EMPLOYMENT TRIBUNALS

Claimant:	Mr W Roderick
Respondent:	Chief Constable of South Wales Police
Heard at:	Cardiff
On:	9 April 2021-28 April 2021 and 29 April and 28 June 2021 (Chambers)
Before:	Employment Judge R Brace Members: Mrs B Currie and Mr B Roberts

Appearances

For the Claimant:	Mr Phillips (Counsel)
For the Respondent:	Ms H Winstone (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. The complaints of disability discrimination contrary to sections 13, 15, 20/21 and 26 Equality Act 2010 are not well founded and are dismissed.

2. The complaints of religion and belief discrimination contrary to sections 13 and 26 Equality Act 2010 are not well founded and are dismissed.

3. The complaint of constructive dismissal (including s.13 and s15 EqA 2010) is not well founded and is dismissed.

CORRECTED WRITTEN REASONS

Background and the Claims

1. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by CVP [V].

First Claim

2. On 21 December 2018, the Claimant's first claim (the "First Claim") was accepted by the Tribunal [853] in which the Claimant brought claims of disability as well as religion or belief discrimination following contact with ACAS on 22 October 2018 and an Early Conciliation Certificate R331864/18/51 (the "First EC Certificate") being issued on 22 November 2018 [1].

3. Claims related to matters dating back to his return to work, from a period of suspension and restricted duties, in June 2014 and at the preliminary hearing on case management on 8 March 2019, the Claimant was ordered to provide further particulars by 29 March 2019:

    a. in response to a request for further information made in the Respondent's ET3; and
    b. for a proposed amended additional claim in respect of the Claimant's resignation which he had tendered on 26 November 2028 but which he had not included in his First Claim, it post dating the issue of the claim.

4. It appears that the Amended Particulars of Claim [829] were provided on 29 March 2019 [8] ("Amended Particulars of Claim") and Further and Better Particulars of the Claim were provided on 18 April 2019 ("Further and Better Particulars") [30].

Second Claim

5. On 22 February 2019, the Claimant again contacted ACAS and on 22 March 2019, a Second Early Conciliation Certificate R122064/19/46 ("second EC Certificate") was issued [865].

6. On 18 April 2019, the Claimant issued his second ET1 Claim form ("Second Claim") [874], bringing further claims of disability and religion or belief discrimination and Particulars of the Second Claim were provided in the Bundle [36].

7. The First Claim and the Second Claim were consolidated and on 7 January 2020, Employment Judge Moore granted the Claimant's application to amend his claim dated 29 March 2019, which included the Further and Better Particulars filed on 18 April 2019, but determined that both the Claimant's claims for religious discrimination, set out in paragraphs 7-9 of the Amended Particulars of Claim, and the claim for failure to make reasonable adjustments, set out in paragraph 6 of the Amended Particulars of Claim, were out of time and that it was not just and equitable to extend time [90].

8. As a consequence, the claims before the Tribunal were those arising after the time the Claimant commenced work in April 2017 at the 'Hub' in Merthyr Tydfil.

9. The Claimant brings a number of disability discrimination claims:
    a. failure to make reasonable adjustments (s.20 Equality Act 2010 ("EqA 2010");
    b. direct discrimination and harassment (s.13/26 EqA 2010);
    c. discrimination arising from disability (s15 EqA 2010); and
    d. harassment related to his religion and belief (s.26 EqA 2010).

10. The factual allegations are summarised in the List of Issues.

Preliminary Issues

11. The first day of the hearing had been timetabled for reading but this was converted to a private preliminary hearing on case management before the Employment Judge sitting alone to deal with three applications from the Respondent in relation to the Claimant's witness evidence that had been disclosed on 22 March 2021:

    a. That the evidence presented with the witness statements that had been exchanged on the 22 March 2021 included a 'Medico-Legal Report' prepared by Dr Martin Shaw, dated the 15 March 2021, where advance notice had not been provided to the Respondent that the Claimant was seeking to rely on expert evidence;

b. That paragraphs 9 - 61 of the Claimant's witness statement should be struck out as prejudicial and an attempt to re-introduce the issues which had been determined as out of time by Employment Judge Moore at the preliminary hearing on the 7 January 2020; and
c. That the report of Dr Nimmigadda, relied on by the Claimant to support his claim that he was a disabled person, as a witness at the liability hearing to give expert evidence on his report on the question of disability was disproportionate and unnecessary, disability having been conceded by the Respondent.

12. Submissions were made by representatives for both parties. In relation to Dr Shaw's Report, the Claimant's representative confirmed that the Claimant was not seeking to argue that the FMA advice, relied on by the Respondent in managing the Claimant was wrong, rather that the last section of Dr Shaw's report related to reasonable adjustments he says should have been given serious consideration by the Respondent. These reasonable adjustments were not set out in the Claimant's First Claim or Second Claim and it was accepted by the Tribunal that as such these were not reasonable adjustments which have been able to have been addressed by the Respondents in their evidence.

13. The Respondent submitted that these were fresh reasonable adjustments and now they were unable to deal with those arguments with the witnesses it had called; that essentially, the adjustments at the first three bullet points of 6.2 of Dr Shaw's Report were new reasonable adjustments that only the FMA could answer. The Respondent had been unable to contact the FMA prior to the commencement of the hearing once the Respondent had realised the potential implications of Dr Shaw's evidence.

14. Whilst the duty to make adjustment arises by operation of law—it is not essential for the Claimant himself to identify what should have been done, by the introduction of the Dr Shaw evidence the Claimant was effectively now seeking to rely on the further adjustments. The Tribunal was also reminded that the EAT had emphasised the importance of tribunals confining themselves to findings about proposed adjustments which are identified as being in issue in the case before them in **Newcastle City Council** v **Spires** UKEAT/0034/10*, [2011] All ER (D) 60 (May).* In this case the Claimant had also shown complete disregard for the guidelines in **De Keyser** v **Wilson** [2001] IRLR 324.

15. Despite having a number of opportunities to do so, in case management, in particular the case management on 26 February 2021, the Claimants

representative did not raise a concern that there was a need to obtain expert evidence on the issue of what reasonable adjustments were required in this case.

16. The evidence of Dr Shaw was not permitted on the basis that it is not reasonably required or contain relevant evidence to resolve the complaints before the Employment Tribunal. Furthermore, it was not in accordance with the overriding objective to seek to ensure parties are on an equal footing to raise such issues in the manner that the Claimant has chosen.

17. The Claimant was directed to make an appropriate application to amend his claim to seek to include additional reasonable adjustments, if he wished to rely on the additional reasonable adjustments set out in para 6.2 of Dr Shaw's report. No such application was made on behalf of the Claimant, either at the commencement of the live evidence which commenced on the following week, or indeed at any point during the 15 day hearing.

18. In relation to the two outstanding applications, the Claimant was permitted to rely on the entirety of his amended witness statement and had, at an earlier preliminary hearing, conceded that Dr Nimmigadda's evidence was relevant in relation to disability only. This report was not relied on or included in the bundle before the Tribunal.

Bundle

19. The Tribunal was referred selectively to the hearing bundle of relevant documentary evidence ("Bundle"), pages 1-827 but at the outset of the hearing, further documentation was admitted as agreed between the parties to be relevant. These were as follows:

    a. Screenshots of text and Facebook Messenger communications between the Claimant and various third parties [828-846];
    b. extracts from the Claimant's Blue Book that he had recently found [847]; and
    c. Photographs of the Hub and IST workplace locations [848-852].

20. The Respondent indicated that the Claimant should not have retained the Blue Book following termination of employment. It was agreed from the review of the Claimant's blue book that certain admissions would be made by the

Claimant and these were received by way of email dated 13 June 2021, namely that:

a. The Blue Book had remained in the Claimant's possession after he had left the Hub without the consent of the Respondent;
b. That the Blue Book recorded that the Claimant had dealt with in or about 26 custody cases representing 40 prisoners between 6 May 2017 and 10 March 2018;
c. that two of those cases the Claimant had worked on with PC Kelvin Jones; and
d. the Blue Book had now been returned to the Respondent.

21. It was also pointed out to the parties by the Tribunal that the agreed Bundle did not include the ET1 for either the First or the Second Claim, the ET3 for the First Claim or the Second EC Certificate, documents which were potentially necessary for determination of any time issues at the very least. These were provided on the second day of the hearing [853-888].

22. Further documents became in issue during the hearing and following agreement with the parties, the additional documents were included as admitted evidence numbered as follows:
    a. Emails from February 2018 [889-891];
    b. South Wales Police Reporting Absence Policy [892-920];
    c. Copy of Recuperative Temp Restricted Duties 26 February 2018 [Excel Spreadsheet 1]; and
    d. Copy of Report Fit Interview19 August 2018 [Excel Spreadsheet 2]

23. References to the hearing Bundle (pages 1-920) appear in square brackets [ ] below.

List of Issues

24. The parties had prepared a List of Issues which had been agreed between the parties as directed at an earlier preliminary hearing. At the outset of the hearing, this List of Issues was agreed with and adopted by the Tribunal as the issues to be determined.

25. The Claimant had at the preliminary hearing on case management been directed to clarify the PCP(s), relied upon for the purposes of his reasonable adjustment claims, as these were far from clear from the draft List of Issues

that had been provided. The Claimant confirmed that he was relying on the following PCPs:

a. The requirement on the Claimant, that on his return from work from April 2017 onwards, he was to achieve a prescribed standard of performance and to resume all the ordinary duties of a police officer, with minimum support; and
b. The requirement on the Claimant to work in the Hub from 29 October 2018.

The Evidence

26. The Tribunal heard evidence from the Claimant and from the following witnesses for the Claimant:
    a. Eryl Cooke, Principal of Living Way Academy;
    b. Helen Dorman, friend of the Claimant;
    c. Joel Dorman, friend and joint leader of the Claimant's church;
    d. PC Christopher Percy (now ex PC); and
    e. PS Stuart Archer.

27. The Tribunal was also provided with a witness statement only from Stuart Bell, who was not called by the Claimant to give live evidence.

