111. He says that he spent an hour on 24 October 2017 showing the claimant how to use some of those systems including Lynx, Procad and the employee relations portal. Mr Smith took the view that as the claimant was a long serving officer he would be well versed in using those systems anyway. He also corroborates Mr Harrison's evidence that he (Mr Smith) tried to book the claimant onto a Connect course but could not do so because it entailed being upon the course longer than the claimant's scheduled working hours. Mr Smith also offered the claimant an opportunity to see a trainer on 20 November 2017. Unfortunately, the claimant was absent from work upon that day on dependency leave and therefore this session did not go ahead.

112. Mr Smith says that he enquired about the possibility of the claimant attending a Connect training course. This enquiry was made on 5 December 2017. Mr Smith drew attention to the claimant's limitations. It was therefore suggested that the claimant, as an interim measure, complete the NCALT courses that cover the Connect system as an interim measure.

113. The following emerged from the evidence of the claimant given under cross-examination upon the training issue:

    113.1. That the Connect system was not live when the claimant commenced work in the CSH in October 2017 but went live following that date.

    113.2. He fairly accepted that he could draw upon his long experience in the force in using the existing computer systems and that his previous experience was relevant to the task that he was undertaking in the CSH.

    113.3. He fairly acknowledged the assistance given to him by Mr Smith (in particular as recorded at page 99 and page 101) relating to assistance given on 26 October 2017. The claimant said that although he could not recollect it he would accept that that training had taken place if it was recorded by Mr Smith. Similarly, the

claimant acknowledged the earlier entry in a similar vein at page 98 (dated 24 October 2017). The claimant said that he would not call this training (in the sense of it being provided by a qualified trainer) but he did acknowledge that Mr Smith had given him some input into the use of the respondent's systems.

113.4. The claimant accepted that a Connect course had been planned for four days in January 2018. It appears that this was in fact to take place at a colleague's house. The claimant acknowledged the efforts being made but said that this would present him with some difficulty and Mr Smith was trying to alleviate those difficulties by arranging one to one tuition for him. The training at the colleague's house was cancelled in advance and it was in fact that cancellation that led to Mr Smith making the enquiries on 5 December 2017 and the suggestion made on 10 December 2017 that in the interim he uses the e-learning system NCALT. We can see from pages 144 to 146 that the claimant did so and that Mr Smith rendered some assistance.

113.5. The claimant said in paragraph 24(8) of his witness statement that the lack of training worried him as he was concerned about making mistakes. He said that this was "due to short-term memory issues and reduced ability to concentrate which could have had serious consequences for victims of crime". The claimant fairly acknowledged that the respondent did not seek to reprimand him for unsatisfactory performance much less place him on any performance improvement plan.

114. The following emerged from the cross-examination upon this issue of Mr Harrison and Mr Smith:

114.1. He fairly acknowledged that the claimant had been absent from work for a period over a year and upon his return would need refresher training. Mr Harrison also acknowledged that the claimant had difficulty with retention of information due to the medication that he was taking to alleviate the symptoms from his knee injury.

114.2. Mr Harrison also accepted that there had been significant changes to the email and other computer systems. The claimant did not benefit from the training that at least some in the CSH had received. Mr Harrison said that he thought about 14 out of the 23 officers assigned to the CSH had received and benefited from the five days' training course.

114.3. Mr Harrison referred in paragraph 31 of his witness statement to having created a refresher training course for officers joining the CSH. He says that he was "pragmatic in designing an alternative plan for [the claimant]". When pressed in cross-examination, Mr Harrison said that no written plan had been produced for the claimant. He said that the claimant was aware of it and the plan was essentially that in the email dated 15 October 2017 at pages 90 and 91 to which we have already referred at paragraph 49. Mr Harrison accepted that no plan had been written down but it was mentioned verbally to the claimant on a number of occasions.

114.4. It was suggested to Mr Harrison that the NCALT e-learning was no adequate substitute for undertaking the Connect course. In support of that contention Mr Harrison's attention was drawn to Mr Smith's email of 5 December 2017 at page 368. In that email (to which we have referred already) Mr Smith expresses the view that "NCALT courses will not be sufficient to provide the necessary level of training required to bring [the claimant] up to speed with Connect. All other officers within my department had had a full four day course and it is only by reason of Mat's physical restrictions that he is not able to attend at RDH. The Connect courses were deemed mandatory and therefore it would be my view that as an organisation we need to make reasonable measures to ensure that Mat is supported by receiving the same level of compulsory training that others have received. This is even more important as Mat has only recently returned to the organisation after over 12 months away from SYP". Mr Harrison said that "this is Mr Smith's view not mine".

114.5. Mr Harrison said that there was no available training for the CMS system because it was going to be replaced by Connect by December 2017.

114.6. In evidence given under cross-examination, Mr Smith acknowledged the claimant's need for refresher training. He said (as he had in the email of 5 December 2017) that the claimant should have had training in Connect and that the e-learning system was not an adequate substitute. Mr Smith said that had the claimant remained with the respondent then Connect training would have been provided.

114.7. Mr Smith was asked about comments made by the claimant that he was having difficulty retaining information. The claimant had emailed Mr Smith on 20 October 2017. He told Mr Smith that, "I'm not managing to navigate through things very well, and I've totally forgot how to use them, emails included. Could do with refreshers if they are available. Things seem totally alien to me and my recollection of using them just isn't kicking in". Mr Smith acknowledged the claimant having complained to him about having difficulty with information retention.

115. We now turn to the issue of canteen facilities. The claimant complains that the respondent applied a PCP of failing to provide adequate canteen facilities. In his witness statement (at paragraph 7(7)) he complains that a room was not set aside for a canteen or breakout facility until 18 December 2017. This entailed him having to eat at his desk. He said that, "I have limited mobility and find it difficult to walk any distance without suffering severe pain and/or struggle to carry eg containers of food more than a short distance, which I had to do as a result of the lack of canteen facilities/a break out room close to my desk area".

116. The claimant acknowledged that the kitchen shown on the plan at page 491 was always *in situ*. It has a fridge and hot water facilities. The claimant denied that the canteen facility or restroom (which is actually

across the corridor from the kitchen according to the plan) was *in situ* and identified to him until December 2017.

117. By way of reminder Mr Harrison said in his witness statement that, "during our meeting on 16 August 2017 *[this being the return to work meeting attended by the claimant, Mr Harrison and Mrs Parker]* I also explained to Mat that the room located opposite my office and opposite the kitchen would be used as a restroom and Mat was welcome to use it if he did not want to eat at his desk or in any other area of the police station. Whilst I cannot be precise on the date, at some point in December 2017 a sign titled "restroom" was placed on the door of that room (even though a number of officers had embarked on using it). However, this sign simply confirmed the existing position as the room as a restroom prior to the sign being positioned. In my opinion, Mat was fully aware that the room was available to eat in upon his commencement in the Crime Support Hub and to be clear, at no point was Mat ever required to eat at his desk if he did not want to, although it is not uncommon for officers to do so".

118. Mr Harrison acknowledged that there are no notes of the meeting of 16 August 2017. Further, it was suggested that this was inconsistent with the claimant's complaint recorded in the log of the meeting of 15 November 2017 (at pages 116 and 117) of the absence of a restroom. Mr Harrison says, "I did tell him. I cannot see why he has raised it".

