THE EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: **Miss J Ruddick**

Respondent: **The Chief Constable of Northumbria Police**

Heard at: **Newcastle Hearing Centre** **On:** **9th – 12th March 2020**

Before: **Employment Judge Johnson sitting alone**

Representation:

Claimant: **Ms J Callan of Counsel**
Respondent: **Mr S Healey of Counsel**

JUDGMENT ON PRELIMINARY ISSUES

1. Throughout the period from 11TH October 2018 to January 2019 the claimant was suffering from a disability as defined in Section 6 of the Equality Act 2010.

2. Throughout the period from June 2018 to January 2019 the respondent did not know that the claimant suffered from a disability.

3. Throughout the relevant period from 11th October 2018 to January 2019 the respondent could reasonably have been expected to know that the claimant suffered from that disability.

REASONS

1. This was a public preliminary hearing, the purpose of which was to consider three questions relating to the claimant's disability. Those questions are:-

   (i) Throughout the relevant period, was the claimant suffering from a disability as defined in Section 6 of the Equality Act 2010?

(ii) Throughout the relevant period, did the respondent know that the claimant suffered from that disability?

(iii) If the respondent did not know, could it reasonably have been expected to know that the claimant had the disability?

2. There was already a considerable history to these proceedings. The claim from was presented on 25th March 2019, in which the claimant brought complaints of unlawful disability discrimination. The claimant alleges that she suffers from stress, anxiety and depression and that this condition amounts to a mental impairment which has a substantial and long-term adverse effect on her ability to carry out normal day to day activities and thus amounts to a disability as defined in Section 6 of the Equality Act 2010. The claimant maintains that she has suffered from that mental impairment for some years and that it amounted to a disability as so defined by not later than June 2018. The respondent's position is that it accepts that the claimant now suffers from that mental impairment and that it now amounts to a disability and has been so since January 2019. The respondent denies that the claimant's condition amounted to a disability before that date. Furthermore, the respondent maintains that it did not know that the claimant suffered from a disability before January 2019 and alternatively, that it could not reasonably have been expected to know that the claimant suffered from a disability before January 2019.

3. There have been private preliminary hearings before Employment Judge Garnon on 13th September 2019, before Employment Judge Aspden on 29th October 2019 and before myself on 14th and 28th February 2020. It was agreed by the parties and their representatives at the first 2 of those preliminary hearings, that there should be a public preliminary hearing, at which the Employment Judge would decide the 3 issues identified above. The last 2 hearings were conducted as "ground rules hearings", the purpose of which was to identify and implement those arrangements which were reasonably required to enable the claimant to give her evidence and be cross examined, in circumstances and by means which would enable there to be a fair hearing, which would produce a just outcome in respect of those issues. Of particular concern was the acknowledged vulnerability of the claimant in giving her evidence to the tribunal, being cross-examined by Mr Healey and answering questions from the Employment Judge. Following exchange of witness statements, Ms Callan and Mr Healey produced respective "position statements", setting out how they proposed that the claimant's evidence should be dealt with. Of particular value to the tribunal was the agreement that Mr Healey for the respondent would identify those parts of the claimant's evidence which would form the subject matter of cross-examination. Mr Healey also set out the nature of the questions which would be put to the claimant. This enabled the claimant to be fully aware of the nature of the questions which would be put to her and to prepare her answers. Mr Healey also kindly indicated the whereabouts of the relevant documents and their page numbers in the substantial bundle and agreed to the claimant being assisted at the hearing by her mother in locating those documents.

4. Ordinarily, a public preliminary hearing to consider the 3 issues identified above, would probably last no more than 1 full day. It was originally suggested that this

hearing should be listed for 2 days, as it was anticipated that the volume of material to be put before the Employment Judge and the anticipated difficulties with the claimant being able to give her evidence, meant that 1 day would be insufficient. However, once all the evidence was collated (including documents, witness statements and the expert`s report from Dr van den Burgh) it was agreed that the hearing should be listed for 5 days, principally because the claimant was unlikely to be able to attend and in particular to give evidence, for lengthy periods of time. The case was therefore listed for 5 days and a timetable agreed for its progress, including the first day being used as a reading day for the Employment Judge, followed by the evidence and cross-examination of the claimant and the evidence and cross -examination of the respondent's witnesses. Following the reading day on Monday 9th March, all the evidence and closing submissions were completed by Thursday 12th March.

5. I wish to note and record my thanks to both Ms Callan and Mr Healey for their expertise, courtesy, patience, kindness and consideration throughout the hearing, particularly to the claimant herself. As a result of that expertise, I am satisfied that the claimant was able to provide the Tribunal with all the factual information it required to fairly consider the 3 identified issues.

6. The claimant is presently aged 38 and joined Northumbria Police Service as a police constable on 16th September 2013. As at the date of this hearing, she remains employed by the respondent.

7. During the early part of her service with the respondent, the claimant had a number of absences from work due to physical injuries, including fractured limbs which required surgery, but none of which were related to her employment. The last of these absences was from 24th January 2017 until 4th March 2017, when the claimant was absent from work as she underwent surgery to her leg to remove pins which had been inserted in late 2014 and partly removed in early 2015. There is no indication or suggestion of any mental health problems before the end of 2016.

8. The claimant's evidence (which was accepted by the respondent) was that she attended the scene of a murder in a pub on Christmas Eve, 24th December 2016. The victim had been stabbed and the claimant was the police officer who attended the scene. The claimant accompanied the victim in the ambulance to the local hospital and helped the paramedic to try and stem the flow of blood from the wound. Unfortunately, the victim died in the ambulance on the way to hospital.

9. At paragraph 2 of her disability impact statement dated 29th June 2019, the claimant states:-

> "During my time on 24-7 patrol, I dealt with numerous hangings, vulnerable mental health incidents and a subsequent murder. My most recent absence from work started in June 2018. I had previously suffered from anxiety and depression, yet I noticed that my mental health took a rapid decline around this time. I attribute this to my workload at the time."

In her evidence to the tribunal, the claimant mentioned a number of suicide "hangings", which she had attended and in respect of which, on more than one occasion, she had to attempt to revive the victim. The claimant did not give any specific dates for these incidents, but on the basis that she refers to a "subsequent" murder, it would appear that they all took place before the incident on 24th December 2016.

10. None of the respondent's witnesses could recall anything about the murder incident on 24th December 2016. None of the respondent's witnesses was responsible for the claimant's immediate supervision at that time. The claimant's evidence made no reference to her requiring time off work in the immediate aftermath of the incident, any reference to discussions with any of her colleagues about how she may have felt at the time, any referrals to the respondent's TRIM (Trauma Risk Management) Service, any form of counselling or any referral to occupational health. In the expert psychiatric report from Doctor Van den Bergh dated 24th February 2020, she records at paragraph 4.2.11, the following:-

> "The support she received after the incident included a de-brief on Christmas Day. She was then asked if she needed any further support immediately after. "I said no because I was on adrenalin". Subsequently, her mother noticed a further deterioration over the next 3 weeks. She informed management and her records reflect a part reference of occupational health and a referral to TRIM. She was assessed by them, but, "I didn't hit the target". There was therefore no subsequent occupational health referral. "That's why I didn't bother any more."

11. At page 495 in the bundle is a record created by Sergeant Karl Lunn on 5th January 2017, which refers to this particular incident. The entry states:-

> "The officer was de-briefed by me on the night, post incident. She was informed of support available mentioning PIM on the night then TRIM and OHU for mid to longer term treatment/referral. The officer was fine and didn't need any support. The officer is currently on self-defence training and has contacted me today to ask for support to be offered. I have briefly discussed this with OHU just now who asked that this report is submitted."

At page 496 is an entry dated 16th January 2017, presumably from HR, which states:-

> "Tel call to Karl – advise no OHC appointment until week commencing 23rd of January 2017. Would he accept TRIM referral in the meantime – he is. Actioned to mailbox today 25/1/17."

At page 497 in the bundle is an entry of an occupational health referral by Sergeant Lunn in respect of the claimant, on 24th January 2017. It refers to the claimant's absence from work, which began on 21st January 2017. However, the entry relates purely to a lower limb injury in respect of the claimant having pins/plates removed from her lower leg, following a significant break over two years before then. No mention is made in the referral of any mental health condition or any reference to the incident which had occurred on 24th December

2016. At page 499 is the occupational health report dated 7th February 2017, relating to the absence due to the leg injury. The entry states as follows:-

> "Constable Ruddick told me that she had surgery on her right leg to remove the metalwork from a previous break on 20th January 2017. She informed me that her sutures have been removed but that there are areas along the wound line that have not yet healed. This is being monitored by her GP. Constable Ruddick told me that she is mobile without aids, but has difficulty with stairs and walking for long periods. She also told me that she does experience some discomfort in her right leg. Her next outpatient appointment with her consultant is on 13th March 2017. I discussed with Constable Ruddick the options for her potential return to work ie non-confrontational duties, phased return. Constable Ruddick is keen to return to work and she is aware that this is to be at the right time. She has advised me that she is managing all her daily activities at home without any restriction. However Constable Ruddick informed me she finds it uncomfortable driving and difficult getting in and out of a vehicle so she is not driving at this time. Constable Ruddick is currently unfit for work to undertake her normal contractual duties as she is still in the initial post operative recovery period and her wound has not healed fully."

Nowhere in that report is there mention of any mental health impairment, or any reference to the incident on 24th December 2016.