28. A number of the Respondent's witnesses have either left the South Wales Police Force or have moved into alternative roles and/or gained promotion. Within this Judgment we have referred to their job titles as existed contemporaneously as opposed to their current positions in the organisation. The Tribunal heard evidence from the Respondent's witnesses as follows:

    a. PS Scott Vaughan (then Acting PS);
    b. PS Matthew O'Sullivan (then Acting PS);
    c. PS Cheryl Flower;
    d. PC Nathan Gratton-Smith;
    e. DS Chris Evans;
    f. DI Damien McKeon;
    g. DC Ian Francis (then PC);
    h. PS Alex Gregory;
    i. Inspector Stuart Williams (then PS);
    j. PS Karl Emerson;

k. DC Lauren Jones;
l. Retired PC Kelvin Jones;
m. DS Julian Barwood (then Custody Sergeant);
n. DS Catrin O'Brien;
o. Inspector Matthew Rowlands;
p. Inspector Dean Gittoes (then PS);
q. Linda Williams, HR Business Partner Northern Division;
r. DI Jonathan Duckham;
s. Retired Chief Inspector Christopher Owen;
t. Emma Mills, Assistant Director of People Safety and Wellbeing.

29. The Tribunal was also provided with a witness statement only from Lorraine Morgan-Shellard, HR Advisor Northern Division (November 2016 – December 2017), who was not called to give evidence by the Respondent.

30. All witnesses relied upon witness statements, which were taken as read, and they were all subject to cross-examination, the Tribunal's questions and re-examination. The Claimant was recalled at the end of the Respondent's witness evidence, for the Respondent to cross-examine him on alternative roles that the Claimant asserted he could have been transferred to as a reasonable adjustment. This evidence had arisen during re-examination of the Claimant and through cross examination of the Respondent's earlier witnesses.

Assessment of the evidence

31. It is not necessary to reject a witness's evidence, in whole or in part, by regarding the witnesses as unreliable or as not telling the truth. The Tribunal naturally looks for the witness evidence to be internally consistent and consistent with the documentary evidence. It assesses a range of matters including:

a. whether the evidence is probable;
b. whether it is corroborated by other evidence from witnesses or contemporaneous records of documents;
c. how reliable is witness' recall; and
d. motive.

32. We considered the Claimant's recall not to be reliable for the following reasons:

a. During the relevant periods i.e. from July 2017 through to the end of his employment, the Claimant had been struggling with his anxiety and '*had been struggling with memory and concentration since the stress began'* (Disability Impact Statement §29, 30, 33, 35, 40 [729-736]) and that this had persisted even when the symptoms were more well-managed and less severe (§42). This was at odds with the Claimant indicating he had clear recall of historic conversations that he now relied on;

b. The Claimant was entering the Hub with a negative attitude to South Wales Police Force, frustrated at seeing others promoted whereas, despite around 16 applications, he had received '*constant rejections'* for promotion as he had put it;

c. The Claimant also held deep grievances relating to matters beyond the scope of this Tribunal and relating to his employment for the period from March 2014, in particular his time at Aberdare right up to his time at the Hub which remained, for him, unresolved. Indeed, these were never resolved to the Claimant's satisfaction; and

d. Both the Claimant's motivation and general attitude against the Respondent, anchored in the past, were therefore an issue for us in terms of the Claimant's evidence. We considered it likely that the Claimant viewed the many interactions with work colleagues and senior officers, through the prism of his ongoing dissatisfaction with his lack of promotion giving him a perspective whereby trivial matters were exaggerated by him.

33. That said, we did not close our minds to the possibility that some of the Respondent witnesses (in particular Cheryl Flower, Stuart Williams and Karl Emerson) had a negative attitude toward the Claimant, considering him exaggerating his symptoms for a personal agenda against the Respondent. Despite that, we were not persuaded that any of those officers however were dismissive of the Claimant in their dealings with him and accepted that they did, at all times, act in the Claimant's interests.

34. As such, where there was a dispute between the evidence of the Claimant and the evidence of the Respondent's witnesses, we preferred the evidence from the Respondent witnesses.

35. Clear recall was an issue in this case where individuals were being asked to confirm exactly what was said in brief conversations and interactions arising during short periods of working alongside each other, dating as far back as early 2017 and early 2018. This was the case for both the Claimant and Respondent' witnesses and particular scrutiny was given to the contemporaneous documentation where available.

The hearing

36. The first day of the hearing was intended as a reading day but was instead converted to a private case management preliminary hearing to consider the applications from the Respondent in relation to the Claimant's witness evidence. The second day was taken with reading and evidence commenced on the third day, Tuesday 13 April 2021.

37. As a consequence of the Claimant's disability, the question of reasonable adjustments was raised and it was agreed that regular rest breaks were all that the Claimant required. As the hearing was being conducted wholly remotely (CVP) it was agreed that regular rest breaks would take place every hour – hour and a half when participants would mute their microphones and disable their cameras.

38. The Claimant was giving his evidence from a different remote location, as was his representative and Claimant witnesses. After the cross examination of each of the Respondent's witnesses the Claimant's representative was provided with time to make contact with the Claimant by electronic means to assess if he wished to give further instructions prior to completion of each cross-examination.

39. The Respondent witnesses all gave evidence from a room within South Wales Police HQ. Respondent's Counsel was also based in South Wales Police HQ but was located in a separate room from the witnesses whilst they were giving their live evidence.

40. It was confirmed by both parties that all witnesses had before them a clean copy of the bundle and a clean copy of the witness statements.

41. There were no particular connection problems arising during the hearing which proceeded by and large in accordance with the timetable that had been agreed at the outset with the parties.

42. The evidence concluded at around 10:35am on the morning of the penultimate day of the hearing and written submissions were provided on the afternoon of that day, both parties having been asked to do so earlier in the week. Oral submissions were also given late that afternoon and the Tribunal used the last day of the listed hearing for some deliberation. Deliberation was not completed in that one day and further deliberation arose at a later time when all the panel were available, resulting in this reserved judgment.

Facts

43. The Claimant is a former police constable ("PC") who had been employed by the Respondent, the Chief Constable of South Wales Police, from 3 March 2003 up to 31 December 2018 when the Claimant's employment terminated following the Claimant's resignation submitted on 26 November 2018 [712].

Pre April 2017 commencement at the HUB Merthyr Tydfil

44. In March 2009, the Claimant passed the first part of the exams required to gain promotion to Police Sergeant ("PS") but in July 2009, whilst working as a PC on the Swansea Response team, the Claimant was arrested as part of a criminal investigation in relation to matters pertaining to his brothers' companies. As a result of the criminal investigation, the Claimant was placed onto restricted duties in file preparation and property storage, where he remained on until October 2010 when he was then suspended, having been summoned to appear in court on criminal charges in relation to that criminal investigation.

45. Earlier in that period:

    a. in October 2009, the Claimant undertook the second part of the PS exams; and

    b. in January 2010, become a born again Christian.

46. Neither the detail of the offences, nor the specific charges brought against the Claimant were part of the evidence before us but, in September 2012, whilst the Claimant's three brothers were convicted and imprisoned after pleading guilty to the charges brought against them, it appears that the charges against the Claimant were withdrawn.

47. In June 2013, the Claimant was reinstated from suspension but again placed onto restricted duties in the Property department whilst the Respondent's Professional Standards Department ("Professional Standards") completed an internal investigation into the Claimant's conduct in failing to disclose his business interest in relation to his brothers' company [496].

48. In March 2014, the Claimant reported as sick and submitted a grievance in relation to his time in the Property department where he considered he had been subjected to bullying. Having decided to withdraw that grievance on 3 April 2014 [496], the Claimant returned to work in June 2014, not to the Property department, but to Aberdare police station as a Response officer. By that time, the Claimant had been non-operational for almost 5 years.

49. During his time at Aberdare the Claimant expressed a desire to become a PS. He considered his attempts at promotion had been blocked and that he had been overlooked to fulfil the role of Acting PS in May 2016, when PC Matthew O'Sullivan was promoted instead to Acting PS, the Claimant's application having been unsuccessful. The Claimant considered at the time that Matthew O'Sullivan was being actively developed whereas he was not, despite having been qualified for longer and having already applied for several posts. He was,

as he put it in cross-examination '*frustrated at seeing others have favourable treatment'*.

50. On returning to work following the police investigation, he considered that there was a stigma attached to him as a result of the previous criminal investigation and charges - he felt an element of embarrassment too. He was also felt that some work colleagues there in particular were creating a hostile working environment for him as a result of comments he alleges they made regarding him personally and his religious beliefs.

51. We make no other findings in relation to the Claimant's time in Aberdare during this period other than we found that the Claimant's grievances, about his lack of promotion and how he had felt he had been treated by certain colleagues, were deep-rooted and he carried with him throughout the remainder of his employment with the Respondent.

52. In September 2016, the Claimant was transferred as part of a reorganisation to Ton Pentre police station in the Rhondda where he remained until December 2017.

53. In December 2017, the Claimant applied for a role at the Hub in Merthyr Tydfil, a post that had been recently advertised. He considered it beneficial for his development [624] and by this stage no longer had aspirations for promotion, feeling unsupported in his previous attempts.

54. On 5 January 2017, the Claimant reported as sick as a result of the health of a family member, his rejections for promotion and his time at Aberdare [439]. This was the first time that the Claimant had reported as sick with stress-related symptoms. He considered that a return to work at the Hub would assist his position where there were no regular night shifts. Over the course of his sickness absence, the sickness supervision notes reflect that the Claimant was reporting that he attributed to the way '*he was treated by line-management…. Stating that he has felt unsupported and has had decisions made about his career path without any explanation or reason provided'* [438].

Hub Merthyr Tydfil April 2017

55. The Claimant resumed duties on 18 of April 2017 following his period of sick leave returning to work, not to Ton Pentre, but to the Hub at Merthyr Tydfil, his application to work there for his own development having been accepted over his period of sick leave.

56. Whilst no one witness for either party dealt in their witness statement with what the 'Hub' actually did any detail, evidence was provided on cross -examination and re-examination in relation to this, and some documentation was provided within the Bundle in relation to Hub competencies [236].

57. Whilst it appeared that the nature of the Hub had changed over time, by April 2017 the Hub dealt with pre-charge investigations including dealing with prisoners who had been brought into custody by Response Teams at Merthyr the previous night. The number of prisoners that the Hub dealt with on a daily basis varied from day to day, ranged in number and averaged around 10 per day. There could be up to as many as 20 prisoners at any one time after a busy night for Response.

58. The pre-charge Hub Team would deal with a range of crimes, from shoplifting through to attempted murder, but domestic violence was the routine offence that was dealt with. The Hub officers would be responsible for reviewing the actions taken by the Response teams overnight and take on the prisoners that had been taken into custody from the Response Team. They would deal with pre-charge investigations, liaising with victims, defence and CPS and setting the police file ready for the CPS. Much of the work for fully operational officers working in the Hub required them to operate within the requirements for detention and questioning of prisoners in accordance with the Police and Criminal Evidence Act 1984 "PACE", requiring suspects to be released or charged within a set time period.