119. Mr Harrison was then taken to Mr Smith's email of 17 November 2017 (page 317). Here, the claimant was told, "HR have discussed the restroom facilities with SCS who are reviewing this in respect of a place to eat your lunch etc. I will keep you informed as and when I receive any further information". Mr Harrison was asked why Mr Smith would say this if there was in fact a canteen or restroom *in situ.* Mr Harrison maintained that the restroom was identified as such from the commencement of the CSH.

120. Mr Harrison said that within the restroom were "desks and chairs". Mr Connor, ASO-Specialist Crime Services said in an email sent on 16 November 2017 (page 327 and 328) that there was a restroom on the third floor. He went on to say, "granted we are yet to appoint the restroom on floor 3 with better furniture but it is available for use now". Mr Harrison said that this was supportive of his position.

121. On 22 November 2017 at a return to work interview Mr Smith raised the issue of the restroom facilities. There, Mr Smith recalls informing the claimant that the room in which the meeting was being held was in fact the allocated restroom facility where he could eat his lunch or have a break. It was put to Mr Harrison that that was the first occasion upon which the room was identified to the claimant as a restroom. (This appears to sit uneasily with the claimant's own evidence that no canteen or break out facility room was provided for him until 18 December 2017).

122. It was suggested to Mr Smith that if the room in question had always been used as a canteen or restroom then either the claimant would have known that or alternatively Mr Smith would have been able to tell him that without hesitation on 15 November 2017 rather than it simply being a point of discussion. If it was so well known it also curious that Mr Smith felt the need to send the email to the claimant on 17 November 2017 (page 317) informing the claimant that there was to be a discussion between HR and

the SCS about the issue of restroom facilities. Mr Smith acknowledged that he had not said in this email words to the effect that there was a restroom as was common knowledge to all of those working within the police station. Further, it had taken Mr Connor's email of 16 November 2017 to prompt Mr Smith to inform the claimant on 22 November 2017 that the room in which the meeting of the day was being held was earmarked as the rest room.

123. In a second witness statement signed by Mr Smith on 4 September 2018 he said (at paragraph 7) that, "within paragraph 52 of my initial statement I would like to further add that although I never saw Mat eat what I would describe as a meal at his desk, I did on a small number of occasions see him eat small snacks, which would not require to be prepared in a kitchen, while sat at his workstation." It was suggested to Mr Smith that this illustrated the claimant's difficulty in that he only ate small snacks because he could not get to the kitchen in order to prepare food which had brought in from home. Mr Smith said that the claimant had never told him that that was a difficulty and that staff will frequently bring in fruit or sandwiches with them.

124. We now turn to the issue of sickness absence and sickness pay. This is closely connected with the claimant's claim (brought under section 15 of the 2010 Act) that the respondent threatened him with action under the unsatisfactory attendance procedure if he took any more sick leave.

125. At paragraph 11 of her witness statement, Mrs Parker refers to it being part of her role to undertake (in conjunction with the respondent) a review of the officers in receipt of sick pay benefits. These are known as 'Regulation 28 reviews.' They are so called because entitlement to pay whilst sick is dealt with under Regulation 28 of the Police Regulations 2003.

126. We have referred already to Mrs Parker's evidence (at paragraph 9 of her witness statement) that the claimant was unfit to return to the local policing team and therefore the respondent's case is that he was properly categorised as being on sick leave in circumstances where he was willing to return to work in the CSH following the expiry of his sick note in July 2017. The respondent exercised discretion to extend the claimant's sick pay for a further four weeks. Due to delays in him being able to return to work in the CSH the claimant remained absent on full pay notwithstanding that he remained incapable of carrying out a substantive role due to illness. The claimant was also not formally managed through the respondent's unsatisfactory attendance procedures.

127. On 23 October 2017 Mrs Parker emailed Mr Smith (page 237). She confirmed that "Mat has been unable to return to work until the reasonable adjustments he requires have been put into place, and this took until week commencing 9 October. Mat was kept on full pay in recognition of this and still recorded as sick, hence his absence being closed when he returned on 16 October 2017". She went on to say that the respondent had made the decision to reduce the claimant to half pay with effect from 16 October 2017 in the event that the claimant should not return to work. According to paragraph 25 of her witness statement, the claimant was reduced to half

pay because the claimant had not informed payroll that he had in fact returned to work. This was later rectified.

128. It is Mrs Parker's evidence that, when exercising discretion to pay full pay to the claimant, the respondent was taking into account the guidance in the notes at pages 445 to 453. The notes say that Regulation 28 of the 2003 Regulations creates a presumption that pay will automatically be reduced to half pay after six months of absence in the preceding 12 months from the first day of individual absence and nil pay after 12 months unless there are exceptional circumstances justifying the exercise of discretion in the individual's favour. At page 448, we see that only in exceptional circumstances will discretion be exercised in favour of a member of staff. There is a non-exhaustive table setting out four possible exceptional circumstances. It was common ground that the claimant's case fell within three of these:

- *Where the individual is suffering an injury or illness sustained or contracted in the actual execution/discharge of duty.*
- *Where the case has been referred to the selected medical practitioner to consider the issue of whether the officer is permanently disabled and a decision is imminent.*
- *Where there is a clear return to work plan and it is considered reasonable to extend pay for a limited period to allow reasonable adjustments or arrangements to be put in place.*

129. It was suggested in cross-examination to Mrs Parker that the claimant should not have been recorded as being on sick leave between July and October 2017. She said that, "there was no other leave provision available. I sought advice – because it was for a medical reason it could be recorded as sick leave". The claimant, as we have seen, was absent from work on 19 October 2017 due to ill health. There were further absences in November 2017: on 1, 6 and 7 November and 16 and 17 November. There was then a further period of absence on 4 and 5 January 2018. This was followed by a further three days' absence between 24 and 26 January 2018 inclusive. There was then a further three days' absence on 31 January and 1 and 2 February 2018. Mrs Parker says that HR services wrote to the claimant on 2 February 2018 (page 443) informing him that his entitlement to full pay had expired on 31 January 2018 and that if he took any further sickness absence his entitlement to pay would be at half pay. A similar letter was sent to him on 21 February 2018 (page 454) and again on 11 April 2018 (page 458).

130. On 23 November 2017 the claimant had made an application to extend his sick pay (pages 332 to 335). The claimant was requesting that future potential sickness absence be paid at full pay. He said in his application form that, "by now being placed in a position where I need to take time off sick to recover from the effects of trying to make this "new role" work, I feel that I am being significantly disadvantaged due to this disability, because I have been given an unachievable goal. The same disability I was retained with is causing these absences. As the SMP *[Dr Adejoro*] alludes to, these absences will continue".

131. Mrs Parker informed the claimant on 13 December 2017 (at the welfare meeting to which we have referred) that the respondent was not prepared to exercise his discretion in this way. Applications for the exercise of discretion would have to be considered at the time that the sickness has occurred. Mrs Parker confirmed the respondent's position in her email to the claimant of 15 January 2018 (page 435). The claimant's pay was in fact never reduced to half pay despite the claimant being unable to maintain an acceptable level of attendance.