12. There is no record or mention of any concerns from then until the end of 2017. The claimant was at that time based at Amble in Northumberland, having been appointed as a neighbourhood officer there in October 2017. In late 2017, one of the claimant's colleagues reported to their sergeant that he no longer wished to work with the claimant because of her "very poor communication skills". Other similar concerns had been raised by different colleagues, which led the claimant's supervising sergeant (Ms Wilmore-Greaves) to believe that there were significant problems around the claimant`s performance. Sergeant Wilmore-Greaves concluded that the claimant "did not have the resilience, essential skills, personality or character to undertake the Amble neighbourhood role." As a result, Sergeant Wilmore-Greaves had a formal meeting with the claimant on 24th January 2018. Sergeant Wilmore-Greaves concluded from the claimant's physical appearance that she was "not well", as she looked "rather flushed and stressed". The claimant's explanation was that she had not felt well since returning to work following her driving assessment and since having to work alone. The claimant explained to Sergeant Wilmore-Greaves that she did not like late shifts, but preferred doing night-shifts and that she was feeling run-down. Sergeant Wilmore-Greaves was concerned that the claimant may be experiencing stress and offered to refer the claimant to the force occupational health unit. The claimant declined, stating that she had her mother to support her. The claimant did say that she had been referred to occupational health in the past for counselling for historic matters, but did not need to be referred at that time. Sergeant Wilmore-Greaves was concerned that the demands of the Amble role were complex and were having a detrimental effect on the claimant's confidence and that she was finding it more difficult to cope with those demands and was thus becoming stressed. Sergeant Wilmore-Greaves suggested that a move to a

different role might eliminate the cause of the claimant's stress and enable her to rebuild her confidence. The claimant accepted that the Amble position was not suitable for her and that she should return to 24/7 response duties. A proposed move to a larger team at a different station was discussed. Sergeant Wilmore-Greaves informed the claimant that a development plan would be required to support her at her new appointment. Sergeant Wilmore-Greaves wrote up that development plan and sent it to the claimant on 14th February 2018.

13. The claimant transferred to Middle Engine Lane, Wallsend, police station in February 2018, when she joined the 24/7 response shift supervised by Sergeant Hilsden and Sergeant Banks. Sergeant Hilsden was keen to enable the claimant to start "with a clean sheet" if that was possible, in relation to her performance. He discussed the improvement plan with the claimant and approximately 2 months after the transfer, (ie by April 2018) Sergeant Hilsden concluded that "the issues which had been documented in her improvement plan were no longer a problem and that generally she was a competent officer". Sergeant Hilsden discussed the plan with the claimant and it was agreed that the plan would be closed with effect from 28th April 2018. At that stage, Sergeant Hilsden had no reason to believe that the claimant was suffering from any kind of mental impairment.

14. The claimant's medical records tell a slightly different story. At page 116 in the bundle is an entry dated 26th February 2018, where the claimant consulted her GP. The note in her records states as follows:-

> "Since Christmas has felt shattered, cannot get enough sleep, wakes unrefreshed even after 12 hours sleeping. Can get up and manage at work but when gets home just wants to go to bed. Eating and drinking well, denies any low mood/stress/anxiety, discussed work burn out and she denies this also. No alcohol or OTC medications. Denies snoring or poor quality sleep."

The entry also states, "She was hoping we'd find a cause for her "TATT" (tired all the time). When questioned about this in cross-examination, the claimant explained that she had not realised herself at that time, that something was wrong, but now considers that she was by then displaying symptoms of depression.

15. Following the closure of the original improvement plan, a number of matters were brought to Sergeant Hilsden's attention, which caused him to have concerns about the claimant's performance. Those are set out at paragraph 17 of Sergeant's Hilsden's statement as follows:-

    a. an alleged rape victim reported that the claimant had been dismissive and brusque in her dealings with that victim;

    b. the victim of a potential criminal damage incident reported that he had issues with the way the claimant had spoken to him and had made promises which were not fulfilled;

c. during the course of a night-shift, an incident had arisen which had essentially required all available officers to stop what they were doing and deal with that incident. The claimant declined to attend, on the basis that Sergeant Hilsden had already asked her to do another job. That approach indicated to Sergeant Hilsden "doubtful judgment in terms of proper priorities and a lack of team support on the part of the claimant."

As a result, Sergeant Hilsden discussed the claimant's performance with Acting Inspector Banks and both agreed that a new improvement plan may be required, as the matters which had arisen were very similar to those addressed by the previous improvement plan. Sergeant Hilsden drew up the plan which was agreed by Acting Inspector Banks. Sergeant Hilsden then discussed the improvement plan with the claimant at the end of her shift on 10th June 2018. That was in fact the last shift which the claimant had performed, prior to taking a period of annual leave.

16. Sergeant Hilsden's recollection of the meeting was that it lasted about half an hour and that he had tried to take a positive approach, emphasising that he and the claimant's colleagues wanted to see the claimant succeed and wanted to help her to do so. He said he had explained the improvement plan to the claimant in those terms. The plan appears at page 853 – 854 in the bundle. The relevant extracts are that the claimant was "required to make a conscious and consistent effort to improve her standards of communication and that this was in inextricably linked to the claimant's basic attitude to the job which needs to be professional at all times." The plan goes on to state that the claimant had many positive attributes, but that her communication style was clearly causing problems and letting down her overall performance.

17. At paragraph 21 of his statement, Sergeant Hilsden states:-

> "It is my practice when dealing with performance issues to directly ask the officer if there are any other factors which would need to be taken into consideration, ie pressures outwith the job, family circumstances, personal issues etc, in order to better understand performance issues and I am sure that I asked the claimant during the meeting. The one thing I do recall her saying was that I had ruined her leave, but she did not say that she was stressed or medically unwell or otherwise present at this meeting in a way which led me to think she was unwell. Had she said anything like that, then I would have discussed a referral to OHU and included the details in the improvement plan."

18. Sergeant Hilsden goes on to say that the claimant "did not recognise that there was any problem" and that what he was saying to her probably "fell on deaf ears". Sergeant Hilsden then records that the claimant ended up in tears. Sergeant Hilsden insisted that the claimant "did not say anything nor act in any way indicating that she had underlying concerns about her wellbeing. Indeed, generally during the time I was her line manager, the claimant did not in any way give me the impression that she had any mental health issues, stresses or

anxieties about her service, whether directly in conversation or otherwise, by her behaviour or appearance or her interaction with colleagues or members of the public."

19. The claimant's version of this meeting appears at paragraph 6 of her statement dated 22nd February 2020. The claimant states as follows:-

> "In the early hours of the 11th June 2018, after being asked to go into the Sergeant's office only a short time before my night shift ended and I was then going on annual leave, Sergeant Hilsden sat me down and stated that my work had been dip-sampled from a few months ago and that I was not performing to his exacting standards. I remained quiet and subdued due to his condescending and overbearing manner at the time. He then informed me that he was placing me on a performance review in the form of an action plan, which to me felt that like the straw that broke the camel`s back. I went into the ladies` toilets and cried. I had to manage using all my strengths to then attend another job with another officer, which made me put my thoughts and feelings to one side to allow me to put on a professional front to perform my duties. I managed to keep myself together until I got home and then once in the safety of my home I suffered a mental breakdown due to work related stress issues."

20. At paragraph 7 of her statement under the heading "Mental breakdown – June 2018", the claimant states as follows:-

> "I came home from work later than morning of 11th June 2018 in tears and very anxious and broke down in the doorway of my address. I spoke to my GP Doctor Lunn, on 13th June 2018 and explained I was feeling under a lot of stress and upset with work. My GP noted that I had suicidal thoughts and we agreed I would self-refer to Talking Matters, a counselling service provided by the NHS. My GP gave me the phone number for the crisis team and we agreed to review my situation in two weeks. Thankfully at this time I have gone on my pre-planned annual leave and therefore could start to get the much needed help and support I desperately needed."

21. The claimant's medical notes at page 116 in the bundle dated 13th June 2018 record Doctor Lunn stating as follows:-

> "Problem – stress at work. History – struggling with work, works as a police officer and struggling with this stress, but more recently she states she's feeling victimised by a senior member of the team which has pushed her over the edge. Came back from work on Monday night and felt dreadful, tearful, anxious, thought about taking some pills to end it all but said Mum and her cat were her protective factor and she would never act on those thoughts. On annual leave this week, due back next week but cannot face it at all. Sleep poor, not eating well, not going out much. Lives with Mum – very supportive. Examination – well kempt, chatty, reactive, tearful. Plan – long chat for time off work she will refer to TM (doesn't want to go through her occupational health) and see how it goes.

Phone number given for crisis team if needed. Review with me in 2 weeks, seek urgent medical advice in meantime if any worsening/concern/new symptoms – patient happy with this plan. Stress at work."

22. The claimant had been due to return to work following a period of annual leave on 20th June. Doctor Lunn had however issued a fit-note on 15th June, stating that the claimant would not be fit for work for 3 weeks due to "work-related stress". The claimant in fact did not return to work until 26th October, over 18 weeks later. During that time, the claimant was prescribed Sertrolene, (an anti-depressant), the dosage of which increased from 50mg tablets on 22nd June to 100mg tablets on 3rd August and to 150mg on 31st August. The claimant was also prescribed Propranolol (an anti-depressant) on 14th September, in addition to the Sertolene. Propranolol is said to be for "panic symptoms".

23. The relevant extracts from the claimant's medical records throughout this period, include the following matters:-

20th July 2018 – stress at work – ongoing stress with work, went to occupational health but felt that the report that was written afterwards did not at all reflect the consultation. Needs to try and take a step back from work as still very involved.

3rd August 2018 – stress at work. We see that things are improving – still some down days but can see the way forward now. She is still finding work unsupportive and doesn't feel ready to go back as yet. Examination – well kempt, alert, chatty, more relaxed, good insight.

17th August 2018. Feeling no better – on edge. Feels nowhere to turn and some minor DSH to left forearm. Perhaps brought about by management arranging a visit then cancelling it at the last minute. Feels the force contacting her gives her more stress. Poor sleep, confidence, concentration, anxious.