59. Each morning the PS or Acting PS would review the files from the Response team and provide the Hub police officers working the shift with a daily workload and throughout the day if any questions arose they would ensure officers could deal with their assigned prisoner.

60. The Hub was also an area where officers received tutoring as a student PC or received refresher training or development if a more experienced officer. It was a place where police officers would spend time during a phased return to full operational duties. Up to 14 officers, out of the 40-50 officers assigned to the Hub, were there on restricted duties for a variety of reasons, whether as a result of physical or mental health or other life events. Building confidence was a key part of that training and development.

61. Police officers working at the Hub would work on separate teams – Team 1 and Team 2, teams which generally worked opposite shifts save for periodic double shifts when both teams would be working at the same time. The Claimant was throughout his time at the Hub allocated to Team 2 and from April – July 2017, worked shifts alongside other police officers in Team 2.

62. The Hub operated in a large open-plan area along with the IST department. IST supported the functions of the pre-charge department within the Hub and dealt with administration work on police files that would go to the Crown Prosecution Service for a charging decision[1].

[1] Cheryl Flowers WS §24

63. When the Claimant returned to work at the Hub in April 2017, he reported to and was supervised by Matthew O'Sullivan was now Acting PS responsible for one of the teams at the Hub, Team 2, and who had also transferred to the Hub that month. Matthew O'Sullivan was one of three PSs for the pre-charge Hub section and the other two at that time being Acting PS Scott Vaughan, in charge of Team 1 and PS Cheryl Flower, a PS floating across the Hub and not assigned to a particular team.

64. Whilst Matthew O'Sullivan was also relatively new to the Hub, he had at that time been a PC for around 7 years and had been Acting PS from time to time in the previous year and a half. PS Scott Vaughan had been a PC for around 4 years and 7 months before appointed Acting PS at the Hub from December 2016 and having acted up from time to time at Aberdare and Mountain Ash. The Claimant harboured personal frustration that both Matthew O'Sullivan and Scott Vaughan had been promoted and the Claimant believed that personal connections with freemasonry and a father who had been a Chief Constable respectively, had played an influential part in their promotions.

65. The Claimant returned on a 28 day recuperative duties period and a phased return to work [113]. It was suggested that the Claimant 'shadow' an officer until he felt up to speed with a prisoner by himself. It was anticipated that the Claimant would be back on full duties by 17 May 2017.

66. On 20 April 2017, Matthew O'Sullivan completed a Recuperative Duties Action Plan for the Claimant for a 28 day recuperative period which reflected that during such time, the Claimant would be allocated to an experienced Hub officer and would undertake a progressive role in general file building, prisoner management and CPS interaction [109]. The Action Plan also provided that the functions of the normal role, that the Claimant would be restricted from undertaking during that 28 day period, would only be:

    a. physical requirements of arrest and restraint; and

    b. shift work.

67. The Action Plan also reflected the phased return of the work, with the Claimant starting at four hours of work over four shifts for the first week, increasing to three, ten hour shifts by week four.

68. On the same day the Claimant requested, through an email he sent to Acting PS Matthew O'Sullivan and Scott Vaughan, that the Respondent support his desire to enrol on a course at Bible college in the next academic year, a course that started in September 2017 and would finish at the beginning of July 2018, resulting in a diploma qualification in Christian ministering [121]. He asked that consideration be given for him to submit a flexible working request ("FL1) for the duration of the course to enable him to attend every Tuesday and Wednesday. He also indicated that he was a Pastor of the church in the area

in which he lived and had a weekly study group and Sunday service. In that email he set out that the aim of the church was to serve the community including:

a. Offering a place of worship;

b. Supporting families;

c. Counselling;

d. Working with schools;

e. Providing youths with activities, engagements and mentoring;

f. Providing home visits.

69. On 26 April 2017, a 'Report Fit' interview took place with Acting PS Scott Vaughan where the Claimant confirmed he was feeling better, positive and glad to be back in work [123].

70. The Report Fit form also reflects that at that time the Claimant also spoke of feeling unsupported and not assisted for his career development, mismanaged by the organisation over the previous three years and frustrated as a result which he felt had had an impact on his health. He further complained of the historic bullying he felt he had suffered due to religion, which we found referred to his time in Aberdare.

71. At that point in time the Claimant also indicated that he did not consider his ongoing anxiety to be a disability and that he considered that there was a limited chance of recurrence.

72. During his time at the Hub from April 2017 through to July 217, the Claimant was allocated with experienced officers at the Hub as a point of contact for the Claimant, who worked alongside him on each particular shift albeit no 'tutor' or 'mentor' was provided.

26 May 2017

73. On 13 May 2017, the Claimant submitted a draft grievance to his representatives, the Police Federation regarding his lack of promotion and complaints of religious bullying from his time at Aberdare in 2015/16. He also met with them to discuss that grievance. Whether he discussed with them any concerns he held regarding his short time at the Hub at that point was unclear on the evidence before us and we make no positive findings on that particular issue, but considered that it was more likely than not, that he did not have concerns at that time, having only been in work just over a month.

74. On 26 May 2017, the Claimant had a conversation with Temporary Inspector Jo Jones, the senior officer at that time responsible for the Hub, in which the Claimant spoke of his concerns regarding his time prior to the Hub, and indicated to her that he was struggling with anxiety and of his concerns regarding his religious beliefs and his lack of promotion..

75. At some point, Matthew O'Sullivan became involved in the conversation. There is a dispute between the Claimant and Matthew O'Sullivan as to:

    a. what was said to Insp. Jo Jones by the Claimant in PS Matthew O'Sullivan's presence that day; and

    b. what was said to PS Matthew O' Sullivan by Insp. Jo Jones.

76. Jo Jones has not been called as a witness, having retired on grounds of ill-health. Whereas the Claimant had put in some detail of the conversation into his witness statement at §47, Matthew O'Sullivan had not referred to the conversation at all in his statement. This was not a significant issue for us as we accepted Matthew O'Sullivan's evidence, given on cross-examination, which was that he had only been involved in part of a very brief conversation, ('*about a minute',*) in which the Claimant confirmed he was having on-going stress and that Insp. Jo Jones had confirmed to him that the Claimant be afforded '*protected talktime'*.

77. On cross examination, Matthew O'Sullivan was also adamant that the description of the conversation given by the Claimant, at §47 of his witness statement, did not happen and suggested that Jo Jones, in the rank of Inspector, would not have addressed any concerns that she allegedly held regarding his management of the Claimant directly with him as Acting PS, in front of the Claimant as had been asserted by the Claimant. We too considered it unlikely that a senior officer would spoken to a PS in the manner described by the Claimant, having only heard the Claimant's perspective and where the Claimant was a PC and Matthew O'Sullivan was an Acting PS.

78. Whilst the email from Jo Jones, did refer to the '*protected talktime'* and that the Claimant be given the opportunity to shadow more experienced officers before taking on complex cases, neither that email nor the form sent to Professional Standards, referred to any concerns that the Claimant held regarding Matthew O'Sullivan.

79. As a result we concluded that it was more likely than not that the conversation was limited to:

    a. that evidenced on cross-examination by Matthew O'Sullivan, namely that the Claimant was having **on**-going stress and should be afforded protected talktime; and

b. the action points as reflected in the email Insp. Jo Jones, sent later that day to Acting PS Matthew O'Sullivan and Acting PS Scott Vaughan [128].

80. In that email, Jo Jones confirmed that she had submitted a report to Professional Standards (which she had done later that day [130],) and referred the Claimant to occupational health the Force Medical Adviser ("FMA") for assessment and counselling for the Claimant [136]. She also provided the Claimant with details regarding the Respondent's self referral counselling service, Red Arc and referred to his shift patterns to allow him to accommodate his religious beliefs. In relation to the action points, she indicated that the Claimant was allowed '*protected talktime'* and that when dealing with prisoners, the Claimant had the opportunity to develop by shadowing more experienced officers dealing with more complex cases prior to taking on more complex cases himself.

81. With regard to the referral, neither the Claimant nor the Respondent could confirm the outcome of that referral, or indeed whether the Claimant actually attended any appointment arranged with the FMA.

82. On 9 June 2017, the temporary restrictions that had been in place for the Claimant's return to work on a recuperative basis ended [139]. By this time, the Claimant was fully operational, dealing with prisoners and having volunteered after the meeting on 26 May 2017 to do Response work over August Bank Holiday [127]. Whilst we make no findings on how many prisoners the Claimant dealt with in this particular period, it is admitted by the Claimant that between 6 May 2017 and 10 March 2018, the Claimant's own Blue Book records that the Claimant dealt with in or about 36 custody cases representing 40 prisoners.

83. We found that during this period the Claimant was therefore functioning as a **PC** and interacting with prisoners and members of the public.

Hub - Interaction with PS Flowers – April – July 2017

84. The Claimant has raised three other discrete interactions with PS Cheryl Flowers dating back to this period of his time at the Hub regarding:

a. arrangements made for the Claimant to take a statement from a witness to an incident;
b. a domestic violence incident that the Claimant was tasked to deal with; and
c. his time-keeping.

85. With regard to the first two issues, these were operational matters that are not significant issues, as conceded by Mr Phillips on cross examination of Cheryl Flowers. In both cases, the Claimant considered that PS Flowers had been

dismissive, whereas PS Flowers did not accept that she had been. Whilst to an extent the Claimant was supported in evidence by PS Chris Percy, we did not consider him to be a witness whose evidence was unbiased and impartial and we placed little to no reliance on his evidence.

86. We did not find that during this time that PS Cheryl Flowers behaved in a dismissive way towards the Claimant for reasons given more generally on our assessment of the evidence, and draw no adverse inference from these issues.

87. In relation to the Claimant's time-keeping, in June 2017 PS Flowers spoke to the Claimant regarding the Claimant's time keeping, having been alerted by other PCs that the Claimant had been late on shift on a three-day run. Whilst there is no dispute between the parties that PS Flowers did question the Claimant regarding his lateness, there is a dispute as to whether Cheryl Flowers threatened to discipline the Claimant regarding this, or place him on the '*disciplinary book'* as he referred to it in his evidence. Cheryl Flowers' evidence was that she did not threaten to discipline him, mention a disciplinary book or give him any form of informal warning.

88. Whilst not reflected in the written documentation, it had been agreed by PS Matthew O'Sullivan that, in addition to working phased return hours in the first four weeks, the Claimant could start his morning shifts a little later than the rest of the team as the Claimant had informed him that he was on medication that adversely affected him in the mornings.