132. Mr Smith accepted, in cross-examination that he had made reference to the unacceptable attendance procedure on a number of occasions. There are references to it, for example, in the record of the meetings of 20 October 2017 (at page 159), 10 November 2017 (at page 162) and 22 November 2017 (at page 167). The log also appears to show that the UAP procedure we referred to on 12 January 2018 (page 169), 29 January 2018 (page 173), 8 February 2018 (page 175) and 15 February 2018 (page 178). There is a further reference to it in a log of the meeting of 2 March 2018 (page 180). About the entries for January, February and March 2018, Mr Smith said that he had made a record in the log for the benefit of HR. He was effectively flagging up to HR that he was cognisant of the UAP and would deal with the claimant under it should it be appropriate. It was not necessarily a record of Mr Smith discussing the UAP with the claimant upon those occasions and he had not done so on these later occasions in 2018. That said, Mr Smith accepted that the issue of the UAP did feature in conversations between them about the claimant's attendance.

133. Mr Smith accepted that the unsatisfactory attendance procedure was not instigated against the claimant because a decision had been made to re-visit the question of whether or not the claimant should be allowed to retire upon the grounds of ill health. It was therefore Mr Smith's understanding that should ill health retirement not be granted then the respondent would re-visit the question of the application of the unsatisfactory attendance procedure. It was suggested to Mr Smith that the respondent's position was "made plain" to the claimant. Mr Smith accepted this to be the case at the welfare meeting held on 13 December 2017.

134. It was suggested to Mr Harrison that the respondent's approach created a problem for the claimant in that as he (and indeed the respondent) knew full well there was no prospect of the claimant's physical condition improving. Therefore, unless the unsatisfactory attendance procedure was adjusted there was always the prospect of it being applied to the claimant and ultimately of him being dismissed. Mr Harrison fairly accepted this to be the case but said that, "that was one of the reasons why it was never instigated. He did however accept that the application in principle of the unsatisfactory attendance procedure to the claimant was never removed."

135. It was put to Mr Harrison that the claimant was aware of the claimant's predicament. This had prompted him to take 8 December 2017 as annual leave. His diary says (at page 73(11)) that he "cannot afford to go on to no pay and the organisation is forcing me on to this. I would have taken this day as sick leave if I had the option of payment". Mr Harrison had no knowledge of the claimant doing this on 8 December 2017 but observed

that he would "never support the taking of annual leave to mask sick leave".

136. The day before this the claimant had sent an email to Mr Harrison about this issue (page 131). He told Mr Harrison and Mr Nesbeth that, "I have just been told that the chief has decided to stand on his decision in respect of me going on to the remainder of half pay and then no pay, although I have yet to get a response from Catherine Parker officially about it. It appears I have no more than a few days half pay left for when I have to go on sick leave. It appears that the decision to keep me at home from 10 July 2017 to 16 October 2017 remains classed as sick leave by the organisation regardless of me saying I would come back immediately after the chief had made a decision to retain me." Mr Harrison fairly accepted that this was indicative of the claimant's view that he was being disadvantaged because of his disability.

137. It was suggested that as a reasonable adjustment the claimant should have been allowed to take sick leave and retain full pay. Mr Harrison said that this was not in his gift.

138. In evidence given under cross-examination, the claimant accepted that the earnings that he lost in October 2017 was restored to him "without any issue". He also accepted that he had never in fact suffered a reduction of pay. The claimant, while accepting this to be the case, said that he had found it stressful to receive letters intimating that possibility. He also referred to the mention of the unsatisfactory attendance procedure at various meetings. The claimant was taken to the Regulation 28 notification letters at pages 318 and 319 (dated 17 November 2017) and 2 February 2018 (at pages 443 and 444). It was suggested to him that the respondent was doing no more than following the 2003 Regulations. The claimant said that he identified these letters as being threatening.

139. The claimant accepted that the respondent had exercised discretion in accordance with the guidance commencing at page 445. It was suggested to him that he was familiar with Regulation 28 of the 2003 Regulations and the guidance in his capacity as a police federation representative. The claimant said that he could not recall that guidance or having exercised it in that capacity.

140. We now turn to the relevant law. The prohibited conduct of which the claimant complains is made unlawful in the workplace pursuant to the provisions set out in Part 5 of the 2010 Act. The relevant prohibited conduct is that of disability discrimination in particular:

    140.1. Unfavourable treatment for something arising in consequence of disability (under section 15 of the Equality Act 2010).

    140.2. A failure to make reasonable adjustments (under section 20 of the 2010 Act).

141. We shall deal firstly with the reasonable adjustments claim. An employer's duty to make reasonable adjustments arises where a 'provision, criterion or practice' (meaning broadly any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with those that are not disabled. The

employer must then take such steps as it is reasonable to have to take to avoid the disadvantage.

142. Having identified the relevant PCP (as we shall now refer to the provision, criterion or practice in question) the Tribunal must then go on to consider the nature and extent of the substantial disadvantage suffered by the claimant in comparison to non-disabled comparators. 'Substantial' in this context means 'more than minor or trivial'.

143. The claimant bears the burden of proof to establish a *prima facie* case that the duty has arisen and that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. There must be evidence of apparently reasonable adjustments which could be made. The claimant must therefore identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage (or at least have a reasonable prospect of doing so). Having done so the burden will then shift to the employer to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.

144. The duty to make adjustments arises only in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. The test of reasonableness in this context is an objective one. As the reasonable adjustment provisions are concerned with practical outcomes rather than procedures the focus must be on whether the adjustment itself can be considered reasonable rather than on the reasonableness of the process by which the employer reached the decision about a proposed adjustment.

145. It is unlikely to be reasonable for an employer to have to make an adjustment that involves little benefit to the disabled person. However there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for a Tribunal to find simply that there would have been a prospect of it being alleviated.

146. A significant change brought about by the 2010 Act is the omission of specific factors to be considered when determining reasonableness. The Disability Discrimination Act 1995 (when that was in force) stipulated that in determining whether it was reasonable for an employer to have to take a particular step in order to comply with the duty regard should be had to a number of factors. Those factors are not mentioned in the 2010 Act. However, paragraph 6.28 of the Equality and Human Rights Commission's Employment Code gives examples of matters that a Tribunal might take into account.

147. The Code stipulates that what is a reasonable step for an employer to take will depend on all the circumstances of each individual case. The factors to have in mind include for example the extent to which taking the step would prevent the effect in relation to which the duty was imposed, the practicality of such step, the costs that would be incurred by the employer in taking that step and and the extent to which it would disrupt any of its activities. Other factors that need to be taken into account include the extent of the employer's financial and other resources, the nature of the employer's activities and the size of its undertaking.

Paragraph 6.33 of the Code lists a number of adjustments that might be reasonable for an employer to make. These include the alteration of a disabled person's hours of work which could include permitting part-time working or different working hours or a phased return to work with a gradual build-up of hours.

148. The duty to make reasonable adjustments only arises where the employer knows or ought to know that the employee is disabled and that the employee will be placed at a substantial disadvantage by reason of the application to him of the PCP in question. The issue therefore is whether the employer knew or ought to have known both of the disability and the likelihood of the disability placing the employee at a substantial disadvantage by reason of the application of the relevant PCP: the latter concept is known as constructive knowledge.