31st August 2018. A lot going on with work and family life. Some superficial cuts/self-harm to left arm a few weeks ago – says did it as a release and no thoughts of suicide. Work now being supportive and have arranged face to face counselling. Anxious but well-kempt, chatty, reactive, good insight, denies any thoughts of self-harm/suicide. Positive about work and future now.

14th September 2018. Mixed anxiety and depressive disorder. Anxiety and panic is still very prominent. Work still not helping. Has been in touch about sick note and not making decisions about longer term plan.

> When feeling wound up she is going for a walk which she feels really helps – main issue currently is anxiety.
>
> 26th September 2018. Mixed anxiety and depressive disorder. Some improvement – the Propranolol is really helping with no flare of her hand symptoms and she is keen to continue this. Has had a meeting with work – no further forward, but no pressure to go back yet.
>
> 10th October 2018. Mixed anxiety and depressive disorder. History – really feels like she's turned the corner – less stressed, less anxious, able to relax and generally feels less wound up. Work have suggested she go back at the end of the month to an office-based job initially and she is considering this. Has decided that if work doesn't work out she will leave and look for another job. Much less anxious, calm, well-kempt, chatty, reactive.

24. The claimant's evidence covering this period was that she "suffered a mental breakdown after finishing her shift on 11th June 2018." Prior to that, the claimant said she had suffered from episodes of low mood, stress and anxiety which she attributed to "the pressure of work" and in particular, to the traumatic episodes including the murder incident and suicides mentioned in paragraphs 8 and 9 above. The claimant told the tribunal that she would "regularly wake up seeing the faces of the people upon whom I had to perform CPR." She was not sleeping well and often had nightmares that were so distressing, she avoided going back to sleep. She said that on average, she would sleep between 2 and 4 hours each night. The claimant said that she was feeling really low from December 2017 until June 2018 and "increasingly lacked the confidence to go into work". The claimant said that the pressure of working to tight deadlines which were sometimes completely unrealistic and the need to manage her time, made her feel physically sick because of her anxiety. Before Christmas 2017, the claimant said that she used to enjoy the freedom and the fresh air of walking through the woods on a Wednesday morning, but since Christmas 2017 she found this increasingly difficult to do. Her alertness to her surroundings became heightened and she had a constant feeling of impending doom, as if something terrible was going to happen, so that she would feel constantly on edge and find herself looking around, checking her surroundings and listening for noises or people and "feeling on tenterhooks." The claimant felt unable to go outdoors because of her constant fear and worry about what was around her, which she described as "like a constant battle to fight against my fight or flight feelings." She was often too afraid to go into her garden and often struggled to do her grocery shopping, because the crowds made her feel anxious and worried. If the claimant suffered an anxiety attack, she would pay for the items in her trolley and quickly leave the shop, without being able to complete her shopping.

25 The claimant said that she had stopped driving her car from around December 2017 until she returned to work in October 2018 because she often found herself

"zoning out", as if she was "not really present" and it scared her to be behind the wheel in that state. After June 2018 she hardly drove at all, as she did not consider herself to be safe to do any extended journeys and would only drive for essential appointments, as she considered herself to be a danger to herself and others. Whilst she was off sick from June 2018, there were times when she would get as far as stepping out the door to go to the shops or to take her dog for a walk, but would then become overwhelmed with anxiety and not leave the house. The claimant said that she could not do simple things like drive to places she needed to go, or to meet with friends. She would make arrangements, but then cancel them at the last minute, as she felt "totally overwhelmed" and unable to be around people or in situations where there were restrictions on space. If she did go out for a drink with friends, she would have to sit with her back against the wall so that she could see everything in front of her. The claimant described how she has a "safe word" which she uses when she needs any of her friends to contact her. Whilst previously she would enjoy jogging and running, it now takes a "massive effort" for her to go for a run.

26. The claimant informed the Tribunal that she suffers from low self-esteem and feelings of worthlessness, which have led her to self-harm by cutting herself. She said that this was, "The only way I could experience feeling anything and not just be numb and trapped - it was a release." She describes herself as "often short-tempered and unable to concentrate for long periods of time", which affects all aspects of her life. She says that she has a "constant feeling of impending doom, like something terrible is going to happen." She describes herself as, "often sitting in the garden staring into space with no recollection of my day, or the hours I have spent doing so." The claimant described how she has problems with remembering conversations, which has a debilitating effect on her life, and which impacts upon her sleep and her ability to get up in the mornings, rather than just stay in bed. The claimant confirmed that she lives in her own house with her mother and has done so for the last 8 years. The claimant confirmed that her mother does most of the shopping and cooking, but that the claimant does her share of the other house work, although she finds this tiring over a prolonged period.

27. The claimant's evidence to the Tribunal was that, were it not for her medication, then she would be unable to function at all. The claimant describes how her medication was gradually increased from June 2018, until she was finally diagnosed with long-standing depression and anxiety and post-traumatic stress disorder. The claimant attributed the gradual improvement in her condition from June 2018 until October 2018, to the increased level of medication, which she described as having "stabilised" her condition. The claimant went on to describe how her condition again deteriorated after her return to work, because she was moved approximately 8 times between different places and roles. By January 2019 the claimant felt unable to undertake any kind of police work. The claimant described how she now has "good days and bad days", and how she can cope on the good days, but how on the bad days she simply cannot leave the house. Between June 2018 and January 2019 she "had more bad days than good days" and that it was the Sertraline medication which made the difference.

28. The claimant accepted under cross examination, that she had successfully completed her police driving course in late 2017 and had successfully completed

her police self-defence course in early 2018. She had continued to drive to work until June 2018, but following her phased return to work in October 2018, had no longer driven the "diary car" or driven a police response car or for other work purposes, because of her anxiety. The claimant further accepted that she had undertaken a full range of police duties before going on sickness absence in June 2018 and that she had been "working with enthusiasm" until then. The claimant's evidence to the Tribunal was that when she attended work she would put on her "game face", as that is what was expected by her colleagues and her supervisors. The claimant denied actively hiding her condition from her colleagues, but accepted that she had been reluctant to talk about it, as she did not want to appear to be a hindrance to others on her shift. She stated that she had not disclosed anything to her colleagues or supervisors about her symptoms, as she did not herself realise that there was anything wrong with her. She accepted that her first disclosure to her supervisors was when she went on the sick in June 2018, but even then, she would only tell them "what she believed they needed to know" and "nothing which could cause me or my colleagues any significant harm." This was because she was "wary of disclosing information which doesn't need to be disclosed to the wrong people" and that "you don't want people to realise, but you have to keep them in the loop." The claimant stated that she had informed supervision that she had suffered a breakdown and had needed to seek medical assistance and was on medication. The client said that she had returned to work in October 2018 and managed to work until January 2019, but only because she had bills to pay and felt that she had to go to work and "just get on with it."

29. The claimant was contacted by Inspector Banks by telephone on 20th June, to discuss her sickness absence. The claimant recalls that she was upset and found it difficult to discuss matters with him, but did tell him that she was suffering from stress, which had built up since December 2017. She explained that she felt very low and upset and not in a position to return to work. The claimant agreed to a home visit by Inspector Banks and Sergeant Hilsden. That visit took place on 22nd June. At paragraph 10 of her statement, the claimant says that welfare visit "caused my anxiety to rise making me physically ill. I was feeling very low. We discussed the improvement plan, but I made it clear that the situation had been building up since December 2017. I described the commencement of the improvement plan to Inspector Banks as the straw that broke the camel's back and said I did not know if I would be able to return to work. I specifically mentioned to Inspector Banks that I had considered self-harm after being told about the improvement plan." The claimant's mother suggested to Inspector Banks that the claimant should have counselling and that she was very concerned for the claimant. The claimant informed Inspector Banks that she had seen her GP twice since the 15th June and wouldl be seeing the GP later that day to discuss medication and counselling. The claimant explained to Inspector Banks that she felt embarrassed about returning to work after being sick with stress and having to face her colleagues. At paragraph 29 of his statement, Inspector Banks confirmed that he made a welfare visit to see the claimant on 22nd June. Inspector Banks statement says;

"While she came over to me as having a low mood for most of the visit, by the end of the visit she seemed to improve a little so much that we were able to talk about support when she was fit to return to work. She was naturally concerned

about the improvement plan and I confirmed again she would be supported in relation to that. She did not mention any other issues as contributing to her state of health. Following this visit I sent a supplemental e-mail to occupational health to follow up the original referral which had been made on 20th June."

That referral had been made following a text message from the claimant to Inspector Banks on 19th June, telling him that she would not be fit to return to work, as she was unfit due to work-related stress. That was the first indication Inspector Banks had from the claimant that she was undergoing stress and that led to him making the original OHU referral on 20th June. Inspector Banks` note of his discussions with the claimant record that the claimant had told him "she has been suffering a build-up of stress since approximately December 2017, but has tried to manage it by herself."

30. Inspector Banks again spoke to the claimant on the telephone on 7th July and was told by her that she had that day been to see her GP and had been prescribed medication and that she "has good days and bad days, today being a good day." The claimant also confirmed that she had attended the occupational health appointment on 5th July and had been advised "to distance herself from contact with work for the next 6 weeks and to attend an OHU review in 4 weeks."

31. At paragraph 15 of her statement, the claimant refers to her telephone discussion with Inspector Banks on 7th July, when she told him that she planned to visit the police treatment centre in Harrogate for support and to arrange counselling through the employment assistance programme. The claimant informed Inspector Banks that she had been contacted by the head nurse from Harrogate, who told the claimant that she was not a suitable candidate as there were no facilities available to provide her with the level of treatment required as she was "too unwell". The claimant then arranged counselling through the Blue Light Foundation, a support service for serving police officers.

