



EMPLOYMENT TRIBUNALS

Claimant

Mrs Jennifer Hamilton

v

Respondent

Chief Constable of Bedfordshire Police

Heard at: Bury St Edmunds (by CVP)

On: 07, 08, 09, 10 & 11 September 2020
08 & 09 October 2020 (Discussion days – no parties present)

Before: Employment Judge M Warren

Members: Mr G Page and Ms L Davies

Appearances

For the Claimant: Mr Sims, Counsel.

For the Respondent: Mr Moore, Counsel.

COVID-19 Statement on behalf of Sir Ernest Ryder, Senior President of Tribunals.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

The claimant's claims that she was unfairly dismissed and that she was discriminated against by reason of disability fail and are dismissed.

REASONS

Background

1. By a claim form received on 31 August 2018, Mrs Hamilton has brought claims of constructive unfair dismissal and disability discrimination arising out of her employment in an administrative role with the respondent following her resignation on 31 May 2018.
2. The case came before Employment Judge King at a telephone preliminary hearing on 25 February 2019. She directed further and better particulars from the claimant and an open preliminary hearing to determine the issue of disability.
3. Further and better particulars were provided dated 24 March 2019.
4. The open preliminary hearing to determine the issue of disability came before Employment Judge Johnson on 27 September 2019. The respondent conceded the issue of disability after Mrs Hamilton's evidence in chief. Employment Judge Johnson proceeded to attempt to identify the issues in the case. He set out a structure for the issues but left the parties to agree on a final list of issues, which was to be filed by 1 November 2019.
5. An agreed list of issues was indeed subsequently filed, (page A110 of the bundle).
6. The case was listed for hearing on Monday 7 to Friday 11 September 2020. Because of the Coronavirus crisis, a decision had been taken that the hearing would be an attended hearing in Bury St Edmunds, but that the Tribunal Members would participate via CVP, (it not being possible for the Members and Tribunal Judge to maintain appropriate social distancing within the tribunal hearing rooms at Bury St Edmunds). On the morning of 7 September 2020, the Tribunal administration encountered IT problems in setting up the Members attendance by CVP. Whilst those issues were being attended to, I took the opportunity of discussing the situation with Counsel for each side and appraising them of the issues. Arising out of those discussions emerged an agreement that actually, this hearing could properly and fairly be conducted by CVP for everybody. The Tribunal therefore spent day 1 reading and the hearing of live evidence via CVP commenced on the morning of day 2, Tuesday 8 September 2020.
7. The Tribunal concluded hearing evidence on the morning of day 5, 11 September 2020. We then acceded to the representatives' joint request that we allow them to make written submissions. We gave directions for written submissions and replies. We arranged to convene to consider our Reserved Judgment on 8 and 9 October 2020.

The Issues

8. We were provided with a further list of issues by email on the morning of 7 September 2020. This was referred to as an agreed list of issues, but identified two areas of dispute. In respect of the constructive dismissal claim, the question was posed; Whether the claim already included, or may the claimant be allowed to amend, to rely on an allegation in that additional counselling should have been provided by the respondent?
9. In respect of the complaint about a failure to make reasonable adjustments at 3.5 the question asked was; Whether the claim already included, or should the claimant be allowed to amend her claim to rely upon the following additional PCPs:
 - 9.1 The Fairness At Work Procedure as an overview process, not a forensic one;
 - 9.2 The Fairness At Work Appeal did not re-hear the complaint, only review it, and
 - 9.3 Limiting counselling to 6 sessions a year.
10. The reasonable adjustments contended for in respect of those three new alleged PCPs were to be:
 - 10.1 Dealing with the Fairness At Work Complaint in sufficient detail to address the claimant's concerns properly;
 - 10.2 Allowing a re-hearing of the original complaint at Appeal, and
 - 10.3 Providing additional counselling.
11. In considering the application to amend, insofar as that was necessary, we had regard to the guidance set out in the case of Selkent Bus v Moore [1996] ICR 836, the balance of prejudice and the overriding objective.
12. With regard to the suggestion that the claimant should be permitted to complain that the respondent's failure to provide her with additional counselling beyond its standard 6 sessions, was something that contributed to a breach of the implied term to maintain mutual trust and confidence causing her to resign or a failure to make a reasonable adjustment, this was not pleaded in the original ET1. The claimant had been ordered to provide further and better particulars, which she did through her solicitors, at great length: she did not refer to this allegation. The claimant has been legally represented throughout these proceedings. There have been two preliminary hearings at which the point has not been mentioned. The previously agreed list of issues made no mention of this contention. Now, on day 2, of the hearing, the claimant made this application.

13. The prejudice to the respondent is that it would not have had the opportunity to prepare evidence and deal with the point. On the claimant's part, she had plenty of other points that she was able to argue and put forward in support of her contention that she was constructively dismissed. In our Judgment the balance of prejudice favoured the respondent and we refused the application.
14. As for the proposal to add PCPs that the Fairness At Work process was not forensic and that the Appeal was not a re-hearing: these are allegations that were pleaded, as allegations of unfavourable treatment, (incorrectly described as less favourable treatment) and do appear in a previous iteration of the list of issues with regard to constructive dismissal and unfavourable treatment, (at paragraphs 1.1.14, 1.1.15 and 2.1.7). These are then matters of re-labelling. Although that does not mean that we automatically grant the application to amend to treat the allegations as allegations of failure to make reasonable adjustments, the respondent did come to the hearing prepared to deal with the issue on the facts and that in our mind tipped the balance in favour of allowing the amendment, which we did.
15. We note the respondent's position is that it disputes the allegation that these matters amounted to a substantial disadvantage and says that it took all steps as it reasonably could.
16. The list of issues agreed by the parties, cut and pasted in, as amended, therefore reads as follows:

1. Unfair Dismissal

- 1.1. Was the Claimant dismissed for the purposes of section 95 (1) Employment Rights Act 1996 and/or section 39 (7) Equality Act 2010?
- 1.2. Did the outcome of the Claimant's Fairness at Work Procedure amount to a repudiatory breach of contract?
- 1.3. Alternatively, did the outcome of the Claimant's Fairness at Work Procedure amount to a "last straw" in a cumulative sequence of events amounting to a breach of the implied term of mutual trust and confidence?
- 1.4. Which of the following, if any, formed part of that cumulative sequence of events:
 - 1.4.1. the application of the Respondent's management of absence policies
 - 1.4.2. failure to conduct Return to Work interviews following periods of sickness absence
 - 1.4.3. the reduction in sick pay after a specified aggregate of periods of absence
 - 1.4.4. Respondent's conduct in implementing the pay reduction;
 - 1.4.5. failure to undertake a Stress Risk Assessment in a timely manner

- 1.4.6. seeking to prevent the Claimant raising her complaint via the Fairness at Work process.
- 1.4.7. failing to deal with the Claimant's Fairness at Work complaint in a timely;
- 1.4.8. Failing to address the Claimant's Fairness at Work complaint properly or in sufficient detail;
- 1.4.9. Failing to conduct the Fairness at Work appeal in an appropriate manner;
- 1.4.10. Making the findings it did in the Fairness at Work procedure and/or appeal.
- 1.4.11. changes affecting other employees of the Respondent or of other police forces which collaborate with the Respondent
- 1.4.12. failure to provide the Claimant with the correct IT equipment and/or systems required for proper performance of her role
- 1.4.13. backlog of work on the Claimant's return from periods of sickness absence
- 1.4.14. the change of the Claimant's place of work from Force HQ, Kempston to Borough Hall, Bedford
- 1.4.15. changes in the Claimant's hours of work or duties
- 1.4.16. the fact or manner of discussions with the Claimant about her employment, hours of work or duties?
- 1.5. Did the change in the Claimant's place of work amounted to a repudiatory breach of contract?
- 1.6. Did any change in the Claimant's hours of work or duties amount to any repudiatory breach of contract?
- 1.7. Did the Claimant by delay or otherwise waive any repudiatory breach of contract and affirm her contract of employment?

2. Unfavourable Treatment because of Something Arising in Consequence of Disability (S15 EQA 2010)

- 2.1. Did any of the following amount to unfavourable treatment of the Claimant:
 - 2.1.1. varying the Claimant's role, Department or reporting line
 - 2.1.2. not considering the Claimant for promotion to supervisor
 - 2.1.3. exposing the Claimant to an excessive backlog of work on her return from periods of sickness absence
 - 2.1.4. failure to carry out or implement a stress risk assessment

- 2.1.5. changing the Claimant's place of work
- 2.1.6. the application of the Respondent's management of absence procedures
- 2.1.7. failing to provide the Claimant with adequate resources for the proper performance of her duties including addressing alarm company complaints
- 2.1.8. failing to take account of the Claimant's condition during the reorganisation process.
- 2.1.9. failing to treat Claimant's Fairness at Work complaint, including the appeal, with the appropriate degree of seriousness as to conduct and outcome?
- 2.2. At the date of any such unfavourable treatment, did the Respondent know or ought reasonably to have known that the Claimant was disabled?
- 2.3. In the case of such unfavourable treatment as shall be found to have been afforded to the Claimant, was such treatment because of either the Claimant's disability related sickness absence or because of or onerous working conditions, including an excessive backlog of work?
- 2.4. While sickness absence is "something" arising in consequence of her disability, are "*onerous working conditions, including an excessive backlog of work*" "something" arising in consequence of her disability?
- 2.5. Is the management of absence in order to control costs and/or to secure operational efficiency a legitimate aim?
- 2.6. If so, did the application of the Respondent's management of absence procedures amount to a proportionate means of achieving that legitimate aim?
- 2.7. Is the effective fulfilment of the work allocated to the Claimant a legitimate aim?
- 2.8. If so, did the management on each occasion of the Claimant's return from sickness absence amounts to proportionate means of achieving that legitimate aim?
- 2.9. Is the effective supervision of the Respondent's operations a legitimate aim?
- 2.10. Is the selection of supervisors without internal advertisement by reference to suitability qualifications and experience a proportionate means of achieving that legitimate aim?
- 2.11. Can the Respondent show a legitimate aim in the reorganisation of its operations, including the July 2016 redundancies and changes to the Claimant's duties, Department and place of work, namely the overall efficiency of its functions and were the means used by the Respondent proportionate to that legitimate aim?

3. Duty to Make Reasonable Adjustments

3.1. Did any of the following amount to a “provision, criterion or practice” and were they or any of them applied by the Respondent:

3.1.1. returning to work without an investigation of the barriers which caused or triggered an absence,

3.1.2. returning to work without the implementation of a stress risk assessment

3.1.3. not properly addressing the stressors identified by the Claimant whether within a stress risk assessment or otherwise

3.1.4. involvement in a redundancy consultation when not part of the affected department

3.1.5. undertaking a backlog of work which had not been covered during a period of absence

3.1.6. returning to work after a period of absence without access to IT processes, computer equipment or a chair

3.1.7. hot desking

3.1.8. acceptable absence levels under the management of absence procedures – reduction in pay after 6 months?

3.1.9. The Fairness at Work Procedure was an overview process, not a forensic one.

3.1.10. The Fairness at Work appeal did not re-hear the complaint, only review it.

3.2 At the date of the application of any such provision criterion or practice, did the Respondent know or ought reasonably to have known that the Claimant was disabled or was likely to be placed at a substantial disadvantage by any such provision, criterion or practice?

3.3 Did any such provision, criterion or practice place the Claimant at a substantial disadvantage compared with nondisabled persons?

3.4 If the Claimant had been placed at any substantial disadvantage what steps should have been taken by the Respondent to avoid that disadvantage but were not? Did those steps include

1. Clarifying or adjusting the Claimant’s roles and responsibilities
2. Providing training on SIG markers
3. Addressing the Claimant’s stressors
4. Not reducing the Claimant’s pay

4. Harassment

- 4.1. Did the Respondent engage in unwanted conduct relating to the Claimant's disability by:
 - 4.1.1. changes to the Claimant's role
 - 4.1.2. the management of the Claimant's returns to work after periods of sickness absence
 - 4.1.3. not considering the Claimant for promotion
 - 4.1.4. the absence of systems to enable the Claimant to deal with customer complaints
 - 4.1.5. management of changes to the Claimant's role including ignoring any complaints and concerns expressed by the Claimant about role
 - 4.1.6. the conduct of the Fairness at Work Procedure
- 4.2. Did such conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment of the Claimant.
- 4.3. Was the Claimant's perception of the conduct that it violated her dignity etc (subjective test)?
- 4.4. Was it reasonable for the conduct to have the effect (objective test)?

5 Limitation

- 5.1 Does the Tribunal have jurisdiction to consider any of the Claimant's claims of discrimination something arising in consequence of disability and failure to make reasonable adjustments of in respect of any matter occurring before 2nd May 2018 by reason of (i) conduct extending over a period or (ii) just and equitable extension of time?

The Evidence

- 17. We had before us a bundle in pdf format which had been provided to us in ten parts, properly indexed and paginated. The last page is 428.
- 18. We had a witness statement from Mrs Hamilton.