149. We do not understand there to be any issue of knowledge in this case. The question of knowledge was not one raised in Mr Dixey's submissions. We shall therefore proceed upon the basis that the respondent does not raise any knowledge defence in this matter.

150. We now turn to the complaint of discrimination for something arising in consequence of disability. This is a complaint that may be raised where an employer treats an employee unfavourably because of something arising in consequence of the employee's disability which the employer cannot show to be a proportionate means of achieving a legitimate aim. There is a statutory defence to a complaint brought under section 15 of the 2010 Act. Again, however we do not understand the respondent to be raising such a defence.

151. The burden is upon the claimant to show a *prima facie* case. He must show unfavourable treatment because of something and that something must arise in consequence of his disability.

152. In answer to a section 15 complaint, an employer may raise a defence of justification. It is for the employer to show a legitimate aim for the unfavourable treatment in question which must be legal and must not be discriminatory. It must represent a real objective consideration. Further, the unfavourable treatment of the disabled person must be proportionate. That is to say, the treatment in question has to be an appropriate means of achieving the aim and reasonably necessary in order to do so. The objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and being necessary to that end. This is an objective test. It is not enough that a reasonable employer might think that the action is a proportionate means of achieving the legitimate aim. The Tribunal has to weigh the real needs of the undertaking against the discriminatory effects of the requirements.

153. We shall now set out our conclusions by applying the relevant law to the findings of fact that we have made. We shall take each of the issues set out in paragraph 6 in turn. We therefore start with the question of hours of work.

154. We can see form the amended agreed list of issues referred to in paragraph 4 that the parties advance competing PCPs. The respondent

says that the relevant PCP was the requirement that officers work their full hours. The claimant's case is that the PCP was the requirement that the claimant work five four-hour shifts in the week commencing 16 October 2017.

155. We agree with Mr Dixey that the claimant's formulation cannot be the correct PCP. By definition, the claimant's formulation of the PCP incorporates an adjustment to the number of hours. In our judgment, the claimant has elided the PCP with the adjustment to it and has arrived at an incorrect formulation of the PCP.

156. The correct PCP therefore is the requirement that officers work their full hours. The respondent fairly and realistically accepts that this PCP when applied to the claimant caused him a substantial disadvantage because he was simply unable so to do. He was therefore placed at a disadvantage in comparison with non-disabled comparators (being other officers employed by the respondent to whom the relevant PCP applied and who were required and able to work full-time hours).

157. The respondent again fairly accepted that it had actual knowledge that the application of the relevant PCP to the claimant placed him at a substantial disadvantage.

158. We then refer to our findings of fact upon the issue of hours of work (in particular at paragraphs 40 to 44 and 69 and 70).

159. In our judgment, the respondent made reasonable adjustments which had a prospect of ameliorating or alleviating the substantial disadvantage caused to the claimant by the application of this PCP. The claimant's hours of work were reduced. It is the case that the return to work plan prepared by Mrs Parker and implemented by Mr Harrison departed from the recommendation in the occupational health report. The return to work plan in fact envisaged the claimant working more than the three four-hour days with a gradual increase (as occupational health recommended) dependent upon progress and in consultation with his supervision.

160. However, the claimant was not forced to increase his hours and was allowed to choose his own start and finish times. In the event, the claimant (as he himself fairly accepted) struggled to achieve four hours of work in any given working day. No sanction was imposed upon the claimant of any kind. Objectively, the respondent made a reasonable adjustment to this disadvantaging PCP.

161. Further, the claimant was not made the subject of the unsatisfactory attendance procedure. His pay was not reduced. The respondent makes the submission (at paragraph 19 of Mr Dixey's written submissions) that it would not have been a reasonable adjustment to have continued paying the claimant a full-time wage for part-time hours indefinitely. That may be the case but is, on the facts, a moot point because the claimant was paid a full-time wage until the date upon which he took ill health retirement. The respondent therefore did make a reasonable adjustment during the last period of the claimant's employment with the respondent following his return to work in October 2017 until the date of his retirement by making a pay adjustment entailing paying him his full salary.

162. Our judgment, therefore, is that the claimant's complaint under section 20 of the 2010 Act upon the first issue identified in paragraph 6 fails. While there was a disadvantaging PCP the respondent made reasonable adjustments which ameliorated that disadvantage because he was allowed flexibility with his working hours, he was not made the subject of any formal or even informal capability proceedings and his pay was not reduced.

163. There may have been a lack of consultation with the claimant about the preparation of the return to work plan referred to at paragraph 40. The freedom of the claimant to come and go was somewhat *ad hoc.* However, the focus must be upon the outcome and not the process and in respect of working hours the respondent made reasonable adjustments which served to ameliorate the disadvantage caused to the claimant by the relevant disadvantaging PCP.

164. We now turn to the second issue listed in paragraph 6 which concerns the issue of car parking. We have determined that this complaint succeeds in part.

165. The PCP identified in the agreed amended list of issues is the operation by the respondent of a practice of only reserving parking spaces for officers of a certain rank and above and requiring officers who travel to work by car to park in any other available space on a first come first serve basis.

166. The first limb of this PCP fails upon the facts. The Tribunal found that there was no practice of reserving spaces for officers of a certain rank and above. We refer to paragraph 76 of the reasons. The claimant was in no position to gainsay the evidence of Mr Harrison and as we commented at paragraph 77.1 he appeared unsure for whose benefits certain spaces were reserved.

167. The findings of fact about the parking issue are at paragraphs 71 to 79. Mr Dixey helpfully summarises (at paragraph 29 of his submissions) the adjustments that were made for the claimant. These were that:

    167.1. He was able to park on the double yellow lines on the ramp into the car park.

    167.2. He could block in other vehicles.

    167.3. He could telephone a supervisor who would assist him in finding a space or remove any vehicles parked inappropriately.

    167.4. He was able to park in any space that was free.

168. Mr Dixey submits that these were all reasonable adjustments. In paragraph 17 of his submissions, Mr Lewinski identifies problems with each of the adjustments made by the respondent to accommodate the claimant's parking needs. We agree with the claimant's submissions that the adjustments made by the respondent were not adequate and that there was, objectively, more that could reasonably have been done.

169. Parking on double yellow lines on the Magistrates' court land was unsatisfactory for the reasons given by the claimant in evidence and recorded at paragraph 77.2 above. Blocking other cars in came with the obvious disadvantage (as accepted by Mr Harrison at paragraph 78.8) of

creating a problem in an emergency situation. Mr Harrison also fairly acknowledged that telephoning ahead to seek assistance was beset with problems (paragraph 78.9). The use of Access to Work to fund the provision of taxis was also no answer as it was no part of the claimant's case that he could not drive into work. In fact, as this was one of the tasks that he could do it was positively beneficial for him to drive into work. The difficulty was finding a parking space when he got there.

170. At paragraph 16 of the claimant's submissions, a number of reasonable adjustments are postulated. We hold that it would not have been a reasonable adjustment to provide the claimant with a designated parking space. We agree with Mr Dixey that there are fewer disabled spaces than there are disabled employees. The respondent plainly has to balance the needs of the claimant and the needs of other disabled employees. To reserve a space for the claimant alone would reduce the number of spaces available for other disabled users. The police station in question is in use 24 hours a day. It would therefore not be a reasonable adjustment to devote a parking space for the claimant's exclusive use when he was working significantly fewer than 24 hours in each day. That would be disproportionate as it would reduce space available for others and potentially be disruptive to the respondent's activities.