89. From reviewing the rota records [782] and the timing of the text sent by the Claimant to his wife, it was likely that the Claimant's shift that day did not start until 13:00. The Claimant was late to an afternoon shift and it was not unreasonable of Cheryl Flowers to question the Claimant's lateness to an afternoon shift in any event. There was no indication from the Claimant that his medication meant that he would be late for afternoon shifts.

90. We found that whilst there was a discussion regarding the Claimant's time-keeping, it was an appropriate and reasonable issue for PS Cheryl Flowers to have raised and we did not find that she threatened to discipline the Claimant for being late that day on the basis of the following:

    a. Our attention was drawn to a text that the Claimant had sent his wife on 25 June 2017 [832] by the Claimant's representative, as supportive of the Claimant's evidence. Whilst we accept that as a result of this text, it was likely that this conversation took place on 25 June 2017, we did not consider that the content of this text was supportive of the Claimant's evidence that PS Cheryl Flowers had threatened to discipline the Claimant. Rather, we found that the text could be read in a number of ways, including that it was simply the Claimant's private concerns that

he would be disciplined and that he was expressing his own personally-held fears.

b. Further, if the Claimant's account was correct, we would have expected the Claimant to have raised at the time, that it had already been agreed that he could be late, with his wife in that text, but also with his supervisor PS Matthew O'Sullivan. He did neither.

30 June 2017 email and 2 July meeting

91. The 26 May 2017 conversation with Insp Jo Jones and Acting PS O'Sullivan does appear to have triggered **a** change in the management of the Claimant by PS Matthew O'Sullivan, as thereafter he started to write notes in his personal notebook provided to police officers (or 'Blue Book' as they have been referred to in these proceedings,) recording his interactions with the Claimant. Extracts were contained in the Bundle [148-157].

92. On 30 June 2017, after speaking with his colleague, PC Chris Percy, the Claimant penned an email to Acting PS O'Sullivan in which he claimed that he had lately felt that he had been placed in a position which he felt exacerbated his mental illness [146].

93. That email caused PS O'Sullivan to speak with the Claimant on 2 July 2017. Prior to doing so PS O'Sullivan prepared a document setting out his own response to the email in which he recorded his perspective of his interactions with the Claimant and what he considered to be the steps that had been taken to integrate the Claimant into the Hub following a period of sick leave [158].

94. There is no dispute between the parties:

a. that PS O'Sullivan either told the Claimant about the content of that document or showed him a copy;

b. that the Claimant was upset; or

c. that PC Nathan Gratton-Smith then joined the meeting to accompany the Claimant.

95. There is a dispute however as to the tenor of the conversation, with the Claimant alleging that Matthew O'Sullivan was '*heated'* and claiming that he was '*angry'* with him.

96. Whilst we accept that the Claimant was emotional and upset in that meeting, we did not find that it was likely that his upset was as a result of the behaviour towards him by Matthew O'Sullivan. We did not find it likely that PS O'Sullivan was either 'angry' with the Claimant or became 'heated' for the following reasons:

a. The evidence of Nathan Gratton-Smith, whilst supportive of the Claimant in evidence, was that he did not consider that Acting PS O'Sullivan seemed angry with the Claimant; rather that he had been '*trying to plead'* with the Claimant and that Matthew O'Sullivan was not lacking in empathy for the Claimant. We accepted that evidence.

b. We considered that it was more likely than not that the Claimant reacted adversely and emotionally to that meeting, and indeed to the fact that PS O'Sullivan had chosen to prepare the note itself in advance of the meeting (which was action in itself which we found could be best characterised as simply an appropriate management step for PS O'Sullivan to take to prepare for such a meeting,) without any reasonable justification.

97. The Claimant reported sick immediately after that meeting and was referred to the FMA, the referral stating that the Claimant reported at that time of suffering symptoms of forgetfulness, panic, lack of sleep and feeling overwhelmed [161].

Return to Hub August 2017

98. The Claimant remained on sick leave until 25 of August 2017 and over the period of his absence both Acting PS Vaughan and Acting PS O'Sullivan left the Hub and PS Chris Evans became the Claimant's new supervisor.

99. Prior to his return to work PS Chris Evans met with the Claimant to discuss his return to work and we found that the content of that discussion was reflected in an email that PS Chris Evans sent on 11 August 2017 to Detective Inspector Damien McKeon, who by this stage had also transferred to the Hub,[2] and Inspector Matthew Rowlands (then Inspector responsible for IST[3]).

100. It was agreed that the Claimant would return to work on 25 August 2017 and that the Claimant would receive 5 weeks' tutoring with PC Nathan Gratton Smith to assist him. The return to work also coincided with the commencement of the new shift patterns for the Claimant which had been put in place to enable him to attend his Bible course on Tuesdays and Wednesdays each week and which resulted in the Claimant not working consistent shift patterns with Team 2, but instead working some of his shifts with Team 1.

101. As a result of that flexible working, arrangements were made for other police officers from a Team/shift to be allocated as support for him when PC Nathan Gratton Smith was not working the same shift as the Claimant [178].

[2] WS Damien MCKeon §2
[3] WS Matthew Rowlands §2

102. The terms 'mentor' and 'mentoring', 'tutor' and 'tutoring', have been used regularly throughout the evidence, despite neither party addressing the Tribunal as to whether these were terms defined in any policy document of the Respondent.

103. Despite the proforma Recuperative Duties Action Plan Form (example at [119]), referring to 'Mentoring', we found no definition of 'mentoring' or 'mentor' within the Respondent's South Wales Reporting Absence document [892], or indeed any other documentation that we were taken to. We considered that all parties referred to the term 'mentor' in the sense of an individual who would be available to guide and support the Claimant when required and a point of contact for the Claimant; something akin to, but not the same as the 'tutor' that was provided to the student police officers.

104. We also found that the Claimant's supervising PS was not the same as 'mentor', and that the Claimant's supervising PS changed when the Claimant returned to work in August 2017, from Acting PS Matthew O'Sullivan to PS Chris Evans.

105. The Claimant was allocated a number of police officers as a consistent point of contact during this time at the Hub and he was not allocated any work or prisoners to manage on his own. Whilst those working with the Claimant found that he lacked some confidence, the Claimant did not tell anyone or indicate if he was unable to complete any tasks.

106. Over this period, the Claimant's Police Federation representative was also in contact with the Respondent's Professional Standards regarding the Claimant's prospective grievance that had still to be submitted or even progressed as the Police Federation representatives had themselves been unable to meet with the Claimant [168-175].

Studies at Living Way Academy

107. In September 2017, the Claimant commenced his studies at the Living Way Academy, which would eventually provide him in the July of 2018 with a Christian Ministry Diploma. He was considered an excellent student who '*studied hard and with great diligence*[4]*'*. The course entailed study site visits, weekly lectures, coursework and written examinations at the end of each term ending with the last set of exams in July 2018.

[4] §4WS Dr Eryl Cooke

108. During this year of study, the Claimant kept on top of his studies, attending his course two days a week, but would occasionally struggle to manage that study and deal with work-related anxieties relating to the impact of his arrest and the treatment he believed he had been subjected to on his return to work following that. He received support from other members of his church during this period.

109. During the course he began to pastor in Abercrave, a small home-based church of family and friends and working out in the community providing assistance to the homeless and families in hardship such as transporting food. This continued throughout the Claimant's employment.

First FMA Report and Functional Assessment - 15 September 2017

110. On 12 September 2017, the Claimant attended an FMA appointment that had been arranged and met with Dr S Williams of Caer Health Services [182]. A copy of their report of the same date was provided to Denise Evans, the Respondent's occupational health nurse operating from within the Respondent's Occupational Health, Safety and Wellbeing Department [188].

111. Whilst we have no direct evidence on the point, the Respondent's representative indicated that such reports were generally emailed to the Respondent's health nurse employed by the Respondent and we found that as a result that on each occasion that an FMA Report was prepared, it was likely that the Respondent's Health Department would have received the information from the FMA on the day that each report is dated.

112. Whilst we have not heard evidence from Dr Williams, from reviewing their notes of the assessment, how the Claimant presented himself to the FMA doctor evidences what he says about how he felt at that time. It is supportive of the account that the Claimant was focussed on the past and on his perception of how he had been treated in his past employment, that he had lost faith in the organisation and had suffered embarrassment and loss of dignity. Whilst the Claimant did communicate that he was becoming stressed and anxious in work, he indicated that PS Evans had been very supportive but that he feared he was struggling in work. At that time, whilst he was not on any regular medication, he was receiving counselling.

113. The report of Dr Williams is incorporated by reference but in brief whilst Dr Williams was of the view that the Claimant was experiencing "*significant anxiety related to his perception of the circumstances which had befallen him in work*", they were unable to comment with regards to the likelihood of the

Claimant recovering from that state of mind and uncertain as to the timeframe that the Claimant could return to a substantive role and full operational duties.

114. In particular, at paragraph 4 of their report [189] they stated that based on the Claimant's presentation to them, they were of the opinion that the Claimant needed appropriate support from management so as to build his confidence and self esteem. They recommended that the Claimant was provided with '*appropriate mentoring'*, that his training needs were addressed. It was also advised that the Claimant "*for the moment'……..be maintained on temporary restricted duties of a non critical nature'* in order to allow him to make progress in terms of his role. It was arranged that the Claimant would be reviewed in eight weeks.

115. Accompanying that Report was the FMA Functional Assessment form also completed by Dr Williams which indicated the Claimant was capable of carrying out most functions of the Hub Officer role apart from:

a. operational driving; and

b. interacting with members of the public in an environment either controlled (for example custody) or uncontrolled.

116. Dr Williams considered that the Claimant was capable of dealing with levels of workplace stress and nonphysical confrontation that were normal in a police role but with adjustments, although exactly what these adjustments were to be were not confirmed in that Functional Assessment.

117. On 21 September 2017, PS Evans was provided with a copy of the Claimant's Report by the Occupational health nurse and he in turn provided a copy to his line manager, Det Insp. McKeon, the following day [194].

118. On receipt, both Det. Insp. McKeon and Insp. Rowlands questioned with Denise Evans what, in practice, the Claimant was able to undertake as a result of the recommended temporary restriction, seeking clarification with the FMA as to whether the Claimant was able to speak to members of the public over the phone or take statements at all, in the context of the Claimant being a church minister holding religious meetings with members of the public and his congregation every Sunday [194/93].