32. The report of the first OHU assessment on 5th July 2018 is at page 551 in the bundle. The relevant extracts state as follows:-

> "Jill's low mood and symptoms of anxiety were clearly evident during the OH consultation. Jill is in the care of her GP and has commenced treatment that will take another 4 – 6 weeks to become effective. Jill is to chase up counselling via Talking Therapy and she has also been given information about the police employee assistance programme for counselling/support. I am happy to support an application by Jill to the police treatment centre. Jill explained how historically her already reduced confidence has been further reduced at work over a number of years while she has been attempting to fit in. Jill explained that she struggled with change but has overcome this. Jill felt that the improvement plan to address communication issues was the last straw. I do not feel that Jill is sufficiently fit to attend work at this time. Jill explained that she is physically and mentally exhausted. I will request that Jill be given an OH review appointment in 4 weeks time in order that her fitness for work is discussed and further OH advice provided. A further GP fit note for Jill is anticipated. I am unable to provide a return to work timescale at this time

but on a future return to work, Jill will benefit from a 4 week phased return with a gradual resumption of her work duties and hours of work. Support of a mentor and weekly 1-1 meetings would also be of help to Jill. On Jill's return to work management are advised to undertake a detailed and comprehensive risk assessment for Jill and then to act on the findings to put reasonable control measures in place to support her."

33. Inspector Banks acknowledges at paragraph 32 of his statement, that the OHU report was e-mailed to him on 27th July, although he could not recall exactly when he first looked at it. At paragraph 34 of his statement, he records that he received a text from the claimant on 19th July, in which she stated that she intended to speak to the OHU nurse about the report and that he clearly did not have the report at that point.

34. The next occupational health review was carried out on 30th August, the report for which appears at page 556. It confirms that the claimant remained unfit for work. The relevant extracts are as follows:

"Jill is currently absent from work due to work-related stress. Jill's symptoms of anxiety were again evident during the OH appointment. Jill remains in the care of her GP and has been prescribed additional treatment. A further GP fit note for Jill is anticipated. Jill's confidence and ability to concentrate remain reduced and she has difficulty in being able to sleep. Jill is not sufficiently fit to attend work at this time. I am unable to provide a return to work timescale at this time. On a future return to work, Jill will benefit from a 4-week phased return with a gradual resumption to her work duties and hours of work. Support of a mentor and weekly 1/1 meetings would also be of help. On Jill's return to work management are advised to undertake a detailed and comprehensive stress risk assessment for Jill and then act on the findings to put reasonable control measures in place to support her."

At paragraph 4.2.19 of the expert psychiatrist`s report, Dr van den Burgh records that the OH hand-written notes for that consultation refer to the claimant mentioning "still seeing faces of the dead," although this is not mentioned in the OH report itself.

35. On 31st August the claimant's GP issued a further fit note for "work-related stress" for the period from 31st August to 30th October. In a telephone discussion with Sergeant Banks on 12th September, the claimant stated that she was "feeling much better" and wanted to return to work as soon as possible.

36. A further examination by occupational health took place on 11th October. The report appears at page 560. It confirms that the claimant remains unfit for work. The relevant extracts are as follows:-

"As you know, Jill is absent from work due to work-related stress, depression and anxiety. Jill explained her symptoms are ongoing but she is making progress. Jill anticipates that her medication may need to be increased and she is to have counselling via the Blue Light Foundation. It

is understood that Jill is to meet with management and Federation to discuss her return to work and a potential return date. It is understood that Jill has also completed a formal complaint. This is adding to her anxiety symptoms. You will need to work on her confidence levels on return to work in finding her feet. Jill explained that at present she feels unable to return to police 24/7 work and feels only able to proceed forward and back to work to an office-based police role. Her present medication is assisting with this. Jill explained that if she were to undertake a 24/7 police role that this would push her over the edge and that her present symptoms are such that she is "still seeing faces of the dead". I will request that she is given an OHU appointment in early January 2019 to assess her progress.

37. The claimant had in fact raised a formal grievance relating to her treatment at the hands of Inspector Hilsden, on 17th August 2018. Although the grievance letter is not in the bundle, the outcome form states that the claimant felt that Sgt Hilsden was, "overbearing and had a negative attitude towards her and that she felt like walking on eggshells when she was around him". Sgt Hilsden`s response was that the claimant was "rude and disrespectful". The form states that the claimant was "currently on the sick as a result of a culmination of low level incidents where Sgt Hilsden has made her feel completely useless and contemplating resignation". The grievance was investigated by Chief Inspector Stevens and by letter dated 13th November, the claimant was informed that a decision had been made not to progress the grievance.

38. The tribunal noted that Chief Inspector Stevens recorded the reason for the claimant's absence as "a culmination of low level incidents where Sgt Hilsden has made her feel completely useless and contemplating resignation." The tribunal further notes that at pages 857 and 859 in the bundle, are redacted notes of meetings of the Local Attendance Management Group, on 2 July 2018 and 6 August 2018. The LAMG comprises senior officers and HR representatives who meet regularly to consider, amongst other things, the absence of police officers. The first entry states, "PC 4 Ruddick has gone sick with stress. It was established that the officer is on a development plan." The second entry states, "PC4 Ruddick – officer absent due to stress. Reported absent following being placed on an improvement plan. Stress Management Standards to be completed at the next home visit. Fit note until 6 August. 0HU have advised that the officer is physically and mentally exhausted. We need to ensure that supportive measures have been completed with the officer. A review date to be set based on 0H advice."

39. There was some confusion among the respondent's witnesses as to how the various records relating to the claimant's absence were recorded and how access to those records could be gained by the claimant's supervising officers. Evidence was given by the respondent`s HR manager Ms Sarah Burns, to the effect that the respondent operates an "attendance support system", which is a record of any contact between an officer and his/her supervising officer or with HR, relating to an officer`s absence or attendance, or any matter relating to that officer`s service. Sgt Banks and Sgt Hilsden believed that they could record entries onto this computer system, but could not gain access to entries made by other officers or by OH. The evidence from Ms Burns was that senior officers could access the

system and view entries made by other officers and by HR. Ms Burns also said that there was no regular system for those computer entries to be examined and/or checked by HR on a daily or weekly basis. The records would be checked as and when HR had time to do so. There are no particular "triggers" which automatically cause anyone to view an officer's records on the system. If HR were made aware of a particular problem with an individual officer, then HR would check the computer records to see what entries had been made by the supervising officers or by OH. Any OH reports would be sent to the supervising officers, as it was those supervising officers who would request an OH referral. When asked whose responsibility it was to look at those records, Ms Burns evidence was that responsibility was shared between the officers and HR advisors, but that there was no mandated frequency to do so. The vast majority of the entries are extremely brief. An example is at page 774, which relates to the claimant's absence from 20 June 2018. The entry was created by Sgt Hilsden and states;

"Background to this period of sick. On 11/6 PS 2046 Hilsden and PC Ruddick had a conversation concerning a performance issue, consequently she was placed on an improvement plan. She then commenced a period of leave. On 18/06 she has made contact via email with TI Banks and advised that she has visited her GP and is now on certified sick leave. This period of absence would appear to be directly related to work and having been placed on an improvement plan."

40. Ms Burns went on to say in her evidence that the respondent does not have a formal system to record any OH advice given to officers in their capacity as managers. There is no individual "folder" for any individual officer and no paper record is kept. Ms Burns confirmed that reports to the LAMG are made verbally and the only records kept are those of which examples appear at pages 857 and 859 as mentioned above. Ms Burns confirmed that she probably attended the meeting on 6 August 2018, (p 859) but could not recall who provided the information which is recorded there. Ms Burns stated that OH reports would go to the supervising officers and also to the HR mailbox, but would not be routinely examined by HR, as it is the primary responsibility of the supervising officer to deal with those reports. Ms Burns accepted when asked by the Tribunal Judge, that if the supervising officer did not view the report, then it may be missed altogether. When asked about the "stress management standards document" referred to in paragraph 12 of her witness statement, Ms Burns said that this document would be completed by the supervising Sergeant, who would then record on the computer system that it had been done, but that a copy of the document itself would not be downloaded onto the computer system. Thereafter, the document would be kept by the supervising Sergeant and not by HR. Ms Burns was asked by Ms Callan about who was responsible for coordinating such matters between the supervisor, Occupational Health and HR. Ms Burns confirmed that the supervising Sgt was primarily responsible for this. Ms Burns was asked whether the supervising Sergeants were given any training in such matters, particularly with regard to mental health. Ms Burns said that over the last two or three years, mental health awareness training was available from MIND, but no formal training was given by HR or by the respondent generally. When asked who would make sure that the supervising Sergeants undertook these

duties properly, Ms Burns said that it would be either the Inspector, the Chief Inspector or Superintendent. No evidence was given as to whether any of those persons had been involved in the management of the claimant's case, or had taken any steps to ensure that the supervising Sergeants had properly complied with their duties in this regard.

41. Miss Burns further confirmed that the weekly LAMG meetings were primarily to discuss that week`s operational matters and were not "attendance meetings" as such.

42. Miss Burns stated that the OH referral forms used by the respondent (such as that at page 539) were a standard template, which would be completed by the supervising Sergeant. Nowhere on the template is there any mention of "disability" or the possibility of asking for advice about disability. Ms Burns confirmed that, in the claimant's case, no one ever asked OH to advise on whether the claimant may be suffering from a disability as defined in the Equality Act 2010.