19. For the respondent, we had witness statements from:
 - 19.1 Mrs Sandy Murrell, PNC & Business Services Supervisor for the respondent, (latterly the claimant's supervisor).
 - 19.2 Mr Peter Hawkins, PNC Manager, (latterly the claimant's manager).
 - 19.3 Mrs Nicky Crosby, HR Advisor.
 - 19.4 Mr Gary Etherington, Records & Access Manager for Bedfordshire Police, Cambridgeshire and Hertfordshire Constabularies, (acted as a "Independent Manager").
 - 19.5 Ms Hannah Wilkinson, Head of the Regional Organised Crime Unit (Operations) for the Eastern Region, (dealt with the claimant's Fairness At Work complaint).
 - 19.6 Mr Mark Upex, Superintendent with the Bedfordshire Police, (heard the appeal against the outcome of Mrs Hamilton's Fairness At Work Investigation).
20. We read the witness statements and the documents contained in the reading list provided by Mr Sims on day 1. We also read or looked at the documents referred to in the witness statements, in our discretion. We heard live evidence from each of the witnesses.

The Law

Disability Discrimination

21. Disability is a protected characteristic pursuant to s.4 of the Equality Act 2010.
22. Section 39(2)(c) and (d) proscribes discrimination by an employer by either dismissing an employee or subjecting him to any other detriment.
23. Section 39(5) imposes a duty on an employer to make reasonable adjustments.

Reasonable Adjustments

24. Section 20 defines the duty to make reasonable adjustments, which comprises three possible requirements, the first of which is that which might apply in this case set out at subsection (3) as follows:-

"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.”

25. Section 21 provides that a failure to comply with that requirement is a failure to make a reasonable adjustment, which amounts to discrimination.
26. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases of Environment Agency v Rowan [2008] IRLR 20 and HM Prison Service v Johnson [2007] IRLR 951). The Tribunal must identify:
 - 26.1 The relevant provision criterion or practice applied by or on behalf of the employer;
 - 26.2 The identity of non-disabled comparators, (where appropriate);
 - 26.3 The nature and extent of the substantial disadvantage suffered by the disabled employee;
 - 26.4 The steps the employer is said to have failed to take, and
 - 26.5 Whether it was reasonable to take that step.
27. The Equality and Human Rights Commission: Code of Practice on Employment (2011) at paragraph 4.5 suggests that PCP should be construed widely so as to include for example, formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. It may also be a decision to do something in the future or a one off decision.
28. The decision of Mrs Justice Simler DBE, (then President of the EAT) in Lamb v the Business Academy Bexley UKEAT/0226/15 assists with identifying what is and what is not, a PCP. The phrase is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer from disability. It may in certain circumstances include one-off decisions, (paragraph 26). She approved though, the comments of the former President, Langstaff J in Nottingham City Transport Ltd v Harvey UKEAT/0032/12 where he referred to, “practice” as having an element of repetition. In the former case, a teacher was dismissed after a long period of absence during which a grievance was investigated and an outcome provided. The PCP was the requirement to return to work without a proper and fair investigation. There were repeated failures to properly investigate and repeated delays; that was a practice. In the latter case, where a claimant suffering from depression returning from work and confused by a new swipe card system altered his time sheet, the EAT held that the one-off application of a flawed disciplinary procedure did not amount to a, “practice”. More recently in Ishola v Transport for London 2020 EWCA Civ 112, CA, Lady Justice Simler, (as she now is) affirmed that approach, the Court of Appeal holding that the words provision criterion or practice carry the connotation of a state of affairs indicating how similar

cases will be treated in the future; a one off act can amount to a practice if there is some indication that it would be repeated if similar circumstances were to arise in the future.

29. It is important for the claimant to identify the PCP relied upon and for the Tribunal to make its decision on the PCP advanced by the claimant, see Secretary of State for Justice v Prospero UKEAT/0412/14.
30. The disadvantage must be substantial, that means, “more than trivial” and must be as compared to people who are not disabled.
31. The duty is to make “reasonable” adjustments, to take such steps as it is reasonable for the employer to take to avoid the disadvantage. The test is objective, (Smith v Churchill Stairlifts plc [2006] ICR 524). Our focus should be not on the process followed by the employer to reach its decision but on whether there is an adjustment that should be considered reasonable.
32. On the question of comparators, the Code states at 6.16 that the purpose of comparison with people who are not disabled is to establish whether it is a PCP that places the disabled person at a disadvantage and therefore there is no need to identify a comparator whose circumstances are the same as the Claimants, (in contrast to such a requirement in claims of direct and indirect discrimination).
33. The duty to make reasonable adjustments may include amendment to sick pay provisions. In Meikle v Nottinghamshire County Council [2005] ICR 1, CA the claimant had been on sick leave for a long time in circumstances where the employer had not made reasonable adjustments to facilitate her return. In those circumstances, a reasonable adjustment would have been not to have applied the policy of halving sick pay after 6 month’s absence. That does not mean that it is always the case that maintaining a disabled employee on full pay during sickness absence is a required reasonable adjustment; the tribunal must make an assessment on the facts, whether such an adjustment would be reasonable, see O’Hanlon v Revenue and Customs Commissioners [2007] ICR 1359, CA.

Disability Related Discrimination

34. Disability Related discrimination is defined at s.15 as follows:
 - (1) *A person (A) discriminates against a disabled person (B) if—*
 - (a) *A treats B unfavourably because of something arising in consequence of B’s disability, and*
 - (b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
 - (2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

35. Determining whether treatment is unfavourable does not require any element of comparison, as is required in deciding whether treatment is less favourable for the purposes of direct discrimination. There is a relatively low threshold of disadvantage for treatment to be regarded as unfavourable, see Williams v Trustees of Swansea University Pension and Assurance Scheme [2019] UKSC.
36. As for the difference between making a reasonable adjustment and disability related discrimination, in General Dynamics v Carranza UKEAT 0107/14/1010 HHJ Richardson explained that reasonable adjustments is about preventing disadvantage, disability related discrimination is about making allowances for that persons disability.
37. There are 2 separate causative steps: firstly, the disability has the consequence of causing something and secondly, the treatment complained of as unfavourable must be because of that particular something, (Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN)
38. There is no requirement that the employer was aware that the disability caused the particular something, City of York Council v Grosset [2018] EWCA Civ 1105 although, as the Court of Appeal observed in that case, if the employer knows of the disability, it would be, "wise to look into the matter more carefully before taking the unfavourable treatment".
39. Simler P gave helpful guidance on the correct approach to s15 in Pnaiser v NHS England [2016] IRLR 170 as follows:

"...the proper approach can be summarised as follows:

(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is

emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises...

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in Land Registry v Houghton UKEAT/0149/14, a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that 'a subjective approach infects the whole of section 15' by virtue of the requirement of knowledge in s.15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26–34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages – the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence

of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of 'something arising in consequence of the claimant's disability'. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

40. If there has been such treatment, we should then go on to ask, as set out at s.15(1)(b), whether the unfavourable treatment can be justified. This requires us to determine:
 - 40.1 Whether there was a legitimate aim, unrelated to discrimination;
 - 40.2 Whether the treatment was capable of achieving that aim, and
 - 40.3 Whether the treatment was a proportionate means of achieving that aim, having regard to the relevant facts and taking into account the possibility of other means of achieving that aim.
41. The test of whether there is a proportionate means of achieving a legitimate aim, (often referred to as the justification test) mirrors similar provisions in other strands of discrimination, such as in respect of indirect discrimination under s19 of the Equality Act, the origins of which lie in European Law.
42. There is guidance in the Equality and Human Rights Commission's Code of Practice on Employment, which reflects case law on objective justification in other strands of discrimination and which can be relied on in the context of disability related discrimination.
43. Thus, in Hensam v Ministry of Defence UKEAT/10067/14/DM the EAT applied the justification test as described in Hardys & Hansons Plc v Lax [2005] EWCA Civ 846. The test is objective. In assessing proportionality, the tribunal uses its own judgment, which must be based on a fair and detailed analysis of the working practices and business considerations involved, particularly the business needs of the employer. It is not a question of whether the view taken by the employer was one a reasonable employer would have taken. The obligation is on the employer to show that the treatment complained of is a proportionate means of achieving a legitimate aim. The employer must establish that it was pursuing a legitimate aim and that the measures it was taking were appropriate and legitimate. To demonstrate proportionality, the employer is not required to show that there was no alternative course of action, but that the measures taken were reasonably necessary.

44. The tribunal has to objectively balance the discriminatory effect of the treatment and the reasonable needs of the employer.
45. “Legitimate aim” and “proportionate means” are 2 separate issues and should not be conflated.
46. The tribunal must weigh out quantitative and qualitative assessment of the discriminatory effect of the treatment, (University of Manchester v Jones [1993] ICR 474).
47. The tribunal should scrutinise the justification put forward by the Respondent, (per Sedley LJ in Allonby v Accrington & Rosedale College [2001] ICR 189).

Harassment

48. Harassment is defined at s.26:

“(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and*
- (b) the conduct has the purpose or effect of—*
 - (i) violating B's dignity, or*
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...*
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
 - (a) the perception of B;*
 - (b) the other circumstances of the case;*
 - (c) whether it is reasonable for the conduct to have that effect.*
- (5) The relevant protected characteristics are—*
...
disability;
...”

49. We will refer to that henceforth as the proscribed environment.
50. The conduct complained of that is said to give rise to the proscribed environment must be related to the protected characteristic. That means the Tribunal must look at the context in which the conduct occurred.
51. The EAT gave some helpful guidance in the case of Richmond Pharmacology v Dhaliwal [2009] IRLR 336. It is a case relating to race

discrimination, but the comments apply to cases of harassment in respect of any of the proscribed grounds.

“We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. Whilst it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred). It is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

52. Those sentiments were reinforced by Sir Patrick Elias in Grant v Her Majesty’s Land Registry [2011] EWCA Civ 769. Of the words, “intimidating, hostile, degrading, humiliating or offensive” he said that Employment Tribunals, “*should not cheapen*” the significance of those words, they are an important control to prevent trivial acts causing minor upsets being caught up in the concept of harassment.

Facts

53. Mrs Hamilton’s employment with the respondent began on 7 September 2010 in the Learning and Development Department.
54. On 10 October 2011, she changed her role to Alarms Administrator, working in the respondent’s control room. The role entailed administering the processes involved in businesses and individuals utilising alarm facilities that called out the Police, if triggered.
55. The respondent was unable to produce a copy of Mrs Hamilton’s contract of employment, (remarkably, the reason given was that it had been “archived”). Mrs Hamilton agreed that her contract contained provision that she could be required to work anywhere in the county. Her place of work would have been stated as being the respondent’s force headquarters (HQ).
56. The respondent’s sick pay provisions are contained within its handbook and include, (page 340) that after 5 years’ service an employee is entitled to 6 months full pay and 6 months half pay in respect of periods of absence from work due to sickness, calculated over a rolling 12 month period. There is a discretion to extend in exceptional circumstances. Guidance is provided on when it might be appropriate to exercise that discretion, (page 369) such as where the illness was contracted in the execution of duty, the illness is terminal or the individual is permanently disabled.

57. The respondent has an Attendance Policy which includes provision for formal management action in respect of long-term absences. This calls for, at paragraph 4.9.1, a sensitive approach to be taken so that for example, it may not be appropriate to issue warnings in such cases. Managers are encouraged to judge each case on its merits and to adopt a structured approach. Paragraph 4.9.2 states that the respondent will do all that it reasonably can to assist individuals with long-term health problems, to be balanced with the respondent's need to continue to operate efficiently.
58. The respondent has what is called a Fairness At Work (FAW) Policy and Procedure, the aims of which, (page 375) are to provide individuals a fair and transparent process to address their issues and seek resolution without fear of recrimination, to propose resolutions, explore solutions and to give a timely response in circumstances where an informal approach has not led to a resolution, (paragraph 1.2).
59. The respondent has a Stress Management Policy called "A Stress Management Standard Operating Procedure (SOP)". This states at section 6, (page 277) that managers and supervisors are responsible for being aware of and identifying early signs of stress. Where that occurs, they should complete a generic risk assessment, (paragraph 6.1.1). They should ensure that jobs are designed in such a way as to reduce in-built stressors, (paragraph 6.1.4). They should recognise stress caused by change management programs, (paragraph 6.1.5). They should co-operate with trained risk assessors in carrying out and communicating the outcome of risk assessments, (paragraph 6.1.9). They should be sympathetic to staff experiencing stress related problems, (paragraph 6.1.12)."
60. Paragraph 7.5.2 of the SOP reads:
- "When it is anticipated that changes in the way work is to be carried out, where new processes are to be introduced, or new technology brought on-stream, managers should consider the impact on their staff and a risk assessment made of the associated difficulties/additional burden and stresses on individuals."
61. Managers are told to contact individuals whose absence exceeds 3 days, (paragraph 7.6.2). If absence is beyond 10 days, they should consider a reference to Occupational Health, (paragraph 7.6.3).
62. In respect of returns to work, managers are encouraged to plan an individual's return to work after stress related illness to be prepared to adjust their work responsibilities, (paragraph 7.7.1) and after their return to work, to continue to meet the individual to discuss factors which may be contributing to their stress, (paragraph 7.7.2).
63. At page 287 there is the following statement in the SOP under the heading "Combating Stress in the Workplace":
- "THE FIRST OBJECTIVE OF BEDFORDSHIRE POLICE IS TO REDUCE WORK-RELATED STRESS AT SOURCE AND IT HAS, THEREFORE,

ELECTED TO ADOPT THE PREVENTATIVE ROUTE TO STRESS MANAGEMENT AS ITS FIRST PRIORITY.”