171. We also agree that increasing the number of disabled parking spaces would not have been a reasonable adjustment. Again, we have to take into account the respondent is operating a busy round-the-clock police station in the middle of one of the largest cities in England. As Mr Dixey submits there is a clear need to have parking spaces for visitors who could include members of the public, victims of crime, witnesses and others with vulnerability. Again, the respondent has to balance the needs of the claimant on one hand as against the needs of other people on the other hand. We also agree with the respondent's submission that the suggestion of allowing the claimant to park in spaces reserved for more senior officers must fail on the facts as it was not in fact the case that this practice was followed anyway.

172. We agree however with the claimant that it would have been reasonable for the respondent to properly police the car park and to make arrangements for him to call in advance to enable a cone to be placed in a bay for the claimant's use by Mr Harrison or somebody delegated by him to perform this task.

173. On the facts, it is readily apparent that the problem of officers parking in the disabled bays was a chronic problem. One only has to look at Mr Trees' emails for evidence of this. Plainly, Mr Trees was whistling in the wind. The respondent could have but did not implement a system of threatening disciplinary action against those improperly using the disabled bays. Mr Trees was fighting a lone battle with, it seems, no support.

174. Taking into account the factors in paragraph 6.28 of the Equality and Human Rights Commission's Employment Code there were practical steps (in the form of policing the disabled bays and taking action against those wrongly parking there) which the respondent could have taken at little or no cost to ensure that the disabled bays were used only by those who needed them. The steps that could have been taken were clearly

practicable and would have caused no disruption or no great disruption to the respondent's activities. Had that been done, there was at least a prospect of avoiding or alleviating the disadvantage caused to the claimant by the application to him of the requirement to come into work and compete for an available space upon a first come first served basis.

175. Similarly, the adjustment of facilitating the claimant telephoning ahead when he had or was about to set off from home so that Mr Harrison or somebody deputed by him could mark with a cone or other device that the space was reserved for the claimant was a practicable step that could have been taken. It was only a short walk from the office to the disabled parking bay area. It would therefore not have been any great imposition upon the respondent for this step to have been taken. The claimant could easily have notified Mr Harrison that he was on his way by a short telephone call or text message or something similar. The claimant lived quite close to Snig Hill police station and therefore the occupation of an available disabled bay by a traffic cone or similar for a few minutes before his arrival would not have caused any great disruption to others using the building. It follows therefore that this aspect of the claimant's claim succeeds in part.

176. We now turn to the question of issues around the claimant's workstation. The relevant findings upon this issue are at paragraphs 80 to 92.

177. We agree with Mr Dixey that the correct formulation of the relevant PCP is the requirement of an officer to walk to their desk from the point of entry into Snig Hill police station. (We may also add that the PCP will operate in reverse when leaving work). The formulation in the agreed list of issues that the relevant PCP is the requirement for the claimant to walk *"a long distance"* from the lift is imprecise, not objective and imports that which the PCP is intended to test ie whether the distance is **"***a long one".*

178. We accept that the application of the PCP of requiring an officer to walk to their desk from their point of entry into the police station is one which disadvantages the claimant. On any view, he has greatly restricted mobility in comparison to non-disabled colleagues subject to the same requirement. A duty therefore arises upon the respondent to make reasonable adjustments.

179. At paragraph 82 we set out passages from Mr Harrison's witness statement where he gives his justification for the positioning of the claimant's work station. All of the points which he raises are reasonable. However, we remind ourselves that the test is objective and not that of the reasonable response of the reasonable employer. The Tribunal may therefore substitute its view given the nature of the test with which we are concerned.

180. In our judgment, Mr Lewinski makes compelling points in favour of the claimant's case that the respondent failed to make reasonable adjustments upon this issue. There are several fundamental issues which persuade us of the claimant's case.

181. Firstly, there was no satisfactory evidence that the desk (which operated electronically) could not be placed in the area which the claimant considered to be optimal. At paragraph 89.5 we have observed that Mr Harrison was supportive of a move of desk subject to checking that

there were enough electrical points to enable the desk to function and that it would fit without creating an obstruction given that the desk is wider than others. There was nothing to suggest that there were any technical reasons why the desk could not be placed in the area that was optimal from the claimant's point of view.

182. Secondly, the optimal area would have reduced considerably the claimant's walk from the lift to his workstation. The claimant of course had to accept that there was no workstation within 20 metres of his car and therefore Jayne Downing's recommendation (at paragraphs 20 and 21) could not be followed to the letter. Nonetheless, one can see by looking at the plan at page 491 that on any view the distance from the lift to the claimant's optimal area is significantly less than that from the lift to the position where he was in fact placed. In the context of an individual with such limited mobility this is highly significant.

183. Mr Harrison makes a fair point, in our judgment, that the actual position of the desk was closer to the kitchen area, rest room and printer. It was in the middle of those areas and the toilet and the lift. That said, we agree with Mr Lewinski that objectively access to the toilets and the lift were fundamental. The claimant did not need access to the kitchen area, rest room and the printer facilities. He did need access to the toilets and the lift. Further, the disabled toilet was upon the floor below that upon which he was working. Therefore, he would not only need access to the lift when coming to and leaving work but also several times during the day to use the disabled toilet.

184. Those considerations (around access and egress and toilet facilities) objectively outweigh those factors cited by Mr Harrison (and recited at paragraph 82 of these reasons). In our judgment therefore moving the claimant to a location closer to the lift had a prospect of alleviating the substantial disadvantage and would have been a reasonable adjustment. By application of the Equality and Human Rights Commissions Employment Code at paragraph 6.28 we can see no practical reason for not having moved the claimant's desk to its optimal position. There was no evidence that this would involve significant cost. It would cause little if any disruption to the respondent's activities. We accept that the claimant would then have been further away from DS Smith and any other work buddies. However, given the distances involved this would cause little difficulty to those non-disabled colleagues in going to see the claimant.

185. We part company with Mr Lewinski when he submits that a reasonable adjustment would have been for the claimant's workstation to have been placed upon the second floor and thus nearer to the disabled toilets. It would have been significantly disruptive for units and teams to move around from those locations that had been identified in the planning of the locations of the various teams as described by Mr Harrison. In our judgment, that would have been a step too far. The substantial disadvantage to the claimant caused by the actual location of his workstation would have been ameliorated or alleviated to a significant extent by moving his workstation to the position identified by him as optimal and much closer to the lift. That would have given him access to the disabled toilets (in conjunction with the reasonable adjustments which we find should have been made in relation to the latter and to which we

shall shortly come). Were the respondent to have made those adjustments (to the workstation and the provision of toilet facilities) objectively it would not have been reasonable for the respondent to then move whole teams around (with all of the disruption that would entail) in order to accommodate the claimant who was, of course, working part-time hours.