43. Miss Burns was questioned about the OH "initial medical assessment" form, which is completed by the OH practitioner. Again, Ms Burns confirmed that this is a standard template, containing standard questions, none of which mention the possibility of the patient suffering from a disability. Ms Burns could not explain why no one from OH or HR or the supervising Sergeants had asked about, or even appeared to consider the possibility of the claimant being disabled.

44. When asked at what stage the respondent would consider referring its officer for psychiatric examination, Ms Burns stated that this was not the respondent's policy, but they may ask for an up-to-date report from a psychiatrist who had already treated the officer, if OH advised that this should be done.

45. Miss Burns was asked about the OH report dated 11 October 2018, which refers to the claimant as "still seeing faces of the dead". Ms Burns accepted that this was a "disturbing" matter which amounted to a "significant symptom", which Ms Burns believed "could be indicative of post-traumatic stress disorder. Ms Burns accepted that the phrase **"still** seeing faces of the dead" meant that the claimant had already reported that symptom. Ms Burns also accepted that by the time of the next occupational health report dated 6 December 2018, the claimant had a significant sickness record and that OH were suggesting that her condition was getting worse and that her ability to function was impaired to a significant degree. Ms Burns accepted that, by 5 December 2018, the claimant had been absent from work through sickness for almost 6 months, before returning to undertake reduced duties, after which the claimant was still unable to cope with the normal duties of a police officer. Ms Burns accepted that by this time, it was likely to be a long time before the claimant recovered. Finally, Ms Burns accepted that, at this time, the outlook for the claimant was "not very optimistic."

46. The OH report of 11 October, at page 563 refers to the claimant as "still seeing faces of the dead", yet goes on to set out proposals for the claimant to return to work in November to an office-based role, with reduced hours, gradually building up to her normal hours. The claimant in fact returned to work in late October in a non-operational role at Bedlington police station, initially working 4 hours per day

and building that up to 6 hours a day. The claimant's GP records show that she was "feeling low mentally" on 6 November, struggling to return to work on 19 November and only fit for reduced hours. At page 246 in the bundle, is an entry from the NHS mental health service showing a telephone call from the claimant and recording that the claimant had ongoing problems with depression, work-related stress and PTSD symptoms, and although not officially diagnosed, had been getting treated by her GP. It records that the claimant's sleep was disturbed, she was experiencing night terrors/nightmares and seeing dead people and waking up in freezing cold sweats or hot sweats. There was a further OH assessment on 6 December 2018, which records the following:

> "Jill has returned to work following an absence due to work-related stress, depression and anxiety. Today Jill appeared to be very anxious. I have concerns about Jill's fitness for work. However Jill wants to remain at work in order to avoid further sick leave and to keep a focus and so that she does not sit at home. Jill anticipates that her medication may need to be changed. If this does happen Jill may experience side effects from the new medication. Jill is currently having counselling via the Blue Light Foundation. Jill's symptoms of anxiety have increased and Jill attributes this to her being moved to and from several work locations in a short period of time. Jill reports that her confidence level is low, her ability to concentrate is reduced and her ability to sleep is restricted. Jill's appetite for eating is also reduced. It is advised that Jill does not return to a potentially confrontational police 24/7 work role and instead works in an office based role. Jill will benefit from meaningful work with no time pressures. Jill's work duties should be risk assessed and it is advised that her work tasks do not include confrontational or safety critical duties (including not driving a police vehicle) at this time. Management are advised to revisit Jill's stress risk assessment three monthly and to then act on the findings to put reasonable control measures in place to support her."

47. The claimant had a panic attack on 8 January and spoke to the NHS emergency mental health service, which records at page 659 that the claimant "has been struggling with anxiety, depression and PTSD recently". On 11 January her GP wrote to the community mental health team asking for the claimant to be seen urgently as, "her mental health has deteriorated and she is suffering from extreme anxiety." The claimant was again reviewed by OH on 10 January 2019. The OH report at page 580 states as follows:

> "Jill is currently absent from work due to anxiety and depression. Her GP has accelerated her referral to the community mental health team. Jill reports that her confidence level is low, her ability to concentrate is significantly reduced but her ability to sleep has improved, although she does not wake refreshed. Jill explained that she feels that the boxes holding her psychological issues have opened and she cannot get the lids to go back on the boxes again. Jill is attending weekly counselling with the Blue Light Foundation. I do not feel that Jill is currently sufficiently fit to attend work. In my opinion, Jill requires long-term psychological support for complex issues and it is hoped that the community mental health team

together with a change in Jill's medication will assist her to become sufficiently fit for work. I have therefore referred Jill for a review OH appointment with the Force Medical Advisor in February 2019. In my opinion the disability provisions of the Equality Act 2010 will be applicable in this case and this should be borne in mind with your consideration."

It was from the date of this report that the respondent accepts that the claimant was suffering from a disability and that the respondent knew or reasonably ought to have known that she suffered from a disability.

48. At the private preliminary hearing before Employment Judge Aspden, on 29 October 2019, the claimant was given permission to obtain an expert psychiatric report to assist the Employment Tribunal in considering the issue of disability. The claimant's solicitors instructed Dr H van den Burgh, who examined the claimant on 25 January 2020 and whose detailed report is dated 24 February 2020, a copy of which appears in the bundle. Dr van den Burgh records at paragraph 4.2.12 that in December 2017 the claimant's mental health deteriorated significantly and that she had "dreams of drowning, suffocating and dreams of dead people standing over me." It is recorded that the claimant stopped driving because her concentration was so poor. It is further recorded that the claimant told the doctor that she did not have the confidence to disclose her symptoms to her employers as "I couldn't have any more sickness. You just have to carry on working, you just have to suck it up." By July 2018 the claimant was described as "agitated, snappy, struggling with change, getting very anxious and low in confidence." The doctor records that she was told by the claimant that she was refused treatment at the police treatment centre because she was considered to be "too ill" to visit there. Dr van den Burgh records that on 30 August 2018, occupational health recorded that the claimant had told them she was "still seeing faces of the dead" and that she was off sick with "depression and anxiety". By December 2018 the claimant's anxiety symptoms were worse but it was not until 10 January 2019 at occupational health suggested that the claimant may have a disability.

49. At 4.3.3 in the report, it is recorded that the claimant's "Thought content revealed a preoccupation of past trauma, depressive cognitions, a sense of fear and foreboding about her future and deep concern that she would never recover. She is not only traumatised by events in her past, but is clearly experiencing internal trauma on a day-to-day basis, as a result of her functioning not meeting with her own expected standards. At 4.3.4 it states, "She has very vivid dreams and nightmares in keeping with the diagnosis of post-traumatic stress disorder." At 4.3.8 it states that the claimant's physiological functioning is significantly impaired with changes to her appetite, depending upon stress, reduced motivation, very low levels of energy and the times, significant deterioration to self-care." Dr van den Burgh concludes that the claimant's symptoms fulfil the diagnostic criteria for post-traumatic stress disorder and that since the period of absence in 2018 (the date 2017 in the report is clearly an error) her relationship with the respondent deteriorated to the point where her interaction with the police force itself has become a source of trauma.

50. Dr van den Burgh concludes that there were objective factors that would indicate that the claimant was unable to carry out normal day-to-day activities during the

material time from June 2018 to January 2019. Whilst it may have been difficult to foresee whether that impairment may be long-term at the beginning of the material time, by the time the claimant started the phased return to work in October 2018, she had had a period of absence spanning just over 4 months and was struggling to adjust to return to work. By October 2018, the claimant was suffering from stress, nightmares and intense anxiety and by the start of the phased return to work in October 2018, it was reasonable to consider that the claimant may have a longer-term difficulty, or that her illness may be more complex than initially anticipated. By December 2018/January 2019, the claimant had been suffering from symptoms of post-traumatic stress disorder for at least 12 months and it was very likely that her impairment was already chronic and certainly likely to last more than 12 months. By January 2019 the claimant had been complaining of symptoms of anxiety and stress lasting for more than a year and has had a period of absence spanning just over 4 months which was followed by a phased return to work. This meant that it was effectively more than 5 months before she was able to return to full-time work. Even then, she was still "seeing faces of the dead"and was still receiving medication for anxiety and depression. Dr van den Burgh acknowledges that it would be difficult to know that there is a possibility or likelihood of longer term impairment or disability, at the beginning of the material time. However, her opinion was that by November 2018 when the phased return was not progressing well, the respondent ought to have known or otherwise considered the possibility of long-term disability. The report concludes that, even if the claimant should recover from the post-traumatic stress disorder, she will be unable to return to work as a police officer.

THE LAW

51. The statutory provisions engaged by the claims brought by the claimant are contained in the Equality Act 2010 and are as follows:

Section 6 Disability

(1) A person (P) has a disability if--

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability--

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)--

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

Section 15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if--

(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Section 20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

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

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

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

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

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

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

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

(d) any other physical element or quality.

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

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

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

Part of this Act	**Applicable Schedule**
Part 3 (services and public functions)	Schedule 2
Part 4 (premises)	Schedule 4
Part 5 (work)	Schedule 8
Part 6 (education)	Schedule 13
Part 7 (associations)	Schedule 15
Each of the Parts mentioned above	Schedule 21

Section 21 Failure to comply with duty

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

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

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

52. The Schedules to the Equality Act 2010 provide guidance as to the interpretation of the above statutory provisions. Part 1 of Schedule 1 relates to the determination of disability. The relevant extracts are as follows:-

2 **Long term effects**

(i) The effect of an impairment is long-term if-

(a) it has lasted for at least twelve months,

(b) it is likely to last for at least twelve months, or

(c) it is likely to last for the rest of the life of the person affected.

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

5 **Effect of medical treatment**

(i) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities, if-

(a) measures are being taken to treat or correct it and

(b) but for that, it will be likely to have that effect.

(ii) "Measures" include, in particular, medical treatment and the use of a prosthesis or other aid.