64. Since 2014, there had been a proposal for ongoing collaboration of the Police Forces of Cambridgeshire, Bedfordshire and Hertfordshire, with a view to making economies. As part of that, a proposal emerged for a, “single operational support function for information management”.
65. In April 2015, Mrs Hamilton had a period of absence from work due to stress caused by her father being seriously ill.
66. On 30 November 2015, Head of Force Control Room, a Mr Humberstone, assured Mrs Hamilton that the collaboration proposals with regard to the control room would not affect her.
67. The proposals for the control room were to be explained to the staff effected at a consultation meeting on 11 July 2016. These proposals included that the claimant’s work in the control room as an Alarms Administrator was to be transferred to a role known as PNC & Business Services Practitioner, (of which there were to be 31.5 full time equivalents). New job profiles were to be produced. Mrs Hamilton was therefore at risk of redundancy, as were the two other Alarms Administrators, one each at Cambridgeshire and Hertfordshire.
68. Mrs Hamilton was invited to the 11 July meeting. She was asked to be there early enough for a quick chat beforehand. She arrived at 9 o’clock, sat in the room in which the meeting was to take place and as 9.30 approached when the meeting was to commence, she was asked to follow somebody out of the room, in the full view of everybody else, approximately 100 people. She was taken to another small room (along with her Cambridgeshire and Hertfordshire colleagues) where she was informed that she was at risk of redundancy. She then returned to the main meeting, entering the room to the full view of those present, the meeting having been paused for them. This episode upset Mrs Hamilton greatly.
69. A point of concern for Mrs Hamilton was that in the redundancy process, selection for appointment to the new PNC role would be based upon competency questions which, as an alarms specialist, she would be less well placed to answer than others, as she would have no knowledge of the other roles with which hers was to be combined.
70. On 18 July 2016, Mrs Hamilton sent a long email to her then manager, Ms Tory, complaining about these matters.
71. On 25 July 2016, Mr Humberstone submitted a complaint on behalf of Mrs Hamilton regarding the above matters. In an email exchange with somebody called Richard Andrews on 29 July 2016, Mrs Hamilton was told that the decision to move and combine these roles had been taken “years ago”.

72. Mrs Hamilton put together a counter proposal for the role of Alarms Specialists and mapped out the processes involved. This was successful. She attended a meeting on 6 September 2016 at which she was told that she was no longer at risk of redundancy, as the Alarms Administrator role was now to be a stand-alone role within the PNC Department. Mrs Hamilton states in her witness statement, (paragraph 13) that she did not feel relief at this as there remained conflict over what the role would comprise of, who would manage the role and the organisational design of the role which, she said, created a hostile and stressful working environment.
73. The new alarms administrator role did include one area of work which was new to Mrs Hamilton, variously referred to as Signal work, Signal Marker work or SIG. This was the process by which, if officers were called by an alarm to a particular location, the system would flag up to them a warning if the premises had a significant history, such as drugs, weapons or domestic violence.
74. On 9 September 2016, Mrs Hamilton was signed off work unfit due to work related stress.
75. On 13 September 2016, Mrs Hamilton attended an Occupational Health appointment by telephone, (page 54). This recommended management undertake a Stress Risk Assessment, looking at workloads and support.
76. Mrs Hamilton apparently attended a further Occupational Health assessment on 24 October 2016. There does not appear to a copy of any note of this discussion. She says in her witness statement at paragraph 16 that she informed Occupational Health that she had been invited to submit a complaint with regard to the redundancy announcement process, that she was no longer to have the benefit of a fixed workstation but was going to be expected to hot desk which she said, created a hostile and degrading working environment for her.
77. The complaint about the redundancy process was directed at a Mr Church, who wrote to Mrs Hamilton on 21 November 2016, (page 59). He offered an apology for the lack of support in place but not, points out Mrs Hamilton, for the way the process of informing her that she was at risk of redundancy was handled. Mr Church made the point in his email that the approach taken was one that had been adopted a number of times in the past and was with the support of the Union, Unison. His apology reads:
- “I can only apologise if insufficient information was divulged to trigger the appropriate support. From a project perspective we felt that we ensured the necessary communication took place but it feels that this in reality has not triggered the support expected and has left you in a vulnerable position, for which I am sorry.”
78. Mrs Hamilton did not see this email to her work email address until late in December, because at the time it was sent she was absent from work through ill health and did not have access to her work emails.

79. On a date the parties were unable to give us, Mr Church and a Ms Butcher of HR met with Mrs Hamilton personally and apologised to her. No note or record of this appeared in the bundle. Mrs Hamilton makes no reference to this meeting in her witness statement, but acknowledged in cross examination that such a meeting took place.
80. Mrs Hamilton attended a further occupational health discussion by telephone on 29 November 2016, noted at pages 60 and 61. Her absence from work is noted as being with a diagnosis of stress/anxiety, "which are perceived to be due to work related issues". In the meeting, she is recorded as explaining an issue she had just encountered with regard to her hours. She had been offered an increase in her hours, which she had accepted, but she had then been told the hours would have to be authorised, which was causing her concern. She also expressed concern that a complaint she had made to Human Resources was not being followed through, which was causing her more stress. She said she did not feel able to return to work until the perceived issues had been resolved. The Occupational Health nurse advised that management undertake a Stress Risk Assessment. The nurse also discussed with Mrs Hamilton a phased return to work. Mrs Hamilton was resistant to that suggestion, because she felt that with the backlog of work that would have built up, a phased return to work would be difficult to manage.
81. Subsequently on 1 December 2016, Ms Butcher, (HR) telephoned Mrs Hamilton to inform her that the hours which she had previously been offered could not now be honoured as they had been, "given away to someone else to prevent their redundancy".
82. On 14 December 2016, Mrs Hamilton spoke to her line manager Ms Tory and explained that the reason she was unable to return to work was the fact that she had been offered and had accepted full time hours which had now been retracted, "without justification".
83. A case conference was held on 15 December 2016 regarding Mrs Hamilton. She did not attend, but her Unison representative did, Ms Crowe. Also attending were Mr Humberstone, Ms Tory, PNC Supervisor Mr Pete Hawkins and Ms Butcher. Minutes of this meeting begin at page 63. Ms Tory is recorded as reporting that the day to day work of Mrs Hamilton had been carried out by the Alarms Administrator in Cambridge and that Ms Tory herself had cleared a backlog of irrelevant emails in Mrs Hamilton's inbox. It was noted that Mrs Hamilton has said that she will need full time hours on her return, in order to complete her normal workload and that it was likely that the Force Medical Advisor, (FMA) would suggest a phased return to work. Mr Hawkins, (who was to be the manager of the new department to which Mrs Hamilton was to be transferred along with her Alarm colleagues) commented that he did not have a free desk, it was agreed that she should be provided with a dedicated desk with a computer with her profile loaded and that she would not be able to "desk hop" because of the ICT programmes required for her

role. It was noted as agreed that the capability procedure would be commenced upon Mrs Hamilton's return to work. Against the action points from the meeting are that Ms Butcher is to ensure that Mrs Hamilton is aware that full time hours are available to her should she wish to take them up.

84. Ms Butcher informed Mrs Hamilton by telephone that day that reinstatement of her extra hours was available to her.
85. Mrs Hamilton was invited by letter dated 16 December 2016 to attend a case meeting on 3 January 2017, to discuss:
 - 85.1 What might be preventing her return to work;
 - 85.2 What could be done to facilitate her return to work, and
 - 85.3 The potential implications in accordance with the respondent's Attendance Management Procedures.
86. That meeting took place on 3 January 2017, the notes are at page 70. Also in attendance were a Miss Baldwin, (senior manager) Ms Tory, Ms Crowe from Unison and Mrs Crosby as HR advisor. This note records that Mrs Hamilton confirmed she had met with someone called Richard, (the manager responsible for delivering the consultation meeting) and Ms Butcher, they had apologised to her for what had happened in the redundancy process, but that she still sought a further apology.
87. At the meeting of 3 January, Mrs Crosby is recorded as explaining that the offer to Mrs Hamilton of additional hours which was then retracted was unfortunate. It had been necessary in order to avoid a potential redundancy situation. She acknowledged that the hours should not have been offered until such things had been finalised. It was acknowledged that this situation should have been dealt with better. Mrs Hamilton was to continue in her role in accordance with her counter proposal, in the same location, on increased hours, with effect from 1 March 2017. A phased return to work was discussed and agreed, Mrs Hamilton being given re-assurance that she would not have to return to a backlog of work. It was also noted there should be a Stress Risk Assessment upon her return. Mrs Hamilton said that she had received 6 counselling sessions through the respondent's EAP and would like a further 6 sessions, which Ms Baldwin said she would look into. Ms Tory told Mrs Hamilton that she was setting long term absence triggers, (i.e. exceeding 28 days) in its record:

“... which was unsustainable; therefore she would be issuing an informal management action letter. Margaret [Ms Baldwin] advised Jenny that she and Caroline (whilst Margaret was on leave) would continue to support her but advised that she needed to return next week, unless for any reason OHU advised otherwise.”
88. The above points were confirmed in a letter dated 3 January 2017, (page 67). This includes that Mrs Hamilton was told her attendance would

be reviewed monthly and that, “if there is not an immediate and sustained improvement then action may be taken under the BCH capability procedure”.

89. Mrs Hamilton met with the respondent’s Force Medical Advisor (FMA) Doctor Marcus on 4 January 2017. He produced a report which begins in the bundle at page 73. He recorded what he was told by Mrs Hamilton as the cause of her work-related stress. Her focus was on the redundancy process, which she described as botched. She recited the suggested phased return to work and the proposal for a Stress Risk Assessment. He suggested a further review when she started her new duties fully, in March 2017.
90. Mrs Hamilton returned to work on 12 January 2017. On 16 January 2017, she met with her new manager, Mr Hawkins and a person who in due course would become her new supervisor, Mrs Murrell. In this meeting, Mr Hawkins informed Mrs Hamilton that her focus would be purely on alarms and security systems, which was where her skills and expertise lay.
91. On 20 January 2017, Mrs Hamilton broke down in tears at work. Mr Hawkins went to speak to her. He was not at that time her manager. He tried to reassure her about the pending move to his department. He discussed with her that further counselling might be possible, which should be discussed with her manager and occupational health, or she should contact her GP.
92. On 22 January 2017, Mrs Hamilton wrote a letter to Mr Church in which she set out what she referred to as a number of points of concern which had contributed to her long-term sickness. She said there had been a number of incidents which stemmed from the re-organisation, the final straw of which was the way in which she was told that she was at risk of redundancy. She said that in preparing her counter proposal, it had become apparent to her that the respondent’s formulated proposals had been without the benefit of advice from specialists in her field. She said that while she had been told current line management had been fully appraised of the proposed changes, she discovered that was not the case. She complained that the counselling she had received had been restricted to 6 sessions. She complained the apology she had received from Mr Church had not addressed the main point at issue. She complained about having been offered full time hours only for that to be withdrawn and then re-instated. She sought an acknowledgement that these matters had contributed to her mental ill health. She asked the respondent to authorise further counselling.
93. On 24 January 2017, Mrs Hamilton learnt that her Cambridgeshire colleague Miss Smith would be leaving and that this would result in her having to increase her workload by 50%. Mr Hawkins told her that she and her Hertfordshire colleague would have to split Miss Smith’s work between them until a replacement was found. A replacement for Miss Smith started in June 2017.

94. A meeting took place between Ms Tory and Mrs Hamilton on 26 January 2017, recorded at page 77. Mrs Hamilton is noted to have said that she was coping well with her workload and that she felt in a better frame of mind. Ms Smith was logging into Mrs Hamilton's email account to help reduce the backlog, for which Mrs Hamilton was grateful. It was noted she had met with Mr Hawkins, who was to take over as her new line manager from 1 March when she relocated to the newly formed IMD Unit, to which she was said to have, "no apprehension and is positively looking forward to". She is recorded as saying that she was happy with the support that she was receiving from Ms Tory and management. She agreed to a further appointment with the Force Medical Officer at the end of February.
95. The meeting of 26 January was followed by a letter, clearly a standard letter, which referred to her having triggered informal management action with her sickness record and stating that her absence would continue to be monitored.
96. The move from the control room to the IMD took place as scheduled on 1 March 2017. At the same time, Mrs Murrell was promoted to the position of Supervisor from that of PNC Operative. She became Mrs Hamilton's supervisor. Mr Hawkins became her manager. Mrs Murrell knew that Mrs Hamilton had been off sick, but she did not know the reason. There was no handover of information and she did not know that there had been stress issues. Mr Hawkins did know.
97. Mrs Murrell's promotion followed a competition that involved internal and external advertising, application and interview. Mrs Hamilton did not apply.
98. At the time of the transfer, Mrs Hamilton's work was made difficult, (as was everybody's in the IMD) because of IT issues in that department, including an upgrade that should have taken 10 days but took 7 weeks.
99. On 6 March 2017, Mrs Hamilton received an outcome from Mr Church, page 80. The letter is dated 1 March. He states that he re-extends his apology:

"I am very sorry for the impact that the consultation process had on you. In addition, I am also sorry that my initial apology did not address all the specific issues that you raised and I intend to address those here."