186. We now come to the question of the toilet facilities. This is in fact advanced not upon the basis of a disadvantaging PCP but rather because the toilet facilities were a physical feature which placed the claimant at a substantial disadvantage when compared with officers who are not disabled. We must therefore consider whether the claimant was put at a substantial disadvantage by the physical feature and whether there were reasonable adjustments available that would reduce or avoid the disadvantage to the claimant.

187. We accept that the physical feature had a disadvantaging effect upon the claimant. The first relevant physical feature is that the toilets upon the third floor were inadequate for use by disabled persons. Principally, this is for the reasons as set out in our findings of fact at paragraphs 93, 94 and 97. The toilet facilities on the third floor were simply inadequate for the claimant and were a disadvantaging physical feature. When using them he was at a disadvantage compared to a non-disabled comparator who would not be as troubled by the size of the cubicles and slippery surfaces.

188. A duty was therefore placed upon the respondent to make reasonable adjustments. We agree that it would not have been reasonable for the respondent to go to the significant cost of installing a disabled toilet upon the third floor when facilities were available on the floor below which would have been reasonably accessible to the claimant with the adjustment to the workstation. However, in our judgment the respondent failed to make a reasonable adjustment in the provision of disabled toilet facilities for the claimant upon the second floor.

189. Essentially, this issue centres upon arrangements for access to the second floor disabled toilet facility by the claimant. The relevant factual findings are at paragraphs 95 to 102. The failure to provide a radar key for the claimant meant that the claimant's use of the second floor disabled toilet facility became unnecessarily difficult and undignified. It would have been a reasonable adjustment to provide the claimant with a radar key from the outset and it is surprising that the respondent failed so to do.

190. That adjustment coupled with moving the claimant's workstation to the optimal place nearer the lift would have served to substantially alleviate the disadvantage caused to the claimant by the relevant physical features of Snig Hill police station. It would have enabled him to access the second floor disabled toilet facilities reasonably easily. He would have faced a reasonably manageable short walk to the lift. He would then have been able to access the second floor disabled toilet without the need for an affront to his dignity in having to ask for a key and return the key after using the facilities. This would enable him to use a suitable toilet facility with privacy and avoid the indignity of others hearing him struggle.

191. The next issue is that of training. The PCP set out in the agreed list of issues is that of requiring the claimant to take up a new role after a long

absence from the workplace without any or any appropriate training or support. We agree with Mr Dixey that this PCP is not accurately formulated. The correct PCP is the requirement placed upon the claimant by the respondent to do a new job in the CSH with training. This disadvantaged the claimant because he was unable to undertake the training. Non-disabled colleagues working in the CSH were able to do the training provided by the respondent. The claimant was therefore substantially disadvantaged.

192. The relevant findings upon the issue of training are at paragraphs 103 to 114. In our judgment, the correct focus upon this issue (a disadvantaging PCP having been identified) is upon the adjustments made by the respondent.

193. In summary, adjustments were made in that the claimant was given one to one training. He was afforded the opportunity of learning the systems upon the e-learning system. It was of course accepted by the respondent that that was no substitute for undertaking the Connect course. However, the respondent was endeavouring to arrange Connect training and in fact this had been organised to take place in January 2018 (paragraph 113.4). Mr Smith's evidence was that had the claimant remained with the respondent then Connect training would have been provided. The claimant was not subjected to any unsatisfactory performance action as a consequence of having difficulty with the systems. It would also not have been a reasonable adjustment for the respondent to provide training upon the CMS system because it was going to be replaced by Connect by December 2014 and would then be rendered obsolete. It would therefore not have been a good use of the respondent's resources to provide training upon the CMS system for the claimant.

194. We agree with Mr Dixey that the issue of training was overtaken by events in the early part of 2018 by reason of the re-referral to Dr Adejoro and the revived possibility of ill health retirement coupled with the claimant's further absences. In our judgment therefore the substantial disadvantage caused to the claimant by being unable to undertake the same quality of training as comparators was ameliorated to a significant degree by the alternative steps put in place by the respondent. This also has to be seen in the context of the limited number of hours being worked by the claimant and the fact that he could draw upon his considerable experience undertaking a role very similar to that that he had undertaken previously. This aspect of the claim therefore fails.

195. We now turn to the sixth issue which is the personal emergency evacuation plan. The formulation of the PCP in the agreed list of issues is the requirement for the claimant to work on the third floor between October 2017 and December 2017 without a PEEP being in place. Mr Dixey submits that the production of a PEEP is akin to a risk assessment and therefore not a breach of the duty to make reasonable adjustments.

196. We find that the claimant has established a disadvantaging PCP. He was required to work at Snig Hill in circumstances where no PEEP was in place. We refer to our findings of fact at paragraphs 26, 50 to 52 and 61 to 68.

197. We find that the requirement to work at Snig Hill without a PEEP substantially disadvantaged the claimant in comparison with non-disabled

comparators. We accept entirely that the absence of a PEEP would be of grave concern to a disabled person as such a requirement would render them even more vulnerable in the event of a disaster or emergency than a non-disabled comparator would be.

198. We therefore find that a reasonable adjustment to ameliorate the substantial disadvantage would have been the timely formulation of a PEEP. By application of paragraph 6.28 of the Equality and Human Rights Commission's Employment code, the Tribunal shall take into account the extent of the employer's financial and other resources. In these circumstances it is to say the least surprising that the respondent took so long to formulate the PEEP and left Mr Smith pretty much to his own devices. Mr Smith was inexperienced in dealing with such a matter. Upon the issue therefore the claimant's claim succeeds.

199. The next issue is about canteen facilities. The relevant findings of fact are at paragraphs 115 to 123. The relevant PCP as formulated in the agreed list of issues is that of failing to provide adequate canteen facilities. On the facts, we find that the respondent did not in fact provide the claimant with access to a rest room or canteen facility until 18 December 2017. We find compelling Mr Lewinski's submission that the evidence as recorded at paragraph 122 above does not sit easily with the respondent's case that the claimant knew full well that the room in question was identified as a rest room or canteen facility before 18 December 2017.

200. We accept that this was a disadvantaging requirement. A non-disabled comparator without canteen facilities would have the option of going out to get something to eat and drink or if eating in the office of carrying hot food and drink from the kitchen to their desk or an available empty room. All of these options were far more difficult for the claimant given his limited mobility.

201. The real issue upon this aspect of the matter is whether it would have been a reasonable adjustment for the respondent to have provided a canteen or rest room. On the facts, the respondent could have identified and made available to the claimant the room across from the kitchen much sooner than they did. A difficulty for the claimant however is that this was not an adjustment that would have come with a reasonable prospect of substantially alleviating the disadvantage.

202. This is because it involved a walk from the area where the claimant's desk was placed (or had a reasonable adjustment been made from further away in the optimal area where the claimant says it should have been placed). Even then, assuming mobility problems accessing the kitchen could have been overcome the claimant would on his own account not have been able to carry hot food and drink. It appears to be no part of the claimant's case that as an adjustment the respondent should have provided or made available colleagues to carry food and drink for him. It is difficult to see what kind of catering or break out room facility would have alleviated the substantial disadvantage given the claimant's mobility difficulties and restrictions (including the use of a walking stick which of course occupies one hand) absent any further adjustments such as deputing work colleagues to assist with the carrying of food and drink provisions. Upon

this basis therefore this aspect of the claimant's claim fails and stands dismissed.