53. Part 3 of Schedule 8 to the Equality Act sets out limitations on the duty to make reasonable adjustments, in the following terms:-

20 **Lack of knowledge of disability, etc**

(i) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know –

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) in any case referred to in Part 2 of this schedule, that in interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

54. In 2011 the Equality and Human Rights Commission produced a “Code of Practice on Employment” (“The Code”) to accompany the Equality Act 2010. The Code was brought into effect on 6th April 2011. The main purpose of the Code is to provide a detailed explanation of the Equality Act to assist courts and tribunals when interpreting the law and to help lawyers, advisors, trade union representatives, human resources departments and others who need to apply the law and understand its technical detail. Whilst the Code does not impose legal obligations, it is well recognised that it should be used in evidence in legal proceedings brought under the Equality Act. The Employment Tribunal must take into account any part of the Code that appears to them relevant to any questions arising in proceedings.

55. Appendix 1 of the Code deals with “the meaning of disability”. The relevant extracts are set out below:-

2 A person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities.

4 People who have had a disability within the definition are protected from discrimination even if they have since recovered, although those with past disabilities are not covered in relation to Part 12 (Transport) and Section 190 (Improvements to Let Dwelling Houses).

5 “Impairment” covers physical or mental impairment. This includes sensory impairments, such as those affecting sight or hearing.

6 The term “mental impairment” is intended to cover a wide range of impairments relating to mental functioning including what are often known as learning disabilities.

7 There is no need for a person to establish a medically diagnosed cause for their impairment. What is important is to consider the effect of the impairment, not the cause.

8 A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

9 Account should be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

10 An impairment may not directly prevent someone from carrying out one or more normal day to day activities, but it may still have a substantial adverse effect long-term effect on how they carry out those activities. For example, where an impairment causes pain or fatigue in performing normal day to day activities, the person may have the capacity to do something but suffer pain in doing so, or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.

11 A long-term effect of an impairment is one:-

- Which has lasted at least twelve months or
- Where the total period for which it lasts is likely to be at least twelve months or
- Which is likely to last for the rest of the life of the person affected

12 Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within twelve months and the effects of temporary infections from which a person would be likely to recover within twelve months.

13 If an impairment has had a substantial adverse effect on normal day to day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur, that is, if it might well recur.

14 Normal day to day activities are activities which are carried out by most men or women on a fairly regular basis and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or participating in a sport to a professional standard or performing or skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day to day activities would be covered by this part of the definition.

15 Day to day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for oneself. Normal day to day activities also encompass the activities which are relevant to working life.

16 Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment). In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops (that is, the impairment has been cured).

20 **Progressive conditions which are likely to change and develop over time.** Where a person has a progressive condition, they will be covered by the Act from the moment the condition leads to an impairment which has some effect on ability to carry out normal day to day activities, even though not a substantial effect, if that impairment might well have a substantial adverse effect on such ability in the future. This applies provided that the effect meets the long-term requirements of the definition.

56. In Chapter 5 of the Code, dealing with claims under section 15, the question is asked “What if the employer does not know that the person is disabled?” and the following advice is set out:

5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a “disabled person”.

5.15 an employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

Example: A disabled man who has depression has been at a particular workplace for two years. He has a good attendance and performance record. In recent weeks, however, he has become emotional and upset at work for no apparent reason. He has been repeatedly late for work and has made some mistakes in his work. The worker is disciplined without being given any opportunity to explain that his difficulties at work arise from a disability and that recently the effects of his depression have worsened.

The sudden deterioration in the worker`s timekeeping and performance and the change in his behaviour at work should have alerted the employer to the possibility that these were connected to a disability. It is likely to be reasonable to expect the employer to explore with the worker the reason for these changes and whether the difficulties are because of something arising in consequence of a disability.

5.17 If an employer’s agent or employee (such as an occupational health adviser or HR officer) knows, in that capacity, of a worker`s disability, the employer will not usually be able to claim that they do not know of the disability, and that they cannot therefore have subjected a disabled person to discrimination arising from disability.

5.18 Therefore, where information about disabled people may come through different channels, employers need to ensure that there is a means - suitably confidential and subject to the disabled person’s consent - for bringing that

information together to make it easier for the employer to fulfil their duties under the Act.

57. In **Vicary v British Telecom (1999 IRLR 680)** it was held that the decision as to whether a person is disabled, is one for the Tribunal to make and not for any medical expert. The burden of proving disability lies upon the claimant. In **McNicol v Balfour Beattie Rail Maintenance Ltd (2002 IRLR 711)** it was stated that, “The definition of a physical or mental impairment is “some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition” and that “ the essential question in each case is whether, on a sensible interpretation of the relevant evidence, including any expert medical evidence and reasonable inferences which can be made from all the evidence, the applicant can fairly be described as having a physical or mental impairment.” In **Hill v Clacton Family Trust (2005 EWCA 1456)** the Court of Appeal said, “No court or tribunal would come to a decision on the question of mental impairment without giving careful consideration to the medical evidence before it. That evidence must however be considered in the context of the totality of the evidence and the decision is of the tribunal, not an expert, however qualified he may or may not be.” In **Morgan v Staffordshire University (2002 ICR 475)** the Employment Appeal Tribunal held that the obligation upon the claimant to prove a mental impairment, should not be taken to require a full consultant psychiatrist report in every case.

58. In **Parnaby v Leicester City Council (UKEAT /0025/19/BA)** Her Honour Judge Eady QC considered the question of whether a particular impairment was “long term” and confirmed that the Employment Tribunal needs to consider the question of likelihood - whether it could well happen that the effect would last at least 12 months or recur - at the time at which the relevant decisions were being taken. What is “long term” is defined at Sch. 1 para 2 of the Equality Act 2010. Where it is necessary to project forward to determine whether an impairment is long-term, in **SCA Packaging v Boyle (2009 ICR 1056)** the House of Lords clarified that in considering whether something was likely, it must be asked whether it “could well happen”, not that it is more probable than not that it will happen. Looking back at what happened after the relevant act of which complaint is made is not, however, the correct approach when determining what was the likely effect – “Likelihood is not something to be determined with hindsight.” (**Parnaby v Leicester CC** above).

59. In **J v DLA Piper (2010 IRLR 936)** the EAT said that the Tribunal should be aware of the difference between alleged depression and a reaction to adverse circumstances. Whilst both can produce symptoms of low mood and anxiety, only the first condition should properly be recognised as a mental impairment which satisfies the definition in section 6. The requirement that any impairment must have long-term adverse effects if it is to amount to a disability for the purposes of section 6, usually assists in separating the two. However, a person with depression may react more severely to adverse circumstances. The EAT also approved previous decisions which stated that it was good practice for Employment Tribunals to state their conclusion separately on the questions of impairment and adverse effect and in respect

of the latter, their findings on substantiality and long-term effect. Where the existence of an impairment is disputed, it makes sense for a Tribunal to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected on a long-term basis and then to consider the question of impairment in the light of those findings. The following 4 questions should be posed sequentially;

i) Did the claimant have a mental or physical impairment?
ii) Did the impairment affects the claimant's ability to carry out normal day-to-day activities?
iii) Was the adverse condition substantial?
iv) Was the adverse condition long-term?

60. When considering whether an employer knew or ought reasonably to have known that an employee suffered from a disability, the following principles were identified by HH Judge Eady QC in **A Ltd v Z (UKEAT /0273/ 18/RN);**

a) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to any unfavourable treatment.

b) The employer need not have constructive knowledge of the employee`s diagnosis to satisfy the requirements of S.15(2). It is however for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that the impairment had a substantial and (c) long-term effect.

c) The question of reasonableness is one of fact and evaluation; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.

d) When assessing the question of constructive knowledge, an employee`s representations as to the cause of absence or disability-related symptoms can be of importance; (i) because, in asking whether the employee has suffered a substantial adverse effect, a reaction to life events may fall short of the definition of disability for Equality Act purposes, and (ii) because, without knowing the likely cause of a given impairment, it becomes much more difficult to know whether it may well last for more than 12 months, if it has not already done so.

e) The approach adopted to answering the question posed by section 15(2) is to be informed by the Code paras 5.14 and 5.15

f) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so

g) Reasonableness must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code.

61. Should the Tribunal find that the respondent does not, or did not, have actual knowledge of the disability, then it must go on to consider whether the respondent had what is commonly called “constructive knowledge”. That means whether the respondent could - applying a test of reasonableness - have been expected to know, not necessarily what was the claimant’s actual diagnosis, but of the facts that would demonstrate that she had a disability ie that she was suffering a physical or mental impairment that had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. As to what a respondent could reasonably have been expected to know, that is a question for the Employment Tribunal to determine. The burden of proof remains on the respondent, but the expectation is to be assessed in terms of what was reasonable. That in turn will depend upon all the circumstances of the case. (**A Ltd v Z** above).

62. What a respondent might reasonably have been expected to know, is different to what it might reasonably have been expected to do. It is now well recognised that mental health problems often carry a stigma, which discourages people from disclosing such matters. It may then be reasonable to require an employer to make enquiries about an employee’s mental well-being. However, that does not answer the question as to what an employer might reasonably have been expected to know, after having made those enquiries. Even if an employer could reasonably have been expected to do more, that does not necessarily mean that it could reasonably have been expected to have known of the employee`s disability. Much will depend upon the nature of the enquiries made, or questions asked and the outcome of such enquiries or replies given to such questions, or what replies were likely(**A Ltd v Z** above)

63. Since the decision of the Court of Appeal in **Gallop v Newport City Council** (**2013 EWCA CIV 1583),** it has been accepted that an employer cannot slavishly rely upon the contents of Occupational Health’s reports and opinions - it remains for the employer to decide on all the facts and information available to it, whether the employee suffers from a physical or mental impairment, and if so, whether that impairment satisfies the definition of “disability”. In reaching that assessment, the employer may of course attach considerable weight to an informed and reasoned opinion from Occupational Health.