He said that he completely took on board that it was felt that the smaller pre-meeting before the redundancy consultation felt impersonal, that the room layout was formal and that not everyone present was identified. He said he had raised these points with those responsible. He referred to the respondent as having learned of the importance of the early involvement of staff in the design phase of the project. He said that he had asked the project team to ensure that this was something that was incorporated in how they approach any future change process. He explained that he was unable to become involved in the return to work process but that he had

asked Occupational Health to look at the request for additional counselling sessions. He concluded:

“I do sincerely hope that my response has both re-assured and addressed the issues that you have raised. If, however, you feel that this matter should be progressed more formally the option of raising a Fairness At Work complaint is still open to you.”

100. On 20 March 2017, Mrs Hamilton resigned her employment, page 83. She complained in her letter of resignation of asking for assistance in the form of further counselling and with key elements of the organisational infrastructure, which she described as broken, which was causing her stress. She complained she had received neither, that the job was making her ill and said that she could not continue. Mr Hawkins encouraged Mrs Hamilton to take a couple of days to think about it, in the meantime not acting on the resignation which subsequently, Mrs Hamilton withdrew on 23 March. There is no documentation about Mr Hawkins' discussions with Mrs Hamilton nor about the resignation being withdrawn. Mrs Murrell knew of the resignation, but did not see the letter. Mr Hawkins says that after the resignation was withdrawn, he told Mrs Hamilton to keep her focus on alarm administration and that signal work would continue to be done by PNC staff for the time being. Mrs Hamilton agrees in her witness statement, (paragraph 46) that she was assured her job was to focus on alarms.
101. On 4 April 2017, Mrs Hamilton was signed off once more as unfit to work due to work related stress. During this period of absence, Mrs Hamilton complains that she did not receive any contact from the respondent for the first three weeks. Mr Hawkins agrees that this is so and says that it was deliberate, because she was absent from work due to stress, he thought it best not to contact her to begin with. From 25 April 2017, there was regular contact with Mrs Hamilton by Mrs Murrell. She recorded her contacts with Mrs Hamilton in a formal contacts diary, which starts at page 86a.
102. Mrs Murrell first spoke to Mrs Hamilton on 25 April. Mrs Hamilton is recorded as having said that she was not ready to return to work, she felt more stressed than last time and she was upset that she had received no contact from the respondent. She complained that no Stress Risk Assessment had been done and that she wanted more counselling. Mrs Murrell records that IT issues, process mapping and backlog of work seemed to be the main triggers. Mrs Hamilton had described the process maps as looking as if they had been prepared by a child. She is recorded as having said she could not face the backlogs.
103. Mrs Murrell rang again on 27 April to set up a welfare meeting at which she would also complete a Stress Risk Assessment, to take place at a Costa Coffee venue.
104. In the meantime, Mr Hawkins arranged for two PNC staff to be trained by the Hertfordshire Alarms Administrator to work on alarms administration so that no backlog would build up during Mrs Hamilton's absence.

105. The planned meeting between Mrs Hamilton and Mrs Murrell at Costa Coffee took place on 8 May 2017. Mrs Murrell completed a Stress Risk Assessment. She emailed a copy of the risk assessment to Mrs Hamilton the next day. The document is at page 90. This was Mrs Murrell's first Stress Risk Assessment and she had not seen the SOP on stress management before this hearing. Mrs Hamilton went into a great deal of detail in the Stress Risk Assessment discussion, which Mrs Murrell tried to condense into the form that she had to use. The following points were noted:

105.1 The backlog of work was attributed to the IT system upgrade taking 6 weeks instead of 10 days. The action agreed was that full-time members of staff, (PNC Practitioners) had been assigned to work on alarms as of 2 May.

105.2 Mrs Hamilton said she had not been informed of the proposed upgrade and had therefore been unable to prepare for it such as by informing companies that there would be no updates during that process and as a consequence, many complaints had been received which she had found stressful. On the subject of alarms process mapping, she complained that there had been little consultation with her, she felt her experience had been disregarded. She felt unable to control her pace of work because of the quantity of backlog. She regarded her working day as "plate spinning". Actions recorded were that in future, ICT project managers should notify in advance of proposed upgrades, Mrs Hamilton should be provided with a copy of the process map when finalised and reference is made again to full-time member of staff being assigned to alarm work from 2 May.

105.3 Mrs Hamilton complained about the absence of contact from the respondent, her Union, HR, management or Occupational Health since she had been signed off. She said that the move on 1 March had caused her stress. Agreed action was there had been an Occupational Health referral that day, Mrs Murrell will ask Occupational Health to contact her as soon as possible, Mrs Hamilton was advised to also request counselling via her GP.

105.4 Under the heading of work relationships, Mrs Hamilton said that she had recently moved to a new team and she had lost a supportive colleague, (a reference to Miss Smith leaving). In terms of action agreed, the assessment reads, "Nil at this time".

105.5 Mrs Hamilton spoke of there being an ongoing issue of uncertainty with regard to her job description alignment. It is recorded that the PNC Manager, (that is Mr Hawkins) was thought to have knowledge of this and contact was to be made with him, (it is not clear whether that contact is to be made by Mrs Murrell or Mrs Hamilton).

- 105.6 Mrs Hamilton stated that she found the idea of process changes in the future stressful, particularly regarding who was going to help her with her workload. She was disappointed that although during the process mapping she had been asked for her knowledge and expertise, she was now stressed that she was not going to be allowed to be in on the final decision-making process. She felt management did not know enough about her role to make an informed decision. The action again is to make reference to the full-time member of staff being assigned on 2 May. Mrs Murrell was to discuss these points with Mr Hawkins.
106. Mrs Hamilton commented on the Stress Risk Assessment in detail, (pages 97 to 103):
- 106.1 She emphasised her excessive workload;
 - 106.2 She complained of lack of support;
 - 106.3 She referred to the full-time member of staff as being untrained;
 - 106.4 She said she had been told that she would have extra work to cover for Miss Smith's departure and complained of the loss of Miss Smith as a knowledgeable and supportive colleague;
 - 106.5 She said she was concerned that she had been told the processes were being streamlined;
 - 106.6 She said her work in preparing process maps was being re-done;
 - 106.7 She expressed exasperation at the length of time the IT upgrade had taken and damage that caused to customer relations;
 - 106.8 She referred to moving departments in March;
 - 106.9 She complained about her dedicated equipment not being moved properly;
 - 106.10 She complained of the demand to create training materials;
 - 106.11 She said she had been overwhelmed by all the changes;
 - 106.12 She complained about not being contacted during her period of absence for 3 weeks;
 - 106.13 She said she had to take a day's leave each week to get through the week;
 - 106.14 She complained that she had returned to work in January 2017 and no Stress Risk Assessment was done until May 2017;

- 106.15 She complained about the lack of authorisation for additional counselling;
- 106.16 She complained about the lack of follow-up communications from the Head of Occupational Health, the Head of Change and the Force Medical Advisor, of having to repeat her story as to why she was stressed to different people, such as different occupational health advisors;
- 106.17 She complained about being told to seek counselling from her GP, for which there was an extraordinarily long waiting list;
- 106.18 She said she felt that her managers did not understand her role;
- 106.19 Interestingly, she said that she had been repeatedly promised her role was one of an Alarms Administrator, (with the addition of the simplest PNC checks within Bedfordshire only). She expressed the concern that her job description reflected the multiple role of the PNC Practitioner;
- 106.20 She said that there were additional non-work issues or worries in respect of her father's ill health, the ups and downs of her daughter's schooling and her husband's work taking him away from home.
- 106.21 She wrote of her financial worries and that Mrs Murrell had told her that she did not know when her sick pay would be reduced to half;
- 106.22 She wrote that she was anxious about the scheduled move from HQ to Borough Hall, (see below) she was concerned about the time and cost of travel and parking and about childcare issues. She complained that a request for the option of working from home had been denied.
107. Mrs Murrell sought advice from HR as to what to do about this lengthy additional document from the claimant. She was told that her Stress Risk Assessment was perfectly fine, but that she should send both documents to Occupational Health. No response to her document was ever provided to Mrs Hamilton.
108. On 18 May 2017, Mrs Hamilton was informed that her sick pay would reduce to one half as of 30 May.
109. The document at page 97 had been prepared on 26 May. On 22 May she had been informed in a meeting with Mrs Murrell and Ms Thurmott that there was a proposal to move the location of her unit from the HQ in Kempston to Borough Hall in Bedford. In this conversation, she raised concerns that this would involve travelling through traffic at peak times to and from work, the time involved would cause childcare issues. Mrs Murrell

discussed with her the possibility of having flexible start and finish times in order to deal with this, to work some long days and some short days. Mrs Murrell also suggested Mrs Hamilton tour Borough Hall to get a feel for it. At this meeting, Mrs Hamilton said that she was going to forward an edited copy of the Stress Risk Assessment after her husband had looked at it. They discussed a phased return to work.

110. On 25 May Mrs Hamilton appealed against the reduction of her sick pay to one half her normal pay, on the grounds that the reason for her absences were work related stress directly attributable to stress caused by work and the execution of her duty.
111. In June 2017 a Miss Wildman, a replacement for Miss Smith at Cambridgeshire, started work. She was trained by the Alarms Administrator for Hertfordshire, (who Mrs Hamilton describes as more of a signals specialist).
112. On 12 June 2017, Mrs Murrell spoke to Mrs Hamilton again by telephone. Mrs Hamilton expressed that she was feeling very stressed about the proposed move to Borough Hall, particularly with regard to the difficulties of collecting her daughter from school. Mrs Murrell suggested some shorter days and some longer days. Mrs Hamilton is recorded as saying that she would look into it, but that this would not work. In a further conversation on 19 June, Mrs Hamilton said she was not feeling any better.
113. On 26 June when Mrs Murrell telephoned Mrs Hamilton, she was told that Mrs Hamilton was not having a good day. Mrs Hamilton expressed anxiety about her sick pay and her pending appeal. She discussed the possibility of raising a Fairness At Work complaint. Mrs Murrell advised her to contact her Union in that regard. She discussed with Mrs Hamilton various matters that had been raised during a consultation briefing on the teams move to Borough Hall, promising to forward her documents relating to that briefing. Mrs Hamilton reiterated her concerns about getting her child to and from school. She said that she was not ready to view the new site.
114. Mrs Hamilton's appeal in respect of her sick pay was refused. She was notified of this by letter dated 27 June 2017. The reasoning was that there are limited cases where sick pay may be extended as a reasonable adjustment, such as when a return to work cannot occur due to a reasonable adjustment not having been made. The letter stated that sick pay is not extended simply because a contractual entitlement has been exhausted.
115. Mrs Murrell and Mrs Hamilton spoke on the telephone again on 3 July 2017. Mrs Hamilton said she was not feeling any better and was not ready to return to work. She complained that her sick pay appeal had been unsuccessful. She reported she had been put on a waiting list for a course of counselling sessions beginning in September with the Bedfordshire Wellbeing Service. She said it would be impossible for her to return to work at Borough Hall full time and that she could not afford to work for reduced

hours. She said she would have been able to remain on full hours if she had been able to stay working at HQ. She expressed exasperation that the respondent would not offer her more counselling sessions. Arrangements were made for a meeting on 14 July.

116. Mrs Murrell's evidence was that Mr Hawkins and his manager, Ms Weeks, took the view that the whole team needed to work together and that Mrs Hamilton working alone at HQ was not therefore possible.
117. Mrs Murrell and Mrs Hamilton met on 14 July 2017. The notes of that meeting start at page 106. Mrs Hamilton is recorded as saying that she is prepared to look into the possibility of re-deployment into other full-time roles. She had stated that she was not prepared to consider returning to work on a trial period travelling to and from Borough Hall. She did however agree to test the route the following week. In evidence, Mrs Murrell says that Mrs Hamilton raised the possibility of her being made redundant, Mrs Hamilton says that Mrs Murrell suggested she might look for work at an alarm company, who would snap her up because of her knowledge. We find that both are likely to be true.
118. Mrs Hamilton sent an email to Mrs Murrell on 24 July stating that she was feeling desperate, financially and emotionally raw. She complained that she was not going to be able to carry forward much of her accrued annual leave. She complained that the issues raised in the stress assessment had not been resolved. She expressed, "hearing that there is no backlog is worrying". (She explained to us the meaning of that remark was that it indicated to her that her work was not being done properly.) She stated she did not feel that she had the resilience to be able to work in a new environment. She said she had been looking at vacancies, but she had not been able to test the route to Borough Hall.
119. Mrs Hamilton's team and therefore the location of her role, transferred from police headquarters to Borough Hall on 1 August 2017.
120. Ms Emma Jackson of Human Resources and Mr Hawkins met with Mrs Hamilton on 7 August 2017, (Mrs Murrell was on leave). What was discussed in this meeting is recorded in an email of 9 August copied at page 115. Ms Jackson records that:
 - 120.1 There could be flexibility over Mrs Hamilton's hours in order to accommodate her childcare concerns, suggesting as an example 8.15 to 16.15. Making it clear that this can be re-discussed if it did not work. Car park fees would be paid for the foreseeable future.
 - 120.2 Mrs Hamilton would return on a phased return to work, to begin with for a cup of tea and to meet colleagues, thereafter for 50% of her time, giving her an opportunity to complete a fresh risk assessment. The arrangements would be reviewed weekly.