119. On the same day, PS Chris Evans also met with the Claimant and conducted an informal management meeting as part of the Unsatisfactory Performance and Attendance Procedure [197]. The notes of that meeting reflect that it was agreed that the Claimant would have:

a. 5 weeks of tutoring;
b. That he was on restricted duties since receipt of the September FMA Report and that his duties were restricted to:
    i. Memos; and
    ii. File building.

120. The note also confirmed that the Claimant was receiving professional support from qualified counsellors. The Claimant signed the meeting note and confirmed that he desired '*nothing more than to be fully operational, regaining aspirations for promotion and advancing [his] career'.* He confirmed that there was support and that he was in an environment where he could go forward [204 and 205].

121. A few days later, on 25 September 2017, the Claimant also met with Det Insp Damien McKeon and Damien McKeon's ePocket Notebook entry of that meeting records the matters discussed [207]. Whilst we did not consider this to be a verbatim record of the meeting, or to be anything other than a note, we found that it represented the gist of the matters discussed on that day. We accepted that it reflected the Claimant's state of mind and perspective of his relationship with his employer, at that point in time and indeed which continued throughout the remainder of his employment.

122. The Claimant was still focussed on his grievance relating to lack of promotion and what he considered was religious discrimination from his time at Aberdare. He did express some discontent with PS Matthew O'Sullivan regarding the meeting of 2 July 2017. It was of note that despite the support he stated that he was getting from PS Evans, the Claimant still felt useless and undervalued.

123. Det. Insp. McKeon asked the Claimant why, if working in the Police made him so ill, did he not just leave and again, the Claimant referred to past issues related to his time at Aberdare and his lack of promotion whilst there, not his time at the Hub, and that simply being in work reminded him of those problems.

124. A few days later, on 27 September 2017, Denise Evans confirmed to PS Matthew Rowlands and Det. Insp. McKeon that the FMA had clarified that the Claimant was capable of taking statements that were '*run of the mill'* and that if he was not capable of taking a basic witness statement then this raised the question as to whether he was fit to be in the workplace [208].

Grievance

125. On 13 October 2017, the Claimant submitted his formal written grievance ("Grievance") [451] regarding broadly four matters dating back to March 2014:

a. regarding his allegations of comment and conduct against him during his time at Aberdare in Spring/Summer of 2015;
b. regarding his failure to progress and be promoted in Spring 2016;
c. regarding his move to Ton Pentre in September 2016; and
d. regarding his time at the Hub from April 2017 to July 2017.

126. At the start of the following week the Claimant was away from work for a period of eight days on compassionate leave relating to a personal matter [218] and, on his return to work on 4 November 2017, he had a further conversation with Det. Insp. McKeon which was again documented and recorded in Damien McKeon's ePocket Notebook [222].

127. Again, we don't consider this to be a verbatim note of the meeting, but reflects that the Claimant, at Damien McKeon's instigation, discussed his Grievance. The comments made by Damien McKeon are likely to be reflective of his perception of the Claimant's approach and attitude to work at that time, which was that the Claimant considered that there was nothing that the Respondent could do to make him feel valued and that he was not coping being in the workplace.

128. We accept that the gist of the Claimant's expressed position at this time which was that he wanted to do the role of a police officer. However, he also held a contrary mix of feelings:

a. that there was little that he could do as he felt sick at the thought of work; but, at that the same time
b. that the work that was given to him was demeaning.

129. There was a lack of clarity from both parties on who was actually supervising the Claimant from the period that PS Evans left work on 8 October 2017, to the point in time when the Claimant returned to work on 1 February 2018.

130. When asked on cross examination, PS Stuart Williams gave evidence that from his review of the supervision notes, PS Stuart Archer had been responsible for supervising the Claimant until he took over in January 2018 [432]. Despite Stuart William's belief, he was not at the Hub prior to October 2017 and no other Respondent witness confirmed that this was the case. Whilst Stuart Archer made little reference to this in his own witness statement, he did confirm that he had discussions with the Claimant over this period and

spoke on the telephone[5] and emails and sickness records reflect that [437-438]. Whether he had been responsible for supervising the Claimant in this period was not a question that was put to Stuart Archer when cross-examined by the Respondent's Counsel earlier in the hearing.

131. However, and in any event, during this time the Claimant worked few shifts, around 9 in total in that one month period before he too reported as sick. We found that it was more likely than not, that as the arrangements that PS Evans had put in place for the Claimant back in August had continued throughout August and September (with officers routinely being the single point of contact for the Claimant and supporting him when required,) and that this support continued until the Claimant's own sick leave on 10 November 2017.

132. We further found that it was more likely than not that no one PS was formally appointed the Claimant's supervisor in the four- week period from 8 October to 7 November 2017, when the Claimant himself reported sick and that during the Claimant's sick leave from 10 November 2017 until the beginning of 2018, that it was more likely than not that no one PS was allocated to 'supervise' but that PS Stuart Archer was tasked with keeping in contact with and managing the Claimant's sickness absence in this period until PS Stuart Williams assumed responsibility for this in January 2018.

133. On 6 November 2017, Chief inspector Chris Owen wrote to the Claimant confirming that he had been appointed to investigate the Claimant's grievance and made arrangements to meet the Claimant on 23 November 2017 to discuss his Grievance [470].

Second FMA Report and Functional Assessment 7 November 2017 (Second Report)

134. The Claimant was again reviewed by Dr Williams on 7 November 2017 just prior to his sickness absence and again we were provided with Dr Williams' notes of the consultation which confirmed that the Claimant reported experiencing symptoms of stress and anxiety and finding it extremely difficult to be in work. He also reported that he had found it very difficult to overcome his symptoms because of the way he perceived he had been treated by the organisation which had led to a lack of trust. The Claimant reported that his memory was extremely poor although he was not on medication. He was receiving counselling from outside the organisation, counselling he was receiving from members of his church.

[5] WS Stuart Archer §15 and 16

135. A second report dated 7 November 2017 was prepared which was again sent to Denise Evans [228]. In brief, the report reflected the content of Dr Williams' note of their consultation with the Claimant and confirmed that the Claimant had communicated that he was finding the Hub environment busy and stressful and that because he was limited by restrictions in terms of what he could do, this was compounding his lack of confidence and anxiousness.

136. Dr Williams was unable to determine, in terms of recuperative/temporary restricted duties, a timeframe for return to substantive role for full operational duties and it was their opinion that *'if at all possible, a reasonable adjustment may be to locate him in a less stressful environment to enable him to regain his confidence in his abilities and reintegrate into a productive role'*. They arranged to review the Claimant in three months.

137. The FMA Functional Assessment again indicated that the Claimant was incapable of:

a. operational driving duties and
b. interacting with members of the public in an environment which was either controlled (custody) or uncontrolled.

138. With regard to the Claimant's capability with regards to his mental health, it was considered that the Claimant was capable but with adjustments of '*appropriate support'.* This included dealing with workplace stress and non-physical confrontation that were normal in a police role, roles that required a critical requirement for good memory and concentration, strong decision making and cognitive abilities and dealing with traumatic events [232]. Dr Williams concluded that the Claimant was not capable for either a normal substantive role or the ordinary duties of the police officer at that time and considered that the incapacity reflected in the Functional Assessment was considered that it was likely to last in excess of six months.

Karl Emerson comments August 2017 – November 2017

139. The Claimant has alleged that during the period after he returned to work on 25 August 2017, PS Karl Emerson said '*Does he have his your pants on his head today?'* and *'Is he available for work?'*.

140. The Claimant was unable to particularise within the Further and Better Particulars the precise date on which the comment was made but he accepted that he occasionally made self-deprecating comments himself[6]. He amended the allegation to that Karl Emerson had said the two comments in one sentence

[6] Further and Better Particulars para 23 [35]

on one occasion – *'Do you have your pants on your head today, or are you available for work?*

141. In his witness statement, the Claimant extended this allegation that Karl Emerson '*would often refer to me as having* '*pants on my head'* or 'ask *whether he had 'pencils up my nose'"*[7]*.* The Claimant admitted to using such phrases himself which he tells us was a coping mechanism.

142. Karl Emerson admitted that he had used such phrases but that he had never heard them before the Claimant had used them, adopting them from the Claimant. He believed it was banter between two colleagues. Such evidence was also supported by other of the Respondent witnesses, Kelvin Jones who confirmed that they had heard the Claimant make such comments, believing that the reference was attributed to various comedy sketches from Monty Python.

143. We accepted the Respondent's evidence and found that whilst the comment had been made by Karl Emerson, and that it was likely that it was made on more than one occasion, this was said by him in response after the Claimant had referred to himself in such a way.

Sick Leave 10 November 2017 – 31 January 2018

144. On 10 November 2017, the Claimant commenced a second period of sickness absence from the Hub and on 6 December 2017, the Police Federation, on behalf of the Claimant emailed Det. Insp. McKeon and asked if a temporary reasonable adjustment could be considered of placing the Claimant in IST when/if the Claimant returned to work [234]. This email was in turn forwarded by him to Det Insp Matthew Rowlands on the same date with the following query *'It doesn't matter to me where he goes. IST is yours. It will be up to you I think?'.*

145. We have not been provided with any documentation which indicates any further written correspondence on this matter, either between the two inspectors or the Police Federation.

146. Damien McKeon was unable to recall the reasons why the Claimant was not offered IST at that time and on cross examination indicated that he wasn't in charge of IST and ultimately it was not his decision. Matt Rowlands was not cross-examined on the specific issue as to whether consideration was given to moving the Claimant to IST at that point, but in his witness statement confirmed that he had been unable to find any emails indicating a response and was also

[7] Claimant WS §66

was unable to recall whether he in fact responded to that email. In his statement and on cross-examination he disagreed that IST would have been beneficial for the Claimant.

147. It is possible that the HR Business Partner, responsible for the Northern Unit at that time, may have been able to assist had she given evidence, but she was not relied on by the Respondent to give evidence. There was however no indication from the Claimant's representative that this was a significant issue for them when that issue arose during the hearing.

148. Ultimately, we have had no evidence from the Respondent witnesses as to what thought process, if any, they put at that time into considering the FMA Report of November 2017, and the request from the Police Federation to move the Claimant to IST. We found that it was more likely than not, due to the paucity of the evidence relating to this issue from any of the Respondent's witnesses, that no one put their minds to transferring the Claimant to the IST or to another area of the business at that time.

149. However, whether the role at the Hub was a stressful area to work appears to be very much a subjective issue within the Respondent pool of witnesses, with some officers believing the HUB was stressful, largely as a result of the PACE 'clock', and others believing areas such as Response to be more stressful.