203. The final reasonable adjustments complaint concerns sickness absence and sickness pay. The impugned PCP was that of requiring full attendance.

204. Mr Dixey submits (at paragraph 66 of his written submissions) that the respondent did not apply a PCP to the claimant of requiring full attendance. We found in reference to the hours of work issue that the respondent did apply that PCP to the claimant but made a reasonable adjustment to it. We agree with him that it is clear from the evidence that the respondent did not as a fact require full attendance on the part of the claimant but that was the adjustment made to the disadvantaging PCP.

205. Mr Dixey has elided the adjustment with the PCP. As with the first issue the disadvantaging PCP is the requirement to work an officer's full hours. We found that the respondent made reasonable adjustments when applying this PCP to the claimant. The same logic follows upon the issue of sickness absence and sickness pay. This aspect of the claim therefore fails as although there was a disadvantaging PCP the respondent made reasonable adjustments to it.

206. The second limb of this issue is the application by the respondent of a PCP of counting a period of absence as sickness leave where an adjusted role was not available to the claimant. On the facts, the alternative role identified for the claimant was in the CSH.

207. It is unfortunate that neither party clearly addressed in their evidence the question of when the respondent broached with the claimant the question of working in the CSH. We infer from the chronology (particularly around paragraphs 26 and 27) that the claimant knew of the prospect of working in the CSH between mid-June and early July 2017. The suggestion of the claimant working in the CSH appeared to be the basis of the respondent's decision to retain him on 20 June 2017. Further, Mrs Parker wrote to the claimant on 10 July 2017 (*per* paragraph 27 above) and informed the claimant that the CSH was not yet live. She would hardly have written in those terms had the issue of working in the CSH not been raised with the claimant before.

208. Unfortunately for the claimant however the CSH was not yet live. Mr Harrison said in paragraph 5 of his witness statement (cited at paragraph 28) that he was tasked with the creation of the CSH which came into being in September 2017.

209. The claimant was not to able and fit return to his substantive role. There were no adjustments that the respondent could make to his substantive role to enable the claimant to fulfil it. None were suggested by the claimant. In our judgment, the respondent made a reasonable adjustment by allowing the claimant to return to work in an alternative role. Further, the respondent paid the claimant his full salary both pending and during him working in the CSH. There was therefore no disadvantage let alone any substantial disadvantage to the claimant by reason of application of either of the two impugned PCPs referred to in paragraphs 205 and 206 in terms of his remuneration.

210. The claimant also complains of substantial disadvantage because the respondent counted the period of absence pending him taking the CSH role as sickness absence (as opposed to disability leave). That the respondent did so is clear from the evidence: we refer in particular to paragraphs 35 and 47.

211. We accept the claimant's case that the application of this PCP (of counting the period between 5 July 2017 and 16 October 2017) as sick leave substantially disadvantaged the claimant. As the respondent readily acknowledged, the claimant was more liable to take sick leave due to his disability than was a non-disabled comparator. Therefore, a duty to make reasonable adjustments fell upon the respondent.

212. We hold that the respondent did make reasonable adjustments which served to alleviate the substantial disadvantage. This is for reasons very similar to that as found by us upon the issue of the claimant's working hours. His absences from work were not held against him and he was not made the subject of the unsatisfactory attendance procedure at any stage.

213. We disagree with Mr Dixey when he submits that the categorisation of the claimant's absence between July and October 2017 as sick leave was not a substantial disadvantage. It plainly was given the claimant's vulnerability to further periods of ill health absence. The respondent has in our judgment elided substantial disadvantage with the reasonable adjustments it made. The proper analysis in our judgment is that there was a substantial disadvantage caused to the claimant but this was alleviated by the reasonable adjustments made by the respondent of taking no adverse action against the claimant because of his sickness record and not reducing his pay.

214. A further aspect of the sickness absence and sickness pay issue is the claimant's complaint about the generation of letters consistent with the Police Regulations notifying the claimant of prospective reductions in his pay. We refer for example to pages 443 (being a letter dated 2 February 2018), page 454 (being a letter dated 21 February 2018) and page 458 (being a letter dated 11 April 2018). We have referred to these letters in our fact finding at paragraph 138.

215. The respondent does have a discretion to depart from the strict application of the Police Regulations in the circumstances that we set out at paragraph 128.

216. The claimant's case is that the sending of the letters notifying the claimant of prospective reductions in his pay was to treat the claimant as the same without modification as non-disabled personnel. We agree with Mr Lewinski's submission. The application of Regulation 28 of the 2003 Regulations to all will plainly disadvantage a disabled person liable (by reason of his or her disability) to greater periods of absence than non-disabled comparators. The application of Regulation 28 to the claimant placed him at that substantial disadvantage.

217. In our judgment, it would not have been a reasonable adjustment for the Respondent to disapply Regulation 28. The Respondent is bound to follow it. It is a legislative requirement.

218. A strict application of Regulation 28 to a case involving a disabled officer is mitigated by the application of the guidance to which we referred in paragraph 128. On the facts, that guidance was applied in the claimant's case by reason of the tolerance of his periods of absence from work, his shorter working day and the respondent paying him a full salary to the date of his retirement. In our judgment, these were reasonable adjustments.

219. The claimant complains that the respondent ought to have increased its tolerances and trigger points. A failure so to do meant that upon each occasion he was absent and the usual triggers were applied the claimant would have to make application for special consideration by the respondent. The claimant complains that this was not a satisfactory state of affairs as it rendered him continually subject to the same attendance standards applicable to fit officers. He was therefore repeatedly reliant upon the exercise by the respondent of discretion in his favour on each occasion. This he says was unreasonable in circumstances where the respondent kept him on knowing of the likelihood of regular absences.

220. We agree with the claimant and with his counsel that upon the facts the respondent did proceed in this way by applying Regulation 28 against him. In addition to the instances given at paragraph 214 in her email dated 15 January 2018 at page 435 Mrs Parker told the claimant that, "in accordance with the Regulation 28 process [*the respondent*] will consider the specific circumstances at the time."

221. The Tribunal has a great deal of sympathy with the claimant upon this issue. We can see how subjectively it is unsatisfactory from his point of view to have to continually apply for the exercise of discretion in his favour and have disability-related sick leave upon his record. However, looking at matters objectively it is our judgment that the respondent did make reasonable adjustments by applying discretion in the claimant's favour during his remaining time with the force and paying him in full during his periods of absence and short-time working.

222. It would not have been objectively a reasonable adjustment for the respondent to effectively say to the claimant that it would disregard Regulation 28. The respondent was required by law to apply it.

223. Further, the claimant's position effectively was that as a reasonable adjustment the respondent should disregard disability related sickness absence. This was so in order to eliminate the worry and stress of not being paid in full and being at risk of dismissal.

224. It was held by the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265 that it had been open to the Employment Tribunal when deciding that case to find that that proposed adjustment had not been reasonable as it was to ask the employer to write off an extended period of absence. We agree with Mr Dixey that such an adjustment would not have been reasonable in the circumstances of this case given the claimant's lengthy periods of absence before October 2017 and the safeguard for the claimant of the respondent's ability to exercise discretion to militate against the strict application of Regulation 28.