- 120.3 Someone would meet Mrs Hamilton in the car park on her first day back.
- 120.4 If Mrs Hamilton was certified fit as of 11 August, she would take annual leave until 5 September and the remainder of her leave would be carried over.
- 120.5 Clarification was provided to Mrs Hamilton's role and she was reassured that arrangements were in place to cover for her when she was on leave so that no backlog would build up in the future.
- 120.6 It was felt that if the new process maps had been sent to Mrs Hamilton whilst she was off ill, it would add to her stress, but she was assured they would be provided to her on her return to work and they would appreciate her feedback.
121. Mrs Hamilton confirmed in evidence she agreed Mr Hawkins had told her that she need only do alarms work and not signal work. However, she says that she remained anxious because signal work remained in her job description and she was not informed of any plan in place for her to receive training so that she would be able to do this in the future.
122. On 12 September 2017, Mrs Hamilton met with Mr Hawkins and the new Alarms Administrator appointed to Cambridgeshire. At this meeting she was informed that she would report to Mrs Murrell, who was also now to be supervisor for the alarms people in Cambridgeshire and Hertfordshire. Mrs Hamilton describes this in her witness statement, (paragraph 64) as her having been sidelined or disregarded for promotion to a supervisory role. Mrs Murrell had been a supervisor already, the change was that she was now the appointed supervisor for the other Alarms Administrators in Cambridgeshire and Hertfordshire.
123. Mrs Hamilton returned to work on reduced hours on 5 September. She was unable to log into the respondent's IT system. The problem was resolved within 24 hours. She complains there was no return to work meeting. She was told by Mrs Murrell to work on alarm deletions only, a trained PNC practitioner would do the other work, (we accept Mrs Murrells evidence in that regard, corroborated by the reference to restricted duties in the subsequent risk assessment).
124. A Stress Risk Assessment was carried out by Mrs Murrell on 26 September, page 119. The key points are:
- 124.1 Mrs Hamilton's backlog had increased during her absence from work. Action is that two PNC staff were being trained on alarms to provide extra cover.
- 124.2 Mrs Hamilton was concerned that other staff had been trained to a different standard to that which she was used to and a different finance process had been introduced, which was causing her stress.

She was also anxious about other work that may exist that she was not aware of. She was anxious about the fact that she used to be autonomous and now had to collaborate. She was concerned that processes had been changed, to suit the three police forces. For action, she suggested that she should have tailored counselling to help her deal with these issues, she was advised to contact occupational health to see if it was possible for counselling to resume.

- 124.3 Mrs Hamilton was still feeling stressed following the departure of Miss Smith. No agreed action is recorded.
- 124.4 No entry is made under a heading for relationship issues.
- 124.5 Mrs Hamilton expressed general concern that she would be required to take on signal marker work imminently. She was advised to raise any queries regarding her job description with Mr Hawkins.
125. 27 September 2017 Mrs Hamilton emailed Mrs Murrell, copying in Mr Hawkins, expressing her concern about the lower standard of work that she was encountering, the number of mistakes that had been made. Mrs Murrell did not respond, she discussed the situation with Mr Hawkins, who told her that the claimant would be involved in the training of the back-up members of staff. Mrs Murrell told us that she wanted to communicate that directly with Mrs Hamilton, but at the time she was in London and felt that an email would simply add to Mrs Hamilton's stress. As it happened, Mrs Hamilton walked out of work on 4 October before Mrs Murrell had returned and so she did not get the opportunity to discuss these matters.
126. Mrs Hamilton says that she had been raising concerns about the quality of work on a regular basis, verbally since her return to work. Mrs Murrell denies that is the case. That Mrs Hamilton would have been raising these issues repeatedly verbally is consistent with what we have observed of Mrs Hamilton's character and find that it is more likely than not that she had done so.
127. The errors that Mrs Hamilton was raising were not regarded as errors by the respondent, but that was never communicated to Mrs Hamilton.
128. As noted above, on 4 October 2017 Mrs Hamilton left work early and commenced a period of sickness absence. It is not really clear from Mrs Hamilton's evidence what exactly triggered this, it seems likely that email correspondence on 4 October regarding her taking leave for counselling may have had something to do with it. Further counselling was to be made available to her. The issue in the correspondence was that Mrs Hamilton had been told that she would receive credit for 2½ hours work when she attended counselling. Specifically, she had been told that if she took a day's leave on the day she was due to attend counselling, she would be credited with 2½ hours of work. However, emails on 4 October informed her that if she left work to attend counselling, she would be

credited with 2½ hours but if she chose to take leave, she would not. The position of the respondent is not unreasonable, the problem was that the email correspondence on 4 October contradicted what she had been told verbally.

129. On 5 October 2017, Mrs Hamilton was admitted to hospital with gastritis.
130. By a letter dated 9 October 2017, Mrs Hamilton was unfortunately invited to attend a welfare meeting on 13 September 2017. There was a mistake with the date.
131. On 18 October 2017, Mrs Hamilton was notified that for this further period of sickness absence, sick pay would be reduced to half pay with effect from 3 November 2017. She appealed this decision and her appeal was again unsuccessful, communicated to her on 21 December 2017. The reason given was that the only circumstances in which the discretion to extend sick pay can be exercised are where incapability is directly attributable to an injury or illness sustained or contracted in the execution of duty, where the illness may be terminal, the disablement being permanent, or further reasonable adjustments are being considered.
132. The respondent has a process whereby people who are absent from work due to psychological illness have an opportunity to meet with an independent manager to give them an opportunity to discuss with someone independent, issues with regard to related problems. Mr Etherington was appointed independent manager to meet with Mrs Hamilton on 24 October 2017. He met with her on 26 October. He wrote an email on 26 October to Mrs Hamilton summarising their discussions. He had encouraged Mrs Hamilton to focus on her 5 top issues, which he recorded as follows:
 - 132.1 Further counselling.
 - 132.2 Don't go back on agreements, (citing the problem with regard to leave to attend counselling).
 - 132.3 Tabling time for Mrs Hamilton to spend with Clare [Baldwin] so that it is structured as opposed to being ad hoc.
 - 132.4 Mr Hawkins and Mrs Murrell to attain a better understanding of policies and procedures relating to alarms.
 - 132.5 Improved contact with HR, better communications for example being provided with a list of issues such as sick pay being reduced to half.
133. Mrs Hamilton sent Mr Etherington a long reply on 27 October, (page 145):
 - 133.1 She had said that she could not list her top 5 issues.

- 133.2 She had explained everything to Mrs Murrell in a 2 hour meeting in May which had been reduced to 5 lines on a template document. Mrs Hamilton explained she had provided a 10 page reply.
- 133.3 She had heard nothing from Emma Jackson since their meeting in August.
- 133.4 She had heard nothing from Occupational Health.
- 133.5 The Stress Risk Assessment completed in September was incomplete and provided no support.
- 133.6 She had tried to explain to Mr Hawkins that the problem with travel to Borough Hall was not in itself a “show stopper” but an issue that was part of a jigsaw of issues.
- 133.7 She had explained to Mr Etherington that the concern over her job description was pivotal.
- 133.8 The start of the change process was the trigger for her deterioration and that worsened with each contact that she has with the respondent.
- 133.9 She protested at Mr Etherington’s expressed belief that she was trying to provide a Rolls Royce service, whereas the respondent only needed a Mondeo service.
- 133.10 A major stress for her was finding that data entries made in her absence consisted of many errors and mistakes.
- 133.11 The loss of her colleague from Cambridgeshire was a major blow.
- 133.12 She was resolutely opposed to adding other tasks such as that of signal markers to her job profile, although she had agreed to be trained and undertake simple PNC checks on alarm companies in Bedfordshire.
- 133.13 Her voice about her concerns for her inexperienced colleagues was not being listened to and no action was being taken.
- 133.14 When she returned to work in September she found 200 alarm records that needed to be reviewed and letters issued, which she described as a massive task.
- 133.15 Although there was a phased return to work, she was expected to work in excess of the agreed hours.
- 133.16 She summarised that she was trying to articulate some difficult issues and the hurdle to her return to work seemed to be getting bigger and bigger.

134. Mr Etherington replied on 7 November to acknowledge that he appreciated there were more than the 5 key issues, he had honed in on those 5 to see some swift, early action. He stated that he recognised she had struggled to accept her new role and job description. He explained that he would now have to step back.
135. Mrs Murrell tried to set about setting up a meeting with Mrs Hamilton and Mr Hawkins to discuss the matters raised with Mr Etherington. These efforts however were put on hold because Mrs Hamilton raised what the respondent's call a Fairness At Work (FAW).
136. On 6 November 2017, Mrs Hamilton wrote a long letter to her Union representative, Ms Crowe. She set out the issues that she wished to raise in her Fairness At Work complaint. This letter is in the bundle beginning at page 135. The FAW form is at page 150a. In the box which calls for a brief summary of the issues the complainant wishes to resolve, the entry makes reference to the attached document. The attached document is Mrs Hamilton's letter to her Union, just over 9 pages in length. The FAW complaint was submitted on the 9 November 2017.
137. Mrs Hamilton indicated she wished to enter into privileged discussions with a view to reaching a compromise agreement. It was made clear that was not an outcome that would be considered under the FAW procedure.
138. The respondent had difficulties finding a manager free and able to deal with the FAW. They were eventually able to identify Ms Wilkinson. That was in mid-December. She had commitments up until the Christmas break and therefore arranged to meet with Mrs Hamilton on 11 January 2018.
139. In the meantime, on 4 January 2018, Mrs Hamilton had submitted a further appeal to the Chief Constable against the reduction of her sick pay on the basis that her absences were due to stress which had been caused by the diligent exercise of her duties. That further appeal was unsuccessful. She was notified of this in a letter dated 12 February written by somebody in HR on behalf of the Chief Constable, the reasoning previously given was repeated.
140. The FAW meeting on 11 January 2018 was attended by Ms Wilkinson, Mrs Hamilton and Union representative, Ms Crowe. No minutes were taken. Ms Wilkinson then investigated the matters raised and prepared a draft outcome. She met with Mrs Hamilton and Ms Crowe on 26 February to provide the draft outcome and to discuss its content.
141. Mrs Hamilton provided a detailed written response dated 9 March 2018, 15 pages long.
142. Ms Wilkinson amended her draft and provided her final outcome on 13 March 2018. Her response to Mrs Hamilton's detailed critique was to observe that she had stated she does not agree with the findings and

intends to appeal. Ms Wilkinson wrote that she had reviewed the document and noted 5 factual amendments to her timeline. Points of note from the FAW outcome are as follows:

- 142.1 Ms Wilkinson stated in her opening paragraph, “Using the FAW principles, I will not be considering every detail of all of the information provided, nor comment on “who said what, when and who was right and who was wrong”, rather taking a more holistic approach ...”.
- 142.2 On the subject of the re-organisation and potential redundancy, she observed that Mrs Hamilton had made a successful counter proposal which led to the position of Alarms and SIG Business Services Partner being redesigned, the redesigned post being offered to Mrs Hamilton, which she accepted. She noted that Mrs Hamilton had received an apology for the way the redundancy situation had been managed. She noted that this was the beginning of Mrs Hamilton’s work-based stress issues. Her finding was that the respondent had acted reasonably and, “whilst acknowledging JH stress I would recommend JH tries to come to terms with this”.
- 142.3 On the subject of Mrs Hamilton’s concerns about her new post, Ms Wilkinson noted it was unrealistic for each force involved in the merger to expect to continue working the way it had done before. She noted that Mrs Hamilton had been identified as an expert in her subject matter by the change team. Mrs Hamilton had on numerous occasions raised her concerns about the processes being developed and these were taken into account, but her ongoing involvement in the development of processes had been thwarted by her absence from work. She said she had sight of a number of records showing Mrs Hamilton had been invited to express her views and thoughts. She recommended that Mrs Hamilton tries to come to terms with her new role and tries to accept the change. She suggested that management ought to invite her to undertake a critical review upon her return, which should be properly considered. If any suggestions are not adopted, the reasons why must be explained to her. The outcome under this heading was, “The organisation can demonstrate the new post and processes were subject of careful planning and that JH was offered opportunity to add views. The final “say” on the processes belongs to the management team as disappointing as that may be to JH.”.
- 142.4 The next subject considered was the question of support provided to Mrs Hamilton moving into her new post and subsequently on her change of location. Ms Wilkinson recognised that it was reasonable for Mrs Hamilton to expect to be given clear direction on the duties required of her. She recognised that moving location and coming to terms with a change in role would clearly contribute to her stress. She noted that it was suggested Mrs Hamilton should go to Borough Hall one day a week to start with, as part of a planned induction.