150. Some officers were of the view that the stress of working in the Hub was marginally higher than the IST but there were also variations on this:

a. That the stress was on the PSs and not the PCs[8];
b. That the stress was on fully fit operational officers but that if officers were there for recuperation, not so much on them, as they could do as much or as little as possible[9]
c. Det. Insp Rowlands accepted that IST was less stressful than the Hub[10].

151. The Claimant has also relied on other areas within the South Wales Police that could have come under consideration at that time as less stressful environments and examples were provided by the Claimant, not within his pleaded claim or his witness statement, but through re-examination of the Claimant and cross-examination of the Respondent's witnesses. As such, it

[8] Cross-examination of Chris Evans
[9] Cross examination evidence of Damien McKeon

[10] *'a 7/10 compared to a 10/10 for the Hub'.*

was necessary to recall the Claimant at the end of the Respondent evidence to give the Respondent the opportunity to cross-examine him on those areas.

152. We were not satisfied, on hearing and accepting the evidence from the Respondent's witnesses, that these alternative roles would have resulted in a less stressful environment than the Hub and/or IST. These included the Property store, MASH or Multi Agency Support and Licensing. All involved interaction with third parties and their own particular pressures, pressures we found were likely to be similar to or greater than those that dealing with prisoners at the Hub might have generated.

153. By December 2017, the Claimant was close to having his sick pay reduced and had applied for consideration to be given to awarding him full pay during his absence. On 13 December 2017, the Respondent wrote to the Claimant confirming that his application to remain on full pay had been considered and that he would remain on full pay until 31 January 2018 '*in order that discussions ….can be undertaken in relation to adjustments to your role/exploration of alternative temporary roles'* [235].

Grievance

154. On 14 December 2017, the Claimant met with CI Chris Owen as part of the Grievance investigation that had commenced following the submission of the Claimant's Grievance earlier in October. A meeting had originally been organised for 23 November 2017, but had been postponed as a result of the Claimant's absence from work. The purpose of the meeting was to clarify the Claimant's Grievance and to obtain further information from him.

155. Chris Owens was accompanied at that meeting Lorraine-Morgan Shellard (HR Business Partner) who took notes of matters discussed [495-520].

Return to work 1 February 2018

156. In January 2017, PS Stuart Williams took over responsibility for sickness contacts in the Hub from PS Stuart Archer. Whilst now an Inspector, Stuart Williams was then a PS and had been at the Hub since the previous October 2017. He was also Hub Deputy and deputised for Insp Damien McKeon and assumed responsibility for supervising the Claimant at this point in time.

157. On 18 January 2018, a copy of a Hub competency document was sent to a number of officers including PS Stuart Williams, by Insp. Matthew Rowlands. From the timing of the email, PS Williams emailed Insp Rowlands

within a few minutes stating that he considered the document would be 'ideal' for the Claimant and a copy of the Hub competencies was provided to the Claimant. There has been no suggestion in evidence or submission that it is the Claimant's case that this document should have been completed for him and/or was not [241].

158. As the Sickness Supervision notes reflect, PS Stuart Williams also spoke with the Claimant on that date and the Claimant indicated he was looking to return to work on 1 February 2018 [435].

159. There appears to have been no discussion with the Claimant regarding working away from the Hub, whether in IST nor indeed in any other section of the Respondent. Equally, neither the Claimant nor his Police Federation representative appears to have revisited this issue. A return to the Hub was discussed and it was agreed that the Claimant would return on phased hours and that he would be supported by 'mentorship' to increase his confidence and awareness of the role at the Hub.

160. On 1 February 2018, the Claimant returned to work at the Hub and met with PS Stuart Williams where a return to work or Report Fit interview was undertaken. A pro forma Report Fit Form was completed which reflected the meeting content [245].

161. At that meeting the Claimant confirmed that he was suffering from anxiety but that he felt that it was at a manageable level to return to work. It was agreed that he would be mentored to assist in rebuilding his confidence and he had returned on reduced hours. The Claimant confirmed that he was on prescribed medication but that he did not consider that this should affect his role.

162. The meeting was also followed by an informal management action meeting regarding the Claimant's absence [242]. The Claimant considered the meetings positive and it was arranged that PC Ian Francis would be the Claimant's tutor.

163. A copy of the Hub competencies document was sent to Ian Francis and Stuart Williams confirmed that there was no time limit within which the Claimant was to complete them and that he would hold weekly face to face meetings with the Claimant to see how he was developing [246].

Third FMA Report and Functional Assessment 8 February 2018

164. On 8 February 2018, the Claimant again attended an assessment with the FMA. This time, he was assessed by a Dr Hopkins and again we were provided with a copy of their clinical record [254]. Again the record, reflects that the Claimant was still referring to his lack of promotion and that this was impacting on his self-esteem.

165. The Report prepared the same day was sent to Denise Evans [259] and confirmed that the Claimant had started medication, appeared to have benefitted from time away from work and was displaying a much more positive outlook. It was again recommended that the Claimant undertake a phased return to work (which was already in place) and that he initially be restricted from having any direct public contact. Dr Hopkins confirmed that Claimant would be '*fit to observe other officers undertaking statement taking/interviewing etc, with a view to resumption of these duties himself in the near future'.*

166. In terms of the recommended rehabilitation/recovery plan or adjustments required, no reference was made to a less busy or stressful environment which seems no longer to have been a recommended adjustment.

167. Dr Hopkins recommended instead that the Claimant's return be '*structured and that he has appropriate support in place'.* It was further recommended that the Claimant's duties were '*very gradually increased, as he feels comfortable, and that regular meetings with management take place to ensure that he is able to access additional support if needed'* and that with appropriate support, it was their opinion that the Claimant would be capable of regular and efficient service.

168. The FMA Functional Assessment was slightly different in format from the earlier Functional Assessment forms but again indicated that Claimant was not capable of

a. interacting with members of the public either in a controlled when controlled environment or statement taking in custody, a police premises or nonpolice premises.
b. undertaking home visits to victims of crime [263].

169. The hand-written annotations reflected that this would remain for 6 weeks when it would need to be reviewed but that in the meantime the Claimant was capable of observing others interacting with members of the public, taking statements and home visits.

170. Dr Hopkins indicated that the Claimant was unable to deal with levels of workplace stress in a police role or dealing with traumatic incidents, shifts or night working. Again the manuscript annotations indicated that this would remain in place for six weeks when it would be reviewed.

171. It does not appear that this Report was provided to the operational Police officers, either PS Stuart Williams or Det. Insp Damien McKeon, until 22 February 2018 [890].

Discussions with Ian Francis and Alex Gregory - February 2018

172. On returning to work at the Hub, Stuart Williams arranged for Detective Constable ("DC") Ian Francis to sit with the Claimant to get him '*settled back into the role'.* DC Francis was a point of contact for the Claimant and had been instructed by Stuart Williams to treat the Claimant like a student officer, starting fresh, to build his confidence. Ian Francis provided the Claimant with his mobile number.

173. By 11 February 2018, the Claimant had worked a couple of shifts only, as reflected in DC Francis' notes of his tutoring of the Claimant [264] and the Claimant's roster [778]. That day the Claimant was working alongside DC Francis. No briefing had been given to DC Francis by more senior management regarding the Claimant's medical background or why he had been off work sick, at this point. That much was evidenced by DC Francis's own evidence including his own contemporaneous tutor notes [264].

174. The Claimant's evidence is that he questioned DC Francis on whether he had been given any brief with regards to training him and that DC Francis had responded that he was going to '*tutor him like a student'* and that the Claimant had been embarrassed by this. DC Francis asked the Claimant whether he wished to take a statement from a witness relating to an assault, offering to sit with the Claimant to assist if required. The Claimant declined and informed DC Francis that he was unable to interact with members of the public.

175. There is a dispute between the Claimant and Ian Francis as to what was then said in response and the manner in which Ian Francis responded;

a. The Claimant alleges that Ian Francis then said *'What the fuck am I supposed to do with you then?'* and that he was very annoyed *(Claimant WS §83);*

b. Ian Francis' evidence is that he said *'I don't know what I can do with you today then as the majority of today's work involves interaction with the*

public and police custody'. He admits that he was frustrated but denies that he was frustrated with the Claimant *(Francis WS §9and §11).*

176. Whilst on cross-examination, the Claimant had no recall of whether Ian Francis offered him to assist and observe him taking a statement, he remembered Ian Francis being 'frustrated'. On cross-examination, it was put to Ian Francis that he looked 'confused', not that he was angry. Ian Francis denied that he had sworn or that he was 'perturbed', as it was also put to him, responding to the Claimant's representative that the pleaded allegation against him was '*horrible'* and that he had not spoken in the way suggested by the Claimant.

177. Whilst we accept and found that DC Francis was frustrated with the situation and had questioned what work he was able to do with the Claimant, we were not persuaded that he was angry with the Claimant or that he had used the swear words alleged for the following reasons:

a. The alleged comment and/or the angry manner that the Ian Francis was alleged to have made the comment was not raised by the Claimant with PS Stuart Williams the following day. Even on the documentation relied on by the Claimant, the Claimant did not raise this issue until 20 July 2018 in his meeting with Dean Gittoes although we accept that he did repeat this allegation to Cheryl Flowers on 21 September 2018 [378]. We found it likely on balance, that had Ian Francis said these words and/or in the angry manner alleged, the Claimant would have raised them earlier. He did not.

b. In addition, where there is a dispute, we preferred the evidence of DC Francis in relation to the words used and behaviour towards the Claimant.

178. On cross-examination, it was also suggested to Ian Francis that he could have enquired of the Claimant whether he wished to talk about his mental health or his FMA Report as he knew that the Claimant had been on long-term sick. We considered this a wholly unrealistic suggestion, particularly taking into account the requirements for any organisation to preserve confidentiality relating to employees' health.

179. Following that conversation, DC Ian Francis did speak to PS Alex Gregory. We accepted the evidence of Ian Francis and Alex Gregory that the Claimant could not have heard their conversation due to distance and general volume of noise in the Hub, which was limited to DC Ian Francis telling PS Alex Gregory that the Claimant was unable to take a witness statement.

180. Alex Gregory emphatically denied saying to the Claimant as has been alleged '*What can we do with you?' you are no good, I cant utilise you'*. There is a dispute in the evidence and we preferred the evidence of Alex Gregory. We found that Alex Gregory did not tell the Claimant that he was '*no good'* to him as he '*couldn't utlilise him',* or words to that effect.