225. We also hold that a suggested adjustment of increasing the respondent's tolerance would also not have been a reasonable adjustment as it would

not have removed the substantial disadvantage caused to the claimant by reason of his disability. *Per* **Griffiths** (at paragraph 78) where future absences are likely to be long a relatively short extension of any consideration point is of limited if any value and is purely arbitrary.

226. Mr Lewinski (at paragraphs 57 to 62 of his submissions) seeks to distinguish **O'Hanlon v Commissioners for HMRC** [2006] IRLR 8404, CA from this case. In our judgment, he makes a powerful case for distinguishing the situation in **O'Hanlon** from the situation that we have here.

227. **O'Hanlon** concerned a disabled employee who experienced absenteeism problems. In this case, the respondent knew that the claimant was permanently unable to carry out his substantial role and that requiring him to continue to perform any role came with the knowledge that as a result of his disability he would be unable to provide only reduced attendance. Nonetheless, he was retained in his role. Mr Lewinski submits therefore that it was not reasonable for the employer to then reduce the claimant's pay.

228. He found support for his proposition in **G4S Cash Solutions (UK) v Powell** [2016] IRLR 820, EAT. In that case, an engineer with a back injury that became a permanent disability was moved to a more junior and less well-paid role. It was considered to be a reasonable adjustment to maintain his salary permanently at his previous higher level.

229. The difficulty for the claimant is that on the facts of this case the respondent made precisely this adjustment: maintaining the claimant upon his salary notwithstanding that he was working significantly reduced hours in his new role. As Mr Dixey says, the point was never reached at which the respondent actually reduced the claimant's pay. In our judgment, it could not have been a reasonable adjustment for the respondent to have effectively agreed to forever pay the claimant a full-time wage whilst he was unable to work full-time hours.

230. In so far as the claimant seeks to argue that to be a reasonable adjustment it must (by parity of reasoning) founder upon the rock of the application by the respondent to the claimant's situation of Regulation 28. As Mr Dixey says at paragraph 70 of his written submissions, *"The guidance note (page 445 to 450) is clear that the reduction in pay due to absences is automatic by reason of the Police Regulations 2003 but that the respondent has a discretion to extend pay in certain circumstances. As appears to be common ground, the claimant plainly would have satisfied one or more of those circumstances. Miss Parker explains why the respondent could not reasonably have prospectively agreed to discount any future absences [Parker, paragraph 37]."*

231. We now turn to the complaint brought under section 15 of the 2010 Act. The first issue is whether the respondent treated the claimant unfavourably by *"threatening"* (as the claimant puts it) him with action under the unsatisfactory attendance procedure if he took any more sickness absence.

232. We take on board Mr Smith's evidence that he had not in fact made mention of the unsatisfactory attendance procedure in the January,

February and March 2018 consultations (paragraph 132). Nonetheless, we accept the claimant's account that a combination of what he was told on other occasions by Mr Smith and the letters he received from Mrs Parker constituted a constant reminder for him of the prospect of the unsatisfactory attendance procedure being applied. Again, we can sympathise with the claimant and accept that subjectively he perceived these communications as a threat of the application to him of the relevant procedure. However, the test is objective. Mr Dixey reminds us that to assess whether something is 'unfavourable' there must be a measurement against *"an objective sense of that which is adverse as compared to that which is beneficial"* (**Trustees of Swansea University Pension and Assurance Scheme v Williams** [2015] ICR 1197 and [2018] ICR 233).

233. Objectively, the respondent did not make any threats to the claimant. All that the respondent did was inform the claimant about the possibility of the application of the unsatisfactory attendance procedure. It is difficult to see how objectively this is unfavourable treatment and the claimant could reasonably consider it to be to his disadvantage. We think that Mr Dixey made a very good point at paragraph 80 of his submissions when he said that it would have been a clear disadvantage to the claimant not to have told him about the possibility of the respondent invoking the unsatisfactory attendance procedure and doing so without any prior warning. We can see nothing wrong, objectively, with an employer advising or reminding an employee that if attendance is not satisfactorily maintained then an absence management policy may have to be invoked.

234. The same reasoning applies to the claimant's contention that the respondent's threats to place him upon half pay if he had any more sickness constituted unfavourable treatment. The respondent did not on the facts either reduce the claimant's pay or use the unsatisfactory attendance procedure against him. As we have already observed, the respondent was obliged under Regulation 28 to reduce the claimant's pay subject to the exercise of discretion to mitigate the hardship brought about by the strict application of that Regulation.

235. In circumstances where the respondent has a statutory obligation to reduce pay in circumstances of long-term absence it is difficult to see objectively how that can constitute unfavourable treatment. The respondent was simply doing what it was legally obliged to do.

236. If we are wrong to hold that the claimant was not subject to unfavourable treatment by reason of the respondent referring to the prospect of the claimant being reduced to half pay (and ultimately to no pay) and/or by referring to the possibility of using the unsatisfactory attendance procedure then we hold that it was legitimate and proportionate for the respondent to inform the claimant of both possibilities.

237. Upon the issue of the unsatisfactory attendance process, the legitimate aim advocated by the respondent was that of: seeking to manage the claimant's attendance through a structured and supportive process; ensuring the equitable treatment of the claimant and his colleagues; and ensuring the proper administration of public funds. It appears not to be disputed by the claimant that these are legitimate aims.

238. Advising or warning the claimant of the possibility of instigating the unsatisfactory attendance process serves, in our judgment to pursue those legitimate aims. Further, warning the claimant that this was a possibility was a proportionate way of doing so. We agree that had the claimant not been warned he may have justifiably complained had the procedure been invoked against him without more. In our judgment, it plainly fell within managerial prerogative for the respondent to mention the possibility to the claimant upon a reasonably frequent basis (particularly given the claimant's patchy attendance record following his return to work in October 2017). Warning the claimant was a reasonably necessary step in pursuit of the aims in question.

239. The same legitimate aim is relied upon by the respondent upon the issue of a reduction in pay. By parity of reasoning it follows that the respondent's treatment of the claimant upon this issue also served as a proportionate means of achieving that aim. Again, account must be taken of the fact that the respondent did not in fact invoke the unsatisfactory attendance procedure against the claimant and maintained his full pay. While it might be said to have been disproportionate as reasonably necessary in pursuit of the legitimate aims to reduce the claimant's pay within a few months of October 2017 and to actually invoke the unsatisfactory attendance procedure against him in the circumstances that is not the case on the facts. Plainly, on any view it was proportionate for the respondent to manage the situation as it did as being reasonably necessary steps to pursue the legitimate aims in question.

240. In conclusion therefore we hold that there was no unfavourable treatment of the claimant. If we are wrong upon that then plainly the unfavourable treatment was because of something arising in consequence of the claimant's disability. Nonetheless, the impugned treatment of the claimant has been justified by the respondent.

241. It follows therefore that the complaint under section 15 of the 2010 Act is dismissed. The complaint under section 20 of the 2010 Act succeeds in part in relation to the issues of parking, the workstation, the toilets and the PEEP.

242. The matter will now be listed for a consideration of remedy. Within 28 days of the date upon which this Judgment is sent to the parties they shall write to the Tribunal with suggested directions and a time estimate for the remedy hearing.

Employment Judge Brain

Date**: 7th December 2018**

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