She noted that Mrs Hamilton was informed at least twice that she should carry on undertaking her alarm responsibilities. She described Mrs Hamilton's expectation that this meant that she would only ever have to do alarm work and that her new job profile should be amended accordingly, as unreasonable. She found that it was perfectly acceptable for management to request that she focuses on the alarm work first, but that Mrs Hamilton should accept that signal work would become part of her role. Her finding was, "Good efforts can be evidenced as having been made by the management team to bring JH into the unit, and clarity was given as to the initial duties she was required to undertake".

142.5 On the question of management of stress-based sickness absence, Ms Wilkinson recognised that this was something sensitive for an individual to experience and something that can be difficult for supervisors to manage. She identified that the starting point was change that Mrs Hamilton disagreed with, so that all efforts then to implement change increased her stress. A point had been reached at which Mrs Hamilton now felt that any engagement she had with the respondent was stressful. Ms Wilkinson described the management team and Human Resources as over cautious. She observed that management did not adhere strictly to the Absence Management Process, adopting a more informal approach, which she described as in accordance with the spirit of the process. She noted that Mrs Hamilton had several Occupational Health reviews and meetings with the Force Medical Officer. She acknowledged that the first Stress Risk Assessment had been conducted in May when it should have been conducted in January. She considered the content of the Stress Risk assessment document and considered it to be in line with the standards expected by the respondent. Similarly, she considered the second Stress Risk Assessment in September to have been to an acceptable standard. The finding outcome was therefore, "A swifter move to the more formal LTS process could have been an opportunity to lay out to JH what she should and should not expect during her absence from work and the plans to return to work. The initial SRA should have happened in January. The content of the 2 SRAs are acceptable. The resolution of a stress trigger cannot be to put back the remit of the post to pre-collaboration."

142.6 On the subject of arrangements for return to work, Ms Wilkinson cited and explained that she considered the arrangements which had been put in place to have been satisfactory, including pre-return to work meetings and putting in place arrangements for phased returns to work, allowing Mrs Hamilton to trial the travel arrangements to the new location, asking her to focus on alarms administration. She noted that it was unfortunate that the national computer upgrade coincided with Mrs Hamilton's return to work. She observed that on Mrs Hamilton's second return to work in September, she was given a specific task to clear a retrospective backlog of work, which could be

completed at her own pace on reduced hours but that, without any direction to do so, she began quality assessing the work of colleagues, locating examples of what she considered poor quality work and poor training and presenting that evidence to management. She noted that Mrs Murrell and Mr Hawkins had reviewed that material and considered many of the points to be trivial. The outcome was, “the organisation can demonstrate they implemented thoughtful return to work plans for JH”.

142.7 On the subject of communication between Mrs Hamilton, Human Resources and line management, Mrs Wilkinson recognised that this was something that any person absent from work for a long period would focus on. She noted Mrs Hamilton had provided several examples of inconsistent communication. She considered specific issues that had been raised, including the initial apology from Mr Church which she did not immediately see because it had been sent to her work email address. Mrs Hamilton had also raised not receiving replies to emails about quality of work and not being warned sufficiently in advance about sick pay being reduced to one half. Ms Wilkinson noted that management had also cited examples where they had sought communication from Mrs Hamilton and she had not responded. Mrs Hamilton was quoted as often responding, “You are stressing me out”. Ms Wilkinson noted that difficulties in communication had been a key theme throughout and suggested that the respondent must ensure that when staff are absent, communication is highlighted as an issue. Her recorded outcome is, “The collective organisation (line management and HR) could have in some instances improved how they communicated with JH, however overall were able to demonstrate in the main they have committed to communication with JH”.

142.8 Finally, on the subject of outstanding concerns that may prevent a return to work, Ms Wilkinson saw as the only outstanding point, that Mrs Hamilton had missed out on the development of the processes she will now have to learn in order to undertake her role. She says that Mrs Hamilton will be welcomed back, that she has a good solid grounding in alarms processes and that she will find it very easy to adapt to the SIG processes. She recommended that HR work with line management to draft a plan with Unison or provide assurances to Mrs Hamilton. Her outcome is that, “There are no outstanding concerns that should prevent a return to work”.

142.9 Ms Wilkinson went on to identify three themes:

142.9.1 Firstly, ensuring the organisation’s systems operate in a timely and effective manner;

142.9.2 Secondly, that information is clearly provided to Mrs Hamilton, and

142.9.3 Thirdly, there should be a review of the Stress Risk Assessment form.

142.10 In her conclusions, Mrs Wilkinson recommends that Mrs Hamilton try to come to terms with the fact that change has been implemented. She had an opportunity to return to work where a process has been embedded, it is a role that should feel fresh to her and she will be provided with support to ensure that she understands the remit of her duties and her role. She states Mrs Hamilton's management team were committed to facilitating this.

143. At Appendix A to the FAW outcome Mrs Wilkinson lists a significant number of documents which she considered, (although copies were not provided to Mrs Hamilton).

144. Mrs Hamilton appealed the FAW outcome by a letter dated 23 March 2018, (page 195). Her appeal points included the following:

144.1 The respondent failed to properly address her diagnosis of anxiety. She asserted that she met the definition of a disabled person and that rather than make reasonable adjustments to minimise further deterioration of her condition, the respondent's failures had exacerbated her condition.

144.2 She complained about the remark in the FAW report that her case is not a fairness at work issue in its true sense.

144.3 She disputed the finding that there was little delay in the outcome to her grievance of 6 November 2017.

144.4 She said the respondent had not followed its stress management standard operating procedure, she was not offered a generic risk assessment in September 2016 or January 2017 and that there had not been, "good communication". Further, she was never referred to the "Recuperative Duties Policy".

144.5 She complained about the timescales in the completion of the FAW investigation.

144.6 She complained of breach of confidentiality in Ms Wilkinson's obtaining information from Occupational Health.

144.7 She complained that the FAW report and decision did not give proper consideration to letters of 6 November 2017 and 9 March 2018. She summarised her main points as follows:

144.7.1 A failure to properly investigate mis-management, failure to communicate and to make reasonable adjustment so as to make a return to work tenable.

- 144.7.2 A failure to properly investigate assertions of breach of policies.
 - 144.7.3 A failure to address concerns over mismanagement of the redundancy consultation process.
 - 144.7.4 A failure to properly consider her assertion that she had been assured that she would only be assigned to alarms.
 - 144.7.5 A failure to consider her request for additional support, training and assistance.
 - 144.7.6 A failure to carry out risk assessments.
 - 144.7.7 A failure to properly investigate her complaints about failed standards of service to alarm companies.
 - 144.7.8 A failure to properly investigate and implement reasonable adjustments.
- 144.8 That the FAW report was itself an act of discrimination in that it failed to take her complaints seriously and sought to chastise her for being stressed, suggesting that she should simply go back to work and move on.
145. The Appeal was dealt with by Mr Upex, a Chief Superintendent with the Bedfordshire Police. He met with Mrs Hamilton on 27 April 2018. The documentation is in an odd format. What was discussed and Mr Upex's conclusions are set out in a single document, which appears in the bundle at pages 200a-200d. The appeal was a review, not a re-hearing. The document has 5 subheadings:
- 145.1 Under the heading of "New Evidence" Mr Upex identified 3 issues: 1) the suggestion that Ms Wilkinson did not consider Mrs Hamilton's condition of anxiety; 2) that Ms Wilkinson and the respondent did not consider Mrs Hamilton as disabled and make reasonable adjustments in the workplace, and 3) Ms Wilkinson had failed to refer to the Stress Management Policy. In Mr Upex's view, these were not new matters, they were matters that Mrs Hamilton could have raised in the FAW or in the meeting or subsequently and she did not do so. However, he proceeded to deal with the points. He said that Ms Wilkinson was not aware that Mrs Hamilton considered herself to be disabled and therefore did not incorporate that in her investigation. He did not consider that these points in any event, would fundamentally affect the outcome of the FAW investigation. He recorded that he had asked Mrs Hamilton what adjustments could have been made and received no answer. In respect of the stress management SOP, he noted that Ms Wilkinson had observed that on occasions, correct procedures were not followed. At this

point, he dismissed complaints that there were failures to follow timescales, stress management procedures, policies and in relation to the Occupational Health appointment, because these were not matters covered under grounds of appeal.

- 145.2 Under the heading of “Fundamental Procedural Error” Mr Upex agreed with Ms Wilkinson’s statement that this was not a true FAW matter. The purpose of a FAW is to tackle situations where individuals have problems with their working environment or working relationships and to find a resolution. However, he noted that nonetheless, the respondent proceeded with an investigation and provided an outcome, in the hope that this would help with the return to work. He accepted that there were delays in the FAW timescales, which have caused further stress. He found that there were detailed matters to investigate and the delays were justified, whilst acknowledging that they had caused further stress.
- 145.3 Under the heading of Reasonableness of Decision/Outcome, Mr Upex records a discussion with Mrs Hamilton about her return to work and in particular, that she had indicated a willingness to work with the respondent to overcome the barriers in respect of a return to work. He noted that Ms Wilkinson had recommended HR, Unison and Mrs Hamilton should together devise a plan for her return to work. He said that the respondent needed to recognise that there were barriers to her return to work, but that they were not insurmountable and Mrs Hamilton and the respondent should work together to overcome them.
- 145.4 Under the heading “Unhappy with Decision”, Mr Upex said that he did not accept that the outcome of the FAW was that Mrs Hamilton should just go back to work and get on with it. The outcome was that she should return to work with a clear supportive plan. He recorded Ms Wilkinson’s explanation that she had not dealt with Mrs Hamilton’s very lengthy and detailed response to her draft FAW report, because some of what she had written was contrary to facts which she had found in her investigation and she knew that Mrs Hamilton had already made it clear that she was going to appeal. She therefore felt that there was no purpose to be served by providing a detailed response. Mr Upex declared that he considered the outcome of the FAW to be fair, balanced and independent.
- 145.5 In his conclusions, Mr Upex notes that Mrs Hamilton found it difficult to trust the respondent and the managers in her department. He acknowledged that there was some justification for that, as there have been failures over time, though everybody appeared to have acted with the best of intentions and that some of the failings have met with apologies. He recorded that Mrs Hamilton had indicated that the situation was recoverable, in that trust could be built up again; she said she was prepared to consider adjustments that could facilitate her return to work. He recommended that she consider

what these adjustments might be and discuss them further with the respondent.

146. The document with his conclusions was sent to Mrs Hamilton by Mr Upex in a letter dated 3 May 2018.
147. On 29 May 2018 there was a meeting entitled "Supportive Informal Management Action Meeting" attended by Ms Jackson of HR, Mrs Murrell and Ms Crowe from Unison. The actions arising out of that meeting were summarised in a letter dated 16 May 2018. This letter lists proposed supportive measures including:
 - 147.1 Flexibility over working hours between 0730 and 1830;
 - 147.2 A further Stress Risk Assessment within the first few days of return to work;
 - 147.3 A workplace adjustment agreement to ensure reasonable adjustments are in place;
 - 147.4 An occupational health referral has already been made, and
 - 147.5 A training/recuperation plan to be drawn up.
148. A training plan was devised, it is copied at page 216a. Unfortunately, Mrs Hamilton never saw this. She resigned on 31 May 2018. Her letter of resignation is at page 207. The reasons for her resignation are given on a form attached at page 209, in which Mrs Hamilton refers to:
 - 148.1 Discrimination suffered as a result of disability of anxiety.
 - 148.2 Being mis-treated, bullied and harassed at work, causing work related stress.
 - 148.3 The issues raised in the Fairness At Work complaint not being properly investigated and ignored.
 - 148.4 The Appeal meeting not giving due consideration to her submissions, the decision being premeditated.
 - 148.5 The Appeal meeting not being impartial, in that the decision maker, Ms Wilkinson, was present.
 - 148.6 The outcome of the process to the effect that she should return to work with the same management chain.
 - 148.7 That the respondent continued to expect Mrs Hamilton to work under conditions which have caused her to become gravely ill.

148.8 That on previous returns to work, she had been given hollow apologies and promises of improvement, which had not been kept.

148.9 She concluded by saying that any return to work was now untenable, following receipt of the Appeal outcome, which she said stated that she is simply to get on with things and return to work.

Conclusions

149. We set out our conclusions by following the agreed list of issues, as amended at the outset of this hearing and as set out above. It would have been helpful if Mr Sims had focused on the agreed list of issues in his submissions. In the paragraphs below, we will state within square brackets the relevant paragraph numbers from the list of issues.