181. Finally, with regard to the claim that the Claimant was left with no work, whilst we accept that this was a possibility on that day, given the particular workload of Ian Francis that day, we also considered it unlikely that this would have been a continued or regular event. We didn't consider that the evidence, from either Chris Percy or Stuart Archer, of seeing the Claimant staring at his computer terminal or making refreshments, to be persuasive or helpful in determining whether the Claimant was left for hours without work. Other officers, witnesses from the Respondent including Alex Gregory and Cheryl Flowers disputed that the Claimant was left without work,

182. We did not find on the evidence that the Claimant had been regularly or routinely left without work. We considered that he would have raised this as an issue had this been the case and/or it would have been noted by colleagues and/or management. Whilst we accepted that the Claimant had raised it with the FMA later in the year in April, even in the Claimant's own witness statement, he appeared to focus this issue on the period in around early October 2017 only, and provides little evidence within his statement that this arose during his time at the Hub in any other period[11].

The Hub from February 2018 – July 2018

183. Whilst the Report Fit form, completed by Stuart Williams on 1 February 2018 [245], indicated that the Claimant was *not* returning on recuperative duties, it appears that this was an error as a Recuperative/Temporary Restricted Duties Action Plan was not completed by PS Stuart Williams until 26 February 2018, as contained in the Bundle [271] and dated that day. By that stage, Stuart Williams had received the FMA Report of 7 February 2018. This appears to be the date that the Report was also sent to the Claimant and amended to reflect that the Claimant did have a disability and did require recuperative/temporary restricted duties [890].

184. During the course of this hearing a further copy of the Action Plan document, in Excel spreadsheet format was also provided so that the full content that had been inputted into the proforma could be read in its entirety. This was referred to as Excel Spreadsheet 1.

[11] Claimant WS §63 and §86

185. This Action Plan confirmed that:

a. the Claimant was on recuperative duties for a maximum of 28 days
b. that reduced hours and restricted duties would assist in the Claimant's return to the workplace.
c. The Claimant was on a phased return to work over 28 days building up to 36 hours over 4 days by week 4.

186. In the data entry for the duties that the Claimant would undertake whilst on recuperative/temporary restricted duties, the following was entry was included:

> *'Pc Roderick will undertake the duties of an officer in the Northern HUB where he will make phone calls/answer the phone and speak to victims/witnesses, take notes, update occurrences, start and complete tasks where he will be effectively reducing demand on Response/NPT teams. Pc Roderick will monitor officers taking statements and interviews, when he feels ready he could start to take straight forward statements from members of the public in a controlled environment. He will complete a HUB competency document to assist in increasing his understanding and duties of a HUB officer, this will assist in his confidence and being a competent HUB officer.'*

187. The proforma Action Plan provided for reviews to be undertaken on a weekly basis and for those review outcomes to be recorded on the same form. Whilst PS Stuart Williams did not complete the proforma Action Plan Review documentation, he did engage in regular face to face meetings with the Claimant as reflected in his own personal supervision notes recorded in a Word document that he had prepared [294].

188. Whilst we agree that the Reporting Absence Policy requires officers to complete the proforma review forms, and it is clearly a training issue for the Respondent that PS Stuart Williams did not, we did not find, as has been inferred by the cross-examination by the Claimant's representative of Stuart Williams, that these supervision notes as recorded in Word by Stuart Williams, were in any way contrived or prepared after the event, for example for the purpose of this litigation.

189. Rather, we found that these notes were a brief written record of the regular review meetings PS Stuart Williams held with the Claimant during his time at the Hub from 1 February 2018 reflecting that face to face meetings where the Claimant's work was reviewed took place on:

a. 12 February 2017 (the Claimant having only worked four shifts at that point,);
b. 19 February 2017 (when the Claimant had worked two further shifts); and
c. 9 March 2017 (after the Claimant had worked a further six shifts[12]).

190. Whilst not undertaken weekly, three review meetings had taken place in the first 5 weeks of the Claimant's return to work, a period where a considerable amount of annual leave and rest days had been taken by the Claimant.

191. The arrangement, whereby Ian Francis would assist the Claimant, ended after 11 February 2018 as DC Francis' responsibility at the Hub was to deal with members of the public and suspects in police custody. During his time at the Hub from February 2018 through to July 2018 the Claimant was therefore instead allocated different but specific officers who he sat with on a daily basis when on shift. The same officer for consistency was not allocated to the Claimant as the Claimant did not work a the same set shift pattern as the Teams based at the Hub due to his flexible working and differing shift patterns.

192. Stuart Williams was not challenged on this on cross-examination. Rather the questioning of him was focussed on the failure to have provided the Claimant with names in advance of the allocated police officers which, it was contended by the Claimant's representative, would have been possible as the shift pattern was set for a three month period. Whilst we found it likely that this would have been possible, names in advance were not provided to the Claimant.

193. In early March it was agreed that the Claimant was to attend courses including officer safety, first aid and a 5 year car refresher and steps were made for the Claimant to attend appropriate courses [279 and 890] although it appears that the Claimant did not in fact attend any courses in the remaining period of his employment.

Comments made by Ian Francis, Karl Emerson and others

Comment from Ian Francis

194. The Claimant alleges that in February 2018, Ian Francis shouted out '*Winston, he could do with some Jesus'*[13]. The Claimant did not indicate within the pleading who it was alleged that Ian Francis had been shouting at and

[12] Claimant's roster [778-802]
[13] Amended Particulars of Claim para 34 and 38H) [18]

further particulars of this allegation were not provided within the Further and Better Particulars. The Claimant's witness statement places such an allegation in the period whilst he was in IST from August 2018 and having been made to PS Barwood[14]. The agreed List of issues (para 5ai) amended this allegation to Ian Francis having *said* this to PS Barwood whilst walking past him.

195. This is disputed by the Respondent witnesses and on cross-examination both Ian Francis and Julian Barwood denied that this had happened. We accepted the evidence of the Respondent witnesses and found that this comment had not been made on the following basis:.

a. where there is a dispute, we prefer the evidence of the Respondent witnesses;
b. The submission by the Respondent's Counsel, that as PC Francis was a committed Christian himself and it seemed inherently unlikely that he would have made such a comment, resonated with us also;
c. The Claimant had varied the dates of the allegation from that originally pleaded para 34 of the Amended Particulars of Claim.

Comment from Karl Emerson – Father Ted

196. Whilst there was no reference to this complaint within the Amended Particulars of Claim, within the Further and Better Particulars the Claimant had alleged that he was called '*Father Ted'* by Karl Emerson during a conversation about freemasonry with PC Ian Francis. Whilst the Claimant could not recall the exact date of the incident, he believed that it was around July 2018.

197. This allegation too had amended within the agreed List of Issues with the date that it was alleged to have been made changing to between February and April 2018, and in a conversation taking place between Acting PS Karl Emerson and PC Ian Francis regarding Ian Francis being in the freemasons. The Claimant alleges that when he had engaged in the conversation, Karl Emerson had said to him '*you can talk Father Ted'.*

198. This was denied by Karl Emerson within his witness statement and again on cross-examination. Ian Francis recalled having a conversation with the Claimant about the freemasons but had no recall of any conversation with Karl Emerson and the Claimant.

199. There is a clear dispute between Karl Emerson and the Claimant regarding a one-off comment that would have been made and again, we preferred the evidence of the Respondent witnesses and found that such a

[14] Claimant WS §118

comment had not been made by Karl Emerson to or about the Claimant. The altered dates further undermined the credibility of the Claimant's evidence.

Comment : Easter Sunday

200. The Claimant has brought a specific complaint, originally pleaded that on or around Easter 2017, a comment was made that '*Jesus did not even exist and the Bible is a pile of nonsense'*. No individuals were named in the original or Amended Particulars of Claim [13](at §20), Further and Better Particulars [18] (at §38E) or Second Claim Particulars [37] (at §7).

201. It appears however that by the latter part of 2020, and then later exchange of witness statements, the Claimant provided further information to the Respondent (not part of these pleadings) and had specifically identified that this had arisen on Easter Sunday 2018, a year later, being 1 April 2018.

202. In his witness statement[15], he also identified a number of police officers as being present including PC Kelvin Jones and PC Lauren Jones, witnesses who we heard live evidence from and he specifically named PC Ashley Cooper, who we did not hear evidence from, as having made the comment.

203. We accepted the evidence from Lauren Jones, supported by Kelvin Jones (a retired PC who had worked at the Hub in the last four years' of service, up to April 2019,) that she was not present during this particular conversation.

204. On cross-examination Kelvin Jones confirmed that he had heard Ashley Cooper '*say something similar'* to '*Jesus does not exist and the Bible is a pile of nonsense'*, and also admitted that he had said '*Here, Here'*.

205. Kelvin Jones did not accept when challenged however, that it was a heated exchange, but rather that '*it was more of a debate and a discussion rather than a heated exchange'* between believers and non-believers*.* He added that the Claimant provided his version and Ashley Cooper had given his. Whilst he did not accept that the comments had been said as a joke, neither did he accept that it was said in an argumentative or derogatory manner.

206. We accepted that evidence in conjunction with the further evidence from Kelvin Jones and Ian Francis, that the Claimant very regularly raised religion as a conversation topic, and initiated conversations about it, inviting questions about his faith and the Bible; that the Claimant was an individual who regularly invited discussion regarding his faith and spoke of it frequently.

[15] Claimant WS§89

207. Whilst we accepted that there was a conversation, which was likely to have been on or around Easter Sunday 2018, regarding Jesus Christ and the Bible, and that another PC had indicated that he did not believe and thought that the Bible was '*nonsense'* or words to that effect, we do not accept that the totality of the conversation was that as reflected in the Claimant's witness statement.

208. Rather, we found that it was a conversation around belief in Jesus Christ and the Bible more generally and that as part of that conversation, a non-believer confirmed that he did not believe that Jesus Christ existed and that he thought that the Bible was ' *a pile of nonsense'* or words to that effect.

Fourth FMA Report and Functional Assessment 19 April 2018

209. Through a combination of sick leave, annual leave, and rest days, the Claimant worked very few shifts during the period from 1 February 2018, with the shift roster indicating that this amounted to around:
    a. eight shifts in February;
    b. seven shifts in March; and
    c. only three shifts in April 2018.

210. On 19 April 2018, the Claimant attended the FMA again as a review appointment. Again, we were provided with the notes of Dr Hopkins which reflected that matters raised by the Claimant at that time, with Dr Hopkins suggesting that it '*may be beneficial to consider move away from operational policing to allow him to rebuild confidence in slow time and away from public contact' [*281].