64. **Submissions**.

Both Ms Callan and Mr Healy had helpfully prepared and submitted written skeleton arguments, which were supplemented by closing oral submissions. Once again, I am grateful to both Counsel for their helpful and succinct submissions.

65. Mr Healy`s submissions on behalf of the respondent may be summarised as follows:

a) It is for the claimant to prove that she suffered from a disability during the relevant period. Whether there was a substantial adverse effect on her ability to carry out normal day-to-day activities, must be assessed on the basis of the claimant's evidence. It is not the role of any experts to say whether the claimant was disabled or not. The Tribunal must focus upon how the claimant presented at the relevant time and how her mental health problems affected her during that time and not upon how she presents now. The only way the claimant could establish the long term requirement is by proving that it was likely, in the sense that it could well happen, to last for more than 12 months. That must be considered on the basis of the information that was before the respondent at the relevant time and not on the basis of what subsequently became available, such as that contained in the expert psychiatric report, or what subsequently happened to the claimant.

b) It is for the respondent to prove that it did not know or could not reasonably have been expected to know that the claimant suffered from a disability during the relevant period. The Employment Tribunal must ask itself whether the respondent did all it could reasonably be expected to have done to find out the nature of the health problem that the claimant was experiencing. The respondent is entitled to have regard to OH advice, but must not simply rubber-stamp that advice. Whether an employer could reasonably be expected to know of a person's disability is a question of fact for theTtribunal to decide. The Tribunal should focus on the impact of the alleged impairment and not so much on whether the respondent knew or could reasonably have been expected to know of a particular diagnosis.

c) There was no significant adverse effect on the claimant's ability to carry out normal day-to-day activities until her absence from work began on 18 June 2018. Thereafter, there was a gradual improvement in the claimant's condition which enabled her to return to work in late October 2018. Throughout the relevant period, the claimant kept her stress and symptoms hidden from her work colleagues, including her supervisors. Those supervisors were not ignoring the signs presented by the claimant and did what any reasonable manager would have done by regularly referring the claimant to occupational health. Until the occupational health report dated 11 October 2018, there was little, if anything, which could alert the respondent to the possibility of the claimant suffering from a disability. The respondent is entitled to rely upon how the claimant presented herself to them and it is not necessary for the respondent to dig any deeper to establish whether there may be a disability. Whilst there may have been a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities after June 2018, there was insufficient evidence to show that this may last for more than 12 months. It was not clear to an employer in the respondent's position that the effects on the claimant could well last for more than 12 months, until the OH report of 11th of October 2018.

d) It is for the claimant to show that any further investigation by the respondent, or questions asked of the claimant by the respondent, would have produced such further information as would have alerted the respondent to the possibility of the claimant suffering from a disability.

e) It is clear from the evidence of the respondent's witnesses, that they did not have actual knowledge of the claimant's disability until January 2019. The claimant's case will therefore turn upon whether the respondent had constructive knowledge, in the sense that it ought reasonably to have known that the claimant's condition was likely to last for 12 months.

66. Ms Callan`s submissions on behalf of the claimant may be summarised as follows;

a) There is no exhaustive list as to what constitutes a normal day-to-day activity. Reference should be made to the Guidance and authorities referred to above. The effects on a person's professional life may be and should be considered.

b) The test for substantial is "more than minor or trivial". The cumulative effects of the impairment must be considered and the focus should be upon what the person cannot do, or can only do with difficulty, rather than what they can do.

c) If an impairment is being treated or corrected, the impairment is deemed to have the effect it is likely to have had, without the measures in question.

d) The question of whether the impairment is likely to last for at least 12 months involves a test of whether it "could well happen" and not whether it is "more probable than not".

e) The OH referral on 20 June 2018 indicates that the claimant had been suffering from stress since December 2017, but that she had been self-managing her stress. The claimant denied hiding her stress, but did say that she hadn't felt fully able to discuss it at work, as she did not wish to appear to be a hindrance to her shift. However, the claimant did tell Sgt Banks as early as 22 June 2018 (p542) that her mental health difficulties had been building up since December 2017 and that she had recent thoughts of self-harm.

f) The claimant was willing to give information about her condition when asked in a supportive manner, as shown by the records of her discussions with her GP, her supervisors and OH. Had the respondent made appropriate and reasonable enquiries, then the information which was readily available would have been placed before them. Had the respondent asked the claimant the right questions, then the claimant would have disclosed such information as would have made it clear to the respondent that her condition was likely to last for at least 12 months.

g) That any improvement in the claimant's condition after June 2018 was due to the anti-depressant medication prescribed by her GP and should therefore be disregarded.

h) That the respondent is a sophisticated employer with significant HR resources, and which has officers who are frequently exposed to harrowing situations. That imposes an obligation on the respondent to be put on enquiry whenever an officer shows symptoms of stress, anxiety or any adverse reaction to a harrowing situation. Such a respondent cannot be complacent about serving police officers suffering mental stress and anxiety and must explore the reasons behind such symptoms. If an officer is exposed to traumatic events, then there is an obligation on the

respondent to specifically ask and consider whether an officer's reaction may amount to a mental impairment which satisfies the definition of disability.

i) The Tribunal should consider why the respondents OH practitioners did not ask for the claimant's GP records, or explore further the extent of the claimant's medical condition, once they were aware that she had been prescribed antidepressant medication.

j) By not later than 31 August 2018, it was clear that the claimant was suffering significant symptoms, which clearly indicated a mental impairment. The respondent knew that the claimant had been exposed to at least 3 incidents involving the death of a member of the public and was subsequently reporting stress, anxiety and depression to her supervising sergeants. That was sufficient to put the respondent on notice that the claimant was severely affected by traumatic events and that it could well happen that her condition was likely to last for more than 12 months. At the very latest, by 11 October, the respondent knew that the claimant was "still seeing faces of the dead" and this was the latest date by which it ought to have known that the claimant was disabled.

k) It is simply not good enough for the respondent to say that the supervising sergeants and OH department were doing their best in all the circumstances. It is not good enough for each of those to say that they thought someone else would properly investigate the claimant's condition. The respondents cannot evade liability by saying that those in charge were all "hands off" and not "hands on".

DISCUSSION AND CONCLUSIONS

67. Disability

    The claimant accepts she was not disabled prior to June 2018, whilst the respondent accepts that the claimant was disabled from January 2019. The issue to be decided by the Tribunal is whether at any time between those dates, the claimant was disabled and, if so, exactly when.

68. The claimant had displayed symptoms of low mood, stress, anxiety and depression prior to the relevant period. Those symptoms included sleep deprivation as a result of nightmares arising from the number of traumatic incidents she had attended which had involved fatalities. The last of those incidents had occurred on 24th December 2016. At their meeting on 24th January 2018, Sergeant Wilmore-Greaves concluded that the claimant was not well as she looked rather flushed and stressed. The claimant's GP records show that on 26th February 2018 the claimant felt shattered as she could not get enough sleep and was waking unrefreshed even after twelve hours sleeping. The claimant's evidence to the tribunal was that she had not then realised something was wrong, but now considers that she was by then displaying symptoms of depression.

69. Following her meeting with Sergeant Hilsden on 10th June 2018, there was a sudden and severe deterioration in the claimant's mental health. The claimant

described having a “breakdown” upon her arrival home following her meeting with Sergeant Hilsden. The claimant had suicidal thoughts and thoughts of self-harm and sought medical help from her GP. The claimant’s medical records show that the claimant was referred for counselling and that she could not face going back to work and that her sleep was poor, she was not eating well and not going out much. The subsequent medical records show that the claimant was suffering from stress at work and that she continued to have poor sleep, poor confidence and poor concentration. Self-harm is referred to in the entry of 31st August and by 14th September the GP records “mixed anxiety and depressive disorder – anxiety and panic is still very prominent”.

70. The claimant was prescribed anti-depressants from 15th June, the dosage of which was increased by 31st August, with a beta-blocker (Propranolol) being prescribed on 14th September.

71. The Tribunal accepted the claimant’s evidence about the impact of her deteriorating mental health on her ability to carry out normal day to day activities. The claimant was frequently unable or reluctant to leave the house. Her ability to drive was affected so that she felt unsafe and unable to drive. Her ability to undertake routine shopping trips was curtailed or shortened by her heightened state of anxiety. She no longer socialised as frequently as she had done previously. Her previous hobbies or jogging and/or walking were similarly curtailed. The claimant continued to have her sleep disturbed by nightmares relating to the faces of the dead people she had attended. She felt constantly tired or “shattered”. Her feelings of low self-esteem and worthlessness led her to self-harm by cutting herself, which she described as the only way in which she could experience “feeling anything and not just numb and trapped.”

72. The claimant described how the medication prescribed by her doctor alleviated her symptoms and that it was only because of that medication that there was a gradual improvement in her condition, which permitted her to return to work on a phased basis by late October 2018.

73. The sudden deterioration in the claimant’s mental health occurred in June 2018, following her meeting with Sergeant Hilsden. The claimant was prescribed anti-depressant medication before the end of June 2018. The level of medication was increased until October 2018. The claimant was absent from work for a period of 17 weeks, after which there was a short and unsuccessful attempt to return to work on reduced hours. The claimant attended her GP on regular occasions and had several appointments with the respondent’s occupational health specialists. Occupational health was aware by not later than 30th August 2018 that the claimant was “still seeing faces of the dead”. The Tribunal accepted that, without the increased dosage of anti-depressant medication, the claimant’s mental health was likely to continue to deteriorate. This was an officer whose records showed no previous absences because of, or related to, mental health problems. The Tribunal found that by not later than 11th October 2018, it was likely (in the sense that it could well happen) that her mental impairment would last for at least 12 months.