Unfair dismissal

150. The wording of the list of issues is in places rather awkward. The answer to the question at 1.1; (whether the claimant has been dismissed) must surely come after analysis of the specific allegations relied upon. The claimant asserts that she was constructively dismissed, in other words that she resigned in response to a fundamental breach or breaches of contract by the respondent.

151. 1.2 poses the question; whether the outcome of the Fairness At Work procedure on it's own, without considering anything else, amounted to a repudiatory breach of contract? The assertion is not that there was a fundamental written term of the contract of employment that has been breached in some way, but that the outcome represented a breach of the implied term to maintain mutual trust and confidence. A great deal of work had clearly gone into preparing the Fairness At Work investigation outcome. It was detailed in its analysis and appears to have been fair and even handed in its approach. Ms Wilkinson does appear to have approached the issues objectively. It is clear that Ms Wilkinson was trying to reach a solution, to keep Mrs Hamilton as an employee and to encourage her return to work. Although the matters raised by Mrs Hamilton and the way they were raised did not fit in with the respondent's Fairness At Work process, Ms Wilkinson adapted the process to provide and ensure that the matters raised by Mrs Hamilton were investigated objectively and reasonably thoroughly, so that she could be provided with an outcome. None of this can be described as conduct calculated or likely to undermine mutual trust and confidence, quite the reverse.

152. In the alternative, at 1.3 the question posed is; whether the FAW procedure can be said to have been the last straw in a sequence of events, as listed at paragraph 1.4, that together amounted to a breach of the implied term of mutual trust and confidence. We consider each of those events or allegations in turn:

- 152.1 [1.4.1] The respondent's implementation of its Absence Management Policy did not undermine mutual trust and confidence. It was applied appropriately, in circumstances for which it is designed and with some latitude.
- 152.2 [1.4.2] There were no meetings which were formally labelled, "return to work" meetings but there were throughout the history of events, frequent meetings and telephone conversations, often informal, which would have been better for Mrs Hamilton than a formal return to work meeting. These were all aimed at the same purpose as would have been a traditional return to work meeting, which is to obtain information as to the reason for absence, to establish whether any action was required from the employer and to facilitate the return to work by making adjustments for issues arising out of the ill health.
- 152.3 [1.4.3] Reducing sick pay from full pay to half pay after a period of absence of 6 months, in accordance with a written sick pay policy, is not conduct which undermines mutual trust and confidence and is something for which the respondent would have reasonable and proper cause. We considered whether the respondent failing to exercise its discretion by extending the full pay period beyond the first 6 months might undermine mutual trust and confidence. It is a matter of discretion and it seems to us that the discretion had not been exercised unfairly or otherwise in a way which undermined mutual trust and confidence. The circumstances were that the respondent was doing all that it could to facilitate Mrs Hamilton's return to work. We note that the policy at paragraph 1.3, (page 340) refers to the possibility of extending sick pay in exceptional cases and sadly, we would not say that a person absent from work through stress was in a category that could be described as exceptional.
- 152.4 Mr Sims argues in his submissions that discretion ought to have been exercised in favour of extending Mrs Hamilton's full pay for sick pay because her absences were caused by work related stress, citing the policy. This is not a situation akin to say, a police officer absent from work because of an injury sustained in an assault at work or a staff member sustaining a physical injury due to a failure of a piece of equipment. Although Mrs Hamilton's stress was described as work related and undoubtedly, the work issues described above caused stress, there were other family related causes of her stress, as she acknowledged.
- 152.5 Mr Sims refers to breach of contract and unlawful deduction from wages. It is not clear whether he is purporting to advance such claims, but no such claims are pleaded.

- 152.6 [1.4.4] The criticism of the respondent in its conduct by implementing the sick pay reduction, is that Mrs Hamilton was notified of the reduction late in the day. It is not an unreasonable assumption for an employer to make in respect of an intelligent and literate employee, that such an employee, absent from work long term through illness, will have appraised herself of the sick pay provisions or will know in this case, that it will be reduced to half pay after a period of 6 months. By letter dated 18 May, Mrs Hamilton was notified that her sick pay would be reduced to one half with effect from the 30 May. That does not strike us as particularly unfair or unreasonable timing, even if it is the case that Mrs Hamilton did not receive the letter until 23 May.
- 152.7 [1.4.5] The conduct of the first Stress Risk Assessment was not timely, it should have been done in January 2017 and was not done until May. That is something for which the respondent can properly be criticised.
- 152.8 With regard to the second Stress Risk Assessment, Mrs Hamilton returned to work on 5 September and the assessment was done on 26 September. One would have hoped that the assessment would have been done more quickly than that, but it is not an inordinate delay.
- 152.9 [1.4.6] It is not an accurate description of the respondent's conduct to state that it sought to prevent her raising her complaint via the Fairness At Work process. Rather, the respondent adopted its process so as to accommodate her complaint. The respondent was looking to provide means by which it could give Mrs Hamilton an opportunity to set out all that she wanted to complain about and then have somebody look at those complaints and provide her with an assessment of them.
- 152.10 [1.4.7] The timeframe within which the Fairness At Work complaint was dealt with, bearing in mind the Christmas period, was not in our view exceptional. The delays were not sufficient that could attract fair criticism.
- 152.11 [1.4.8] It is in our view a harsh and unjustified criticism of the Fairness At Work complaint outcome, to suggest that issues raised were not properly addressed or in sufficient detail. In our view, it was very detailed. There was a suggestion that Ms Wilkinson did not consider Mrs Hamilton's anxiety. It is clear, on a fair reading of the report, that she did.
- 152.12 [1.4.9] It is suggested that the Fairness At Work appeal was not conducted in an appropriate manner, although in precisely what way is not stipulated.

- 152.13 Mrs Hamilton has suggested that it was inappropriate for Mrs Wilkinson to be in attendance. We do not agree. Some might take the view that she ought not to have been present, others might take the view that her presence would be helpful in that she would hear what Mrs Hamilton would have to say to the Appeal Officer and would be able to give the Appeal Officer her immediate response, so that he might be able to reach a speedy and fair conclusion. There appears to have been no complaint about her presence at the time.
- 152.14 There is also complaint that the Appeal was a review and not a re-hearing. That is not in our view, unreasonable or unusual. It is not unreasonable for an employer not to repeat the immense amount of time and work that would go into investigating a detailed complaint, just because the complainant did not like the outcome. It is perfectly fair for an appeal to provide an overview and ensure that the process below had been conducted fairly.
- 152.15 [1.4.10] In our view the conclusions both of the Fairness At Work complaint and the Appeal were reasonable conclusions.
- 152.16 [1.4.11] We were confused as to what was meant by, "Changes affecting other employees of the respondent or of the police forces which collaborate with the respondent". There is nothing in our view in the respondent's re-organisation could have been said to have amounted to a breach of mutual trust and confidence or action that it had taken without reasonable and proper cause. In his reply to the respondent's submissions, (and not before) Mr Sims refers to the redundancy of Ms Smith from Cambridgeshire, (not an action by the respondent) Mr Hawkins telling Mrs Smith that she would have to cover her work as well as her own and the respondent failed to heed the problem that this caused in the absence of Mrs Hamilton. If that was the allegation, it should have been in the list of issues. It is not pleaded. It is too late to raise such an allegation in a reply to written submissions. Mr Moore has not had an opportunity to respond. The evidence was that Mrs Smith opted for redundancy rather than move, it was not a case of Cambridgeshire making an active decision to dismiss her. In any event, asking Mrs Hamilton to help with 50%, (not all) of Cambridgeshire's alarm workload was a step for which it had reasonable and proper cause and steps were taken to replace Mrs Smith as quickly as possible and in the meantime, PCN staff were trained in Alarms.
- 152.17 [1.4.12] There was no sustained failure to provide Mrs Hamilton with the correct IT equipment or systems for proper performance of her role, other than for a single day when she moved. If this point is intended to refer to the inordinate delays in the system upgrade, that is certainly unfortunate, but is something which affected everybody.

- 152.18 [1.4.13] The respondent tried to deal with the build up of a backlog of work whilst the claimant was absent. It trained others to be able to do her work. It tried to ensure that the urgent work was dealt with and Mrs Hamilton's email inbox kept reasonably clear. Insofar as the backlog would cause stress to Mrs Hamilton, in meetings Mr Hawkins and Mrs Murrell tried to tell her not to worry and re-assure her that the backlog that existed was in the respondent's view non-urgent, there were no stipulated timeframes within which the work had to be done. The perception of Mrs Hamilton was that the backlog was a bigger issue than in fact it was.
- 152.19 [1.4.14] The respondent was entitled to change Mrs Hamilton's place of work from its Kempston Headquarters to Borough Hall Bedford, in accordance with her contract of employment. The respondent had reasonable and proper cause for that action. It is entitled to re-organise the way that it operates. The respondent took the view that it would not be appropriate for Mrs Hamilton alone in the IMG team to remain at headquarters. It is not unreasonable for the employer to take the view that a team should work together, in the same geographical location, so that they can provide each other with support. That would have been particularly important in due course, as and when Mrs Hamilton received training on signal work and started to do such work. The change in location represented a relatively short additional distance of travel, although we recognise that traffic conditions can make a minor increase in distance a bigger issue than it might otherwise seem to be. However, the respondent was doing all that it could to facilitate the move, offering total flexibility in terms of hours of work, offering to pay car parking and so on, yet Mrs Hamilton was having none of it, she would not even give it a try.
- 152.20 [1.4.15] As for changes to the claimant's hours of work or duties, whilst it is true that in November or December 2016 Mrs Hamilton was offered increased hours which was then retracted because those additional hours had been provided to somebody else in order to avoid a redundancy, (a perfectly understandable reason). However, that decision was subsequently reversed.
- 152.21 There were discussions, reasonable discussions, about changes to Mrs Hamilton's work in order to accommodate her return to work after her periods of absence and to help her with the move to Borough Hall.
- 152.22 As for changes to duties, there was the proposed addition of responsibility for signal work. The respondent is entitled to re-organise. Mrs Hamilton's concern was that she was going to be required to do this work without training, not that she would be

required to do it at all. The respondent told her clearly to focus on alarms work, although there was a proposal that her duties would change, that had not been imposed upon her. One might though, criticise the respondent for its lack of clarity by failing to put this in writing. In other words, for not setting out clearly in writing that Mrs Hamilton was to focus on her alarms work only and that she would only be required to undertake work to do with signals after such time as she had received appropriate training at some stipulated point in the future. Mrs Hamilton agreed in evidence that this is what she had been told verbally, but her concern was that the requirement to do signals work was nevertheless in her job description.

- 152.23 [1.4.16] In our view, there is no unreasonableness in the manner of the respondent's discussions with Mrs Hamilton about her employment, her hours of work or her duties. We note that the complaints of discrimination and harassment in this regard were withdrawn in the claimant's closing submissions.
153. Of the above considered allegations, there are three in respect of which some criticism might lie at the door of the respondent; that is in respect of the offering of full time hours subsequently to be withdrawn, the lack of written confirmation she was to focus on alarms work only until such time as she received signals training and the timing of the Stress Risk Assessments. None of these individually in our view amount to a breach of the implied term to maintain mutual trust and confidence, nor do they together and combined with the Fairness At Work outcome amount to such a breach.
154. The allegation that the claimant's hours of work or duties alone amount to a repudiatory breach of contract has been withdrawn [1.5 and 1.6].
155. The question of delay or affirmation does not arise [1.7].
156. The claimant's claim of constructive unfair dismissal does not succeed, she was not constructively dismissed, the respondent was not in fundamental breach of her contract of employment.

Unfavourable treatment because of something arising in consequence of disability (s.15 Equality Act 2010)

157. The parties agree that the respondent knew or ought to have known of Mrs Hamilton's disability from 9 September 2016, which is when she was first signed off from work ill with work related stress.
158. We first consider the allegations of unfavourable treatment:
- 158.1 [2.1.1] A change to one's role, department or reporting line could be described as unfavourable treatment.

- 158.2 [2.1.2] In his reply to the respondent's submissions, Mr Sims confirmed that this allegation, relating to opportunities for promotion, is not pursued.
- 158.3 [2.1.3] This allegation is that Mrs Hamilton was exposed to an excessive backlog of work on her return to work. For reasons explained below, there was a backlog but it was not in our view, excessive and not unfavourable treatment.
- 158.4 [2.1.4] This allegation is that the respondent failed to carry out or implement a risk assessment. As worded, the allegation is unfounded. Risk assessments were carried out and were implemented.
- 158.5 [2.1.5] Mrs Hamilton's place of work was changed and that is unfavourable treatment, as it caused her inconvenience with travel difficulties.
- 158.6 [2.1.6] The application of an Absence Management Policy on somebody on long term absence through illness is unfavourable treatment.
- 158.7 [2.1.7] There was no failure to provide Mrs Hamilton with adequate resources to perform her duties, including addressing alarm company complaints.
- 158.8 [2.1.8] The respondent did take account of Mrs Hamilton's condition during its re-organisation process, it told her to focus on alarms only and did what it could to help her in the move to Borough Hall.
- 158.9 [2.1.9] We do not agree with the assertion that the respondent treated the Fairness At Work complaint without the appropriate degree of seriousness. We find there was no unfavourable treatment in this regard.
159. [2.2] As noted above, the respondent knew of the claimant's disability from 9 September 2016.
160. [2.3] [2.4] The claimant's sickness absence did arise as a consequence of her disability. We do not understand how it could be said that her onerous working conditions arose as a consequence of her disability and find that they did not. The other assertion is that an excessive backlog of work arose as a consequence of her disability, that could be so as the backlog arose because of her absence through sickness, but we do not consider that the backlog was excessive. The backlog that remained after the respondent's measures was routine and non-urgent. That could not be described as excessive. There was no pressure on Mrs Hamilton to deal with such work within any particular time frame.

161. The question then arises, whether any of the examples of unfavourable treatment that we have upheld were because of sickness absence:
- 161.1 Changes to Mrs Hamilton's role, department and reporting line did not arise as a consequence of her sickness absence.
 - 161.2 With regard to the Stress Risk Assessments, we found that there was no unfavourable treatment as alleged in the list of issues, in other words Stress Risk Assessments were carried out and implemented. The complaint in the hearing however, was with regard to the delay. Had that appeared in the list of issues as an allegation of discrimination arising from disability, we would have found that the delay in carrying out the Stress Risk Assessments did not arise in consequence of the sickness absence, but in consequence of oversight and error.
 - 161.3 Change in the claimant's workplace did not arise because of her sickness absence.
 - 161.4 The application of the respondent's Absence Management Policy did arise because of Mrs Hamilton's sickness absence.
162. The question then arises whether the imposition of the Absence Management Policy was a proportionate means of achieving a legitimate aim; [2.5], [2.6], [2.7] & [2.8]. The management of absence in order to control costs or to secure operational efficiency is a legitimate aim, as is the effective fulfilment of work allocated to Mrs Hamilton and the effective supervision of the respondent's operations. The application of the Absence Management Policy is a proportionate means of achieving those legitimate aims.
163. The selection of supervisors without internal advertisement [2.10] does not arise as there was no unfavourable treatment; Mrs Murrell was promoted after a selection exercise that followed internal and external advertising, in respect of the change complained about in Mrs Hamilton's witness statement, there was no vacancy, just a re-organisation.
164. Similarly, the legitimacy of the aim in the re-organisation does not arise, [2.11] because there was no unfavourable treatment. However if there had been, the overall efficiency of the respondent's functions was a legitimate aim and in any event, the respondent did not know and could not have known before the 9 September 2016 that Mrs Hamilton was a disabled person.

Duty to make reasonable adjustments

165. The description of provision, criterion or practices (PCPs) at paragraph 3.1 are awkwardly worded, although we can work out what is probably meant by them. We consider each in turn:
- 165.1 [3.1.1] We take this PCP to be one of allowing staff to return to work without investigating barriers which may have caused or triggered the absence. There was certainly no policy to this effect. If one reviews the timing of events, one can see that this is not an accurate description of the practice adopted by the respondent in this case. If one takes firstly the period of absence which began in September 2016, there was an Occupational Health appointment on 13 September, another one on 24 October, a Welfare Support meeting on 25 October, an Occupational Health review on 29 November, a case conference on 15 December, a meeting between Miss Baldwin, Ms Tory, Mrs Crosby and the Trade Union representative Ms Crowe on 3 January 2017, a meeting with Occupational Health on 4 January 2017 before her return to work on 12 January 2017.
- 165.2 Similarly, in respect of the absence from work which began on 4 April 2017, there were numerous telephone calls between Mrs Murrell and Mrs Hamilton beginning on 25 April, there was a telephone call with Mr Hawkins on 2 May, there was a Welfare meeting and risk assessment with Mrs Murrell on 8 May, there was a meeting with the Medical Advisor on 1 June, a review meeting on 14 July, a meeting with Mr Hawkins and Ms Jackson on 7 August before Mrs Hamilton finally returned on 5 September.
- 165.3 In short, there is no such provision, criterion or practice.
- 165.4 [3.1.2] This alleged PCP would appear to be the practice of allowing employees to return to work without the implementation of a Stress Risk Assessment. The respondent's practice was to conduct a Stress Risk Assessment when an employee was absent through stress. In this case, the Stress Risk Assessment was to have taken place in January 2017 but due to oversight, did not take place until May 2017. That was an oversight or an error. The second Stress Risk Assessment after the second period of absence did take place. A one-off error or mistake is not a provision, criterion or practice.
- 165.5 [3.1.3] We take this alleged PCP to be one of not properly addressing stressors identified within a Stress Risk Assessment or in some other way. If that is something which had occurred more than once, that may have been indicative of a practice of not doing so. However, we do not consider it a fair representation of how the respondent dealt with the risk assessments carried out for Mrs Hamilton, or how it dealt with the expression of her concerns

in other ways, nor of its conduct toward Mrs Hamilton generally. In respect of the May 2017 stress risk assessment, including Mrs Hamilton's follow up document:

- 165.5.1 A PNC practitioner had been assigned to work on the backlog;
- 165.5.2 Mrs Hamilton was to be provided with the mapping when completed for input, she was off work ill when it was finished, and so it was not provided to her so as to avoid causing further stress, at the meeting on 7 Augusts 2017 she was told it would be provided to her on her return;
- 165.5.3 She was referred to occupational health that day;
- 165.5.4 She was told to speak to Mr Hawkins about her concerns with regard to her job description, in the context of her having stated in writing that she had been repeatedly been told that she was to focus on alarms, repeated and reassured when she spoke to Mr Hawkins on 7 August 2017, and
- 165.5.5 The respondent went to appropriate lengths to reassure and accommodate Mrs Hamilton in respect of the proposed move to Borough Hall.

With regard to the 26 September 2017 stress risk assessment:

- 165.5.6 Two extra PNC practitioners were currently being trained to provide back-up;
- 165.5.7 A dashboard was being created to provide daily figures, which would help monitor workload and backlog;
- 165.5.8 With regard to her concerns about the poor standards of work, Mrs Hamilton was to be involved in training the PNC practitioners, (but ceased to attend work due to ill health before that could be communicated to her);
- 165.5.9 She was referred to occupational health;
- 165.5.10 She was to discuss her concerns about signal marking with Mr Hawkins, (he had spoken to her about this already on 7 August), and
- 165.5.11 Shortly after this risk assessment, the respondent engaged with Mrs Hamilton and her issues firstly through the independent manager and then through the FAW.

- 165.6 [3.1.4] The alleged PCP here appears to be one of involving in redundancy consultation, parties who are not affected. This is not factually correct. Mrs Hamilton was affected by the re-organisation and the potential redundancies. She was at risk of redundancy and had to be told that she was. In any event, at the time of the redundancy consultation exercise, the respondent could not reasonably have been expected to know that Mrs Hamilton was disabled.
- 165.7 [3.1.5] This is particularly poorly worded. The alleged PCP would appear to be one of requiring employees who have been absent from work, to work on a backlog which will have accrued during their absence. There does seem to be such a practice, which was applied to Mrs Hamilton.
- 165.8 [3.1.6] The alleged PCP in this instance would appear to be a practice of allowing employees to return to work after periods of absence without providing them with access to IT processes, computer equipment or a chair. The point does not appear to be pursued in submissions. Insofar as this occurred, it was a one-off incident when Mrs Hamilton returned to work and was not able to access the system for one day, it was not a PCP.
- 165.9 [3.1.7] In cross examination, Mrs Hamilton agreed that she was not required to hot desk.
- 165.10 [3.1.8] Again this is particularly poorly worded, we take the alleged PCP to be that of reducing sick pay from full pay to half pay after a period of 6 months. There was such a PCP.
- 165.11 [3.1.9] This refers to as a PCP, that the Fairness At Work Procedure was an overview process, not a forensic one. The policy at page 378, section 4.5 describes the fact-finding process, which is to be a proportionate exploration of the issues, gathering relevant details and meeting relevant parties. One cannot properly describe that as an overview process and not forensic. Ms Wilkinson described her approach as, “using the FAW principles, I will not be considering every detail of all the information provided, nor comment on who said what, when and who was right and who was wrong, rather taking a more holistic approach to understand if both the organisation and JH’s actions were reasonable or otherwise in relation to the points raised”. As a statement, to describe that as an “overview process” is not a fair representation of either what Ms Wilkinson did, nor what she said she was going to do. In any event, it was a one-off decision and therefore did not amount to a practice. Furthermore, it was arguably adopting a proportionate approach, as contemplated by paragraph 4.5 of the policy. In short, there was no provision,

criterion or practice in conducting a FAW as an overview process and not a forensic one.

- 165.12 [3.1.10] There is a PCP that on a FAW Appeal, that shall be by way of review only and not re-hearing.
166. [3.2] At the time of the application of the PCPs that we have upheld above, the respondent did know that Mrs Hamilton was a disabled person.
167. [3.3] The next appropriate question is to ask whether any such PCP placed a disabled person at substantial disadvantage and whether in fact if so, it placed the claimant at a substantial disadvantage. We consider each of three PCPs which we have upheld in turn:
- 167.1 Requiring employees who have been absent from work to deal with the backlog of work that has built up in their absence: this is likely to place disabled employees at a disadvantage because they are more likely to have periods of absence from work and therefore are more likely to build up such backlogs. Such disadvantage did accrue to Mrs Hamilton.
- 167.2 Similarly, with regard to the reduction in sick pay from full pay to half pay after a period of 6 months, this is likely to disadvantage disabled people as they are more likely to have long periods of absence. This did disadvantage Mrs Hamilton, because her sick pay was reduced to half after 6 months absence.
- 167.3 A review rather than a re-hearing is not a substantial disadvantage, because the appellant still has the benefit of a reconsideration as to whether or not the original decision process was fairly conducted. There is no disadvantage.
168. The surviving PCPs are therefore relating to backlogs of work after periods of absence and the reduction to sick pay after 6 months. The question then arises whether the respondent has failed to implement reasonable adjustments [3.4].
- 168.1 With regard to the backlog of work, the respondent put adjustments in place. It trained people to be able to do the claimant's work and provide support, ensured that the urgent work was done, it had somebody keep Mrs Hamilton's emails clear, it encouraged Mrs Hamilton on her return to work to focus on non-urgent alarm work only, under no time pressures and did not bring forward the training and the requirement to undertake signals work. These were reasonable adjustments and the respondent has not failed to make reasonable adjustments.
- 168.2 On the subject of sick pay, the respondent had gone to great lengths to try and facilitate Mrs Hamilton's return to work. It is in that context that one considers whether it would have been a

reasonable adjustment, as sometimes it may be, to amend the sick pay provisions so that the reduction is not implemented. Stress is a common cause of absence from work, that will be particularly so with a police force. A contractual provision to pay full pay for a period of 6 months of absence through illness is relatively generous compared to that many experience. To continue paying full pay for a further period would represent a significant expense, and if in every case of absence through stress, employers were obliged to continue paying full pay, that would be a significantly onerous financial burden. On the facts of this particular case, which are not exceptional, we do not consider that an adjustment to continue paying sick pay at the full rate would have been a reasonable adjustment to expect of the employer.

- 168.3 We acknowledge Mr Sims' reference to G4S Cash Solutions (UK) Ltd v Powell [2016] IRLR 820. A case in which the employer created a new role for the claimant as a reasonable adjustment, but reduced his pay. It was held that there is no reason in principle why maintaining a rate of pay should not be a reasonable adjustment. However, this does not add anything to our analysis of the law set out above, (Meikle and O'Hanlon); in assessing whether an adjustment is reasonable or not, every case will turn on its facts.

Harassment

169. In closing submissions, the claimant has withdrawn her allegations of harassment, save in relation to [4.1.6] the conduct of the Fairness At Work procedure. In his reply to the respondent's submissions, Mr Sims has developed this by suggesting that Ms Wilkinson decided not to consider the claimant as disabled. He argues this was unwanted conduct related to her disability which created the proscribed atmosphere. This allegation is not pleaded and does not appear as such in the list of issues. Furthermore, appearing in the claimant's reply, Mr Moore for the respondent has not had an opportunity to respond.
170. In any event, it is an inaccurate and unfair representation of Ms Wilkinson's evidence. She did not say that she did not consider the claimant as disabled. Her evidence in summary in cross examination was that she did not consider the Fairness At Work complaint in the context of a complaint of disability discrimination by way of failure to make reasonable adjustments or disability related discrimination, because it had not been advanced that way by Mrs Hamilton or her representative. That is quite different from not accepting that the claimant was disabled.
171. In any event, the outcome of the Fairness At Work complaint could not be described as creating an intimidating and hostile environment, rather one

that was designed to encourage and facilitate Mrs Hamilton's return to work.

Conclusions

172. For the above reasons the claimant's complaint of disability discrimination and unfair dismissal fail and are dismissed.

Employment Judge M Warren

Date: 30 October 2020

Sent to the parties on: 3 November 20

For the Tribunal Office