74. Addressing the 4 points set out in paragraph 59 above (**J v DLA Piper):-**

i) The Tribunal finds that the claimant did have a mental impairment throughout the relevant period from June 2018 to January 2019.

ii) That impairment adversely affected the claimant's ability to carry out normal day to day activities, as described above.

iii) The adverse effect of the claimant's mental impairment upon her ability to carry out normal day to day activities was substantial, in the sense that it was more than trivial.

iv) The mental impairment was long-term, in that it was likely (in the sense that it could well happen) that her mental impairment would last more than 12 months.

75. **KNOWLEDGE OF DISABILITY**

The tribunal carefully considered the evidence given by the 4 witnesses for the respondent, as follows:-

i) Sergeant Wilmore-Greaves managed the claimant between December 2017 and January 2018. That is well outside the relevant period under consideration for these proceedings. Sergeant Wilmore-Greaves noted that the claimant was "flushed and stressed" at their meeting on 24th January 2018. That aside, Sergeant Wilmore-Greaves had no reason to believe or suspect that the claimant may be suffering from a mental impairment. The Tribunal found that Sergeant Wilmore-Greaves did not know that the claimant suffered from that disability .

ii) Sergeant Hilsden became the claimant's line manager in February 2018 and he was one of her 2 managers up to and including their meeting on 11th June 2018. In his evidence to the tribunal, Sergeant Hilsden showed little sympathy for, or empathy with, the claimant. The claimant had of course raised a formal grievance relating to Sergeant Hilsden's attitude towards her. Sergeant Hilsden's belief was that he had properly placed the claimant upon an improvement plan and that the claimant was using that as an excuse for her continued absence from work. The Tribunal found that Sergeant Hilsden had simply closed his mind to the possibility that there may be another explanation for the claimant's absence. Nevertheless, the Tribunal found that Sergeant Hilsden did not know that the claimant was suffering from a mental impairment which amounted to a disability.

iii) Sergeant Banks displayed a far more sympathetic considerate approach to the claimant's absence and the reasons for that absence. Sergeant Banks` notes show that from late June, he had been told by the claimant that she had been suffering a build-up of stress since December 2017 and had tried to manage it by herself. Sergeant Banks was aware from speaking to the claimant on 7th July, that the claimant had been prescribed medication by her GP and had already attended occupational health. Sergeant Banks was also aware from early July, that the claimant had sought help and counselling from the police treatment centre in Harrogate and through the Blue Light Foundation. He had been told by the claimant that she had considered self-harm after being told

about the improvement plan by Sergeant Hilsden. Sergeant Banks willingly accepted under cross examination that the length of the claimant's absence meant that her condition was more likely to be serious and that there was evidence from his discussion with the claimant as early as 22nd June, that she may have a serious mental health condition. Nevertheless, the Tribunal accepted Sergeant's Banks evidence that he did not know that the claimant was suffering from a mental impairment which amounted to a disability.

iv) The respondent's HR officer Sarah Burns was aware of the claimant's grievance in 2018, but was not involved in dealing with that grievance. Furthermore, she was not involved in management of the claimant's absence and indeed had little, if anything, to do with that absence until she received the occupational health report on 10th January 2019. The Tribunal accepted that throughout the relevant period, Ms Burns did not know that the claimant suffered from a mental impairment which amounted to a disability.

76. The Tribunal therefore found that throughout the period from June 2018 to January 2019, the respondent did not know that the claimant suffered from a mental impairment which amounted to a disability.

76. "**CONSTRUCTIVE KNOWLEDGE**"

The issue here is whether the respondent could reasonably have been expected to know that the claimant suffered from a mental impairment which amounted to a disability, between the period from June 2018 until January 2019. That is a question of reasonableness, based upon fact and evaluation. The Tribunal must examine which facts and information were available for the respondent as a whole, and then to consider whether the totality of that information was such that the respondent ought reasonably to have known that the claimant suffered from a disability. The Tribunal must examine the information which was before the claimant's managers, the respondent's HR department and its occupational health specialists. The Tribunal must consider whether any of that information was such that it should trigger other, reasonable enquiries to be made and if so, what additional information was likely to have been disclosed as a result of those enquiries.

77. The claimant is an employee who had almost 5 years continuous service prior to her absence in mid-June 2018. The claimant had no record of any absences related to her mental health. She was described by Sergeant Wilmore-Greaves as "enthusiastic and keen to impress". Although she had been placed on an improvement plan by Sergeant Wilmore-Greaves, Sergeant Hilsden had sufficient confidence in her ability to give her a clean start when she transferred to his team in April 2018. Both Sergeant Hilsden and Sergeant Banks accepted that the reason for the claimant's absence was certified by her GP and the respondent's OH department as being "work-related stress," which developed into a depressive disorder. Both Sergeant Hilsden and Sergeant Banks were responsible for the claimant's line management, which included managing her absence. Despite the unusual nature of the absence of this particular officer, no attempt was made to explore the reason for the absence, or its underlying cause. Sergeant Hilsden simply presumed that it was an adverse reaction to being placed upon another

improvement plan. That rather dismissive attitude was similarly adopted by those senior officers who attended the LAMG meetings. Sergeant Banks did only what was required of him by making a referral to occupational health. The claimant attended the occupational health appointments, but the reports produced by occupational health were given little, if any, attention by either Sergeant Hilsden, Sergeant Banks or HR.

78. The occupational health reports referred to "work-related stress". By as early as 30th August 2018, OH were aware that the claimant was referring to "still seeing faces of the dead". For unexplained reasons, mention of that crucial symptom was not however included in any occupational health report until that dated 11th October 2018.

79. It was clear from their evidence, that those officers responsible for the claimant's line management had little, if any, training in managing absences which involved elements of mental health. Managing officers simply made factual entries on the respondent's computer system, which entries did not appear to be regularly examined by HR, or indeed anyone else. Occupational health reports were sent to those managing officers, but there was no evidence given to the Tribunal that they were regularly examined by the respondent's HR department, which meant that any recommendations made by OH may not be picked up, let alone acted upon.

80. The claimant accepted in her evidence to the Tribunal that when she attended work she put on her "game-face", which meant that she tried to appear to be fit, capable and ready to undertake any tasks assigned to her and to meet any challenges involved in the role of a police officer. However, the claimant was clearly prepared to discuss her mental health problems with her GP, the respondent's occupational health advisor and Sergeant Banks. The claimant did disclose her stress, anxiety, low mood and self-harm. She disclosed that she was receiving medication for depression. She stated that she was "still seeing faces of the dead" and that this was impacting on her ability to sleep which, in turn, had the knock-on effects referred to above.

81. The Tribunal found that the respondent's system for dealing with absence management was somewhat shambolic, in that it lacked any meaningful chain of command. None of the respondent's witnesses were prepared to accept that it was their responsibility to take charge of an individual's absence. There was inconsistent evidence from the respondent's witnesses about the computerised system for recording matters relating to an officer's absence. The overall impression was that everyone seemed to think that somebody else would attend to it. No-one was charged with being in overall control of an officer's absence, of looking into the reasons behind or the causes of that absence and implementing meaningful steps to secure the officer's return to work. No-one seemed willing or able to address the possibility that the officer's absence may involve an underlying mental health condition, which could amount to a disability as defined in Section 6 of the Equality Act 2010.

82. The Code of Practice on Employment, referred to in paragraphs 54 – 56 above, states that an employer must do all they can reasonably be expected to do to find out if a worker has a disability. That of course involves considering issues of dignity

and privacy and ensuring that personal information is dealt with confidentially. However, that of itself does not prevent the employer from making the appropriate enquiries, where circumstances fairly and reasonably justify those enquiries being made. The claimant was never given a real opportunity to make representations to management as to the reasons for her absence. Insufficient attention was given to the OH reports. No attempt was made to obtain the claimant`s medical records, or indeed anything from her GP. The Tribunal found that the claimant's case was certainly one of those which justified further enquiries being made by the respondent. The Tribunal rejected Mr Healey's submission that this was one of those cases where the claimant was deliberately concealing her condition, by withholding information which could lead to the appropriate chain of enquiries. The Tribunal accepted Ms Callan's submission that the claimant would have disclosed the relevant information, had she been approached and asked in a caring and sympathetic manner. The Tribunal found that the respondent's system for dealing with absences of this type, was unsuitable to the point of being wholly ineffective. It did not provide a means for bringing that information together so as to enable the respondent to fulfil its duties under the Equality Act.

83. There was little, if any, co-operation between line managers, occupational health and HR. The respondent unreasonably failed to collate the information which had been provided by the claimant and failed to enquire into the reasons behind, or causes of that information. The Tribunal found that, had the appropriate enquiries been made, the claimant would have disclosed that her absences were as a result of a sudden and rapid deterioration in her mental health, the symptoms of which had been present for some time and which were likely to be related to post-traumatic stress arising from harrowing and traumatic incidents which the claimant had attended in her capacity as a police officer. There was sufficient information in the hands of the respondent by the time of the occupational health examination on 30th August 2018, to justify further enquiries being made. The Tribunal found that, had the appropriate enquiries been made, then the claimant would have provided such further information that the respondent ought to have been aware that the claimant was suffering from a disability, by not later than the occupational health examination on 11th October 2018.

84. The respondent has not shown that it was unreasonable for it to be expected to know that the claimant was disabled. The Tribunal found that the respondent ought reasonably to have known by 11th October that the claimant suffered from a disability.

EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 26 June 2020

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