211. The subsequent report dated 24 April 2018 reflected that the Claimant was at that time reporting that since returning to work his psychological well-being had deteriorated and was continuing to do. He felt unable to help out with the duties of his shift and could not see how he was going to regain the abilities in the current environment.

212. He reported that he had lost significant confidence over the previous year and now felt overwhelmed at the prospect of any policing duties due to his anxiety, that he would make significant errors. Whilst he had been observing other officers, due to the busy nature of the role, he had often been there for hours without any work to do leaving him feeling devalued and demoralised, as well as guilty toward colleagues who were extremely busy.

213. He also reported the method of tutoring, whereby he would be observed undertaking tasks, such as taking a statement and be provided feedback and Dr Hopkins reported that as the Claimant felt unable to do those tasks, this method of tutoring was not likely to help him. No alternative methods of tutoring were suggested.

214. Dr Hopkins suggested to the Claimant discussing with his GP whether an increase in dosage of his medication would be useful given his symptoms.

215. Paragraph 3 and 4 of the Report proved telling, with Dr Hopkins being unable to suggest what adjustments or arrangements could be put in place in order to benefit the Claimant stating that the Claimant '*really needs to start at the very beginning in terms of undertaking the paperwork associated with policing and moving up from there.'*

216. It was suggested that due to the business of the Hub environment, *'it may be more beneficial to move him out of his current role completely and to consider a move away from operational policing altogether and to allow him to rebuild his confidence at a slower pace and away from public contact'.* It was recommended that management meet HR, potentially also with the Claimant and his Police Federation representative to try to find an appropriate way forward.

217. The FMA Functional Assessment indicated that the Claimant was not capable of the psychological requirements of arrest and restraint or interacting with members of the public, or dealing with levels of workplace stress and non-physical confrontation that were normal in a police role or traumatic incidents [285]. The prognosis was uncertain and the Claimant was likely to be incapacitated for 6-12 months.

218. On 26 April 2018, the Claimant and Stuart Williams met for a Report Fit interview, the Claimant having been off work since 7 April with a chest infection [291]. Indeed, by that point, the Claimant had worked around three full shifts only in April as a result of the ill-health, annual leave and rest days.

219. They discussed a change of role for the Claimant and the Claimant consented to Stuart Williams receiving a copy of the 24 April 2019 FMA Report which, at that point, Stuart Williams had not seen. The Claimant reported to Stuart Williams that he felt he could not carry out the basic tasks of taking a statement for uncomplicated matters, that he couldn't speak to members of the public or retain information. He felt useless as he could not assist in any way.

220. At around this time, PS Dean Gittoes become involved in managing the Claimant, having arrived at the Hub as a PS in March of that year. Whilst in evidence Dean Gittoes recalled that he did not have any dealings with him around this time due to his own annual leave and the Claimant's sickness absence, he was provided by email with a copy of the 24 April 2018 FMA Report [293].

30 April 2018

221. On 30 April 2018, the Claimant reported as sick during work, texting Stuart *"Serge, apologies but going home. I can't stay in work as its making me feel ill. I am getting worse every shift and can't speak to anyone or sit there doing nothing all day. I have never felt more unwell or demotivated. Please report me sick-and I m going to the doctor in the morning.*

222. Prior to leaving, the Claimant had enquired of Det Insp. Damien McKeon about moving to IST. Damien McKeon was busy and unable to discuss this at that particular moment.

223. The Claimant's absence appears to have caused concern as the following day Det Insp McKeon sent an email to PS Stuart Williams telling him to '*document everything we've done to ensure we are watertight in respect of any issues he may bring up.'* [296]. The purpose was to evidence the support the Claimant had been given but also to evidence the Claimant's '*lack of enthusiasm and what he said he can and cant do and his reluctance to actually do anything'*

224. Damien McKeon was cross examined on this document and his explanation for it was that he wanted to be fair to all and for everything to be documented as he believed that the Claimant's departure on sick leave was going to be the catalyst for litigation and wanted to ensure all steps had been documented. We accepted that evidence and, as Stuart Williams put it in answer to similar questioning on his cross examination, we found that in sending this email, Damien McKeon was acting as a manager with the foresight of a possible claim.

Sickness Absence 30 April 2018 – 24 August 2018

225. The Claimant was again referred to the FMA but there appears that there was a delay regarding that appointment or that it had not taken place at all.

226. On around 7 June 2018, the Claimant's pay was again due to reduce to half pay and at the same time arrangements were being put in place for a

formal Stage 1 meeting to take place to discuss his sickness absence as well as a Stage 1 grievance meeting to discuss the Grievance he had submitted in the previous October.

227. On 18 June 2018, the Claimant again was assessed by Dr Williams of the FMA [312]. As evidenced by Dr Williams' notes, and again reflected in the subsequent Report, particularly in the 'Overview' section [317], the Claimant reported to them that he felt he had made no progress and that he felt that the environment was making him ill, that he felt unsupported and that reasonable adjustments were not being made. He didn't feel he had received the necessary training he needed. He also reported that he was unable to cope with anything stressful and could not deal with mail or household business. He referred to his ongoing Grievance, reporting that he had been too unwell to attend the resolution meeting. The Claimant also felt the added pressure of moving onto half pay.

228. In relation to the Claimant's fitness for work, it was in Dr Williams' opinion that the Claimant was unlikely to recover until such time as his perceptions regarding work were appropriately dealt with by management. They considered that it was impossible to comment as to when a return to work was expected in view of his symptoms, deterioration and complete lack of confidence. No recuperative or temporary restricted duties were recommended and the Functional Assessment Form reflected their views on the Claimant's capacity for duty, which was again restricted [320].

229. In terms of adjustments, Dr Williams reported that it seemed that *'Even the very basics are now beyond him'* and that '*he needed a significant degree of retraining starting with the very basics and a relatively stress free environment to enable him to regain the required knowledge and confidence he will require to enable him to return to an acceptable level of functioning within the police officer role.'* Dr Williams saw no prospect of a recovery to the point where he would be an effective and productive police officer unless this was adequately addressed and concluded that this would be a management decision as to whether he could be provided with this level of support.

Stage 1 Unsatisfactory Progress Meeting 20 July 2018

230. A Stage 1 meeting, part of the Unsatisfactory Performance and Attendance Procedure, took place on 20 July 2018, attended by the Claimant accompanied by Leigh Godfrey, his Police Federation representative. The meeting was conducted by PS Dean Gittoes who was accompanied by Linda Williams, HR Business Partner who had been the HR Business Partner for the

Northern Division since January 2018. Her notes of the meeting were provided in the Bundle [340] as were the typed notes [349].

231. There is a dispute between the parties regarding the Claimant's emotional state during that meeting. The Claimant asserts that he was emotionally fraught throughout. Both Dean Gittoes and Linda Williams accepted that the Claimant had been upset at the outset of the meeting but not throughout and that the meeting had ended positively. We accepted the Respondent evidence on that point.

232. As the notes of the meeting reflect, at that meeting the Claimant referred to his Grievance and complained of being given work that was beyond him due to medical reasons and that that the knock on effect of this was a feeling of worthlessness and guilt. He also complained that derogatory comments were being made regarding his role. The Claimant spoke of feeling let down by what he perceived to be failings in terms of supervision. He confirmed he was receiving counselling and that he had previously seen the Respondent's counsellors.

233. The Claimant was determined to return to work and was concerned regarding the reduction to half pay. It was agreed that the Claimant would initially return to work in the IST, but under PS Dean Gittoes' supervision and on the same shift pattern as him. The notes reflect that it was a long term goal that the Claimant would come back to the Hub and that the move to IST was only temporary.

234. The notes also reflect that on his return PS Gittoes would devise a development plan with regard to the Claimant's roles and responsibilities, and that the Claimant would be subject to a recuperative period where the hours and responsibilities would be reviewed on a weekly basis and agreed by the Claimant and PS Gittoes. Linda Williams suggested that action could be taken to the Claimant's annual leave to reduce the burden financially for the Claimant and a decision was made not to progress the Claimant to Stage 1 of the procedure but that he would remain on an informal management action.

235. It was agreed that the Claimant would return to work on 8 August 2018 in IST under the supervision of PS Gittoes and upon return an action plan and recuperative plan would be devised by them both to establish hours and responsibilities. The role in IST was confirmed to be a short term position which would be reviewed after 28 days. This was not a permanent move but a temporary change as there were no permanent vacancies in IST at that time.

Return to Work August 2018 - IST

236. The Claimant returned to work on 8 August 2018 and on 9 August 2018 had an assessment with Dr Hopkins [352]. In that consultation, the Claimant reported to Dr Hopkins that PS Gittoes was very supportive,. The notes also reflect that the Claimant also reported that he was under pressure from the 'Inspector' for his time in IST to be short term but that the 'PS' was 'happy for this to be open-ended'.

237. The formal report of the same date indicated that the FMA considered that the Claimant would need a prolonged period on temporary restricted duties and would need a '*very supportive management plan'* [357]. It was recommended that the Claimant's role be broken down into constituent tasks and that he be given '*only one task to get to grips with at a time'.* It was again recommended that *'initially PC Roderick be restricted from any public contact, including telephone calls but that this could be relaxed once his confidence increases'*. The Functional Assessment Plan indicated in the prognosis that the Claimant was *'very vulnerable psychologically' [i360].*

238. On 10 August 2018, PS Gittoes completed the Claimant's Return to work interview [Excel Spreadsheet 2]. In terms of reasonable adjustments and support, it was agreed that a plan would be set in order to facilitate the Claimant's return to work and his progression to being able to carry out the responsibilities of the role within the Hub. The form also confirmed that the Claimant would initially return into the IST and undertake work within that department in line with FMA guidance.

Cheryl Flowers' Discussion 24 August 2018

239. On 24 August 2018, the Claimant returned to work shadowing IST officers for the first week on a 5 hours' phased return basis [379] after which a plan would then be prepared when PS Gittoes returned to work in the first week of September.

240. PS Cheryl Flowers had by this time moved to IST as a PS on that team. She had been informed that the Claimant would be in IST as part of a recuperative plan to build up his confidence and upskill him ready for a return to PS Gittoes' team in the Hub.

241. She had a conversation with the Claimant on his first day back and Cheryl Flowers asked the Claimant:

a. what work he could do;
b. that he had responded that he could make the tea;

c. that she had suggested that he look forward, or words to that effect, when the Claimant had spoken of historic issues of his time before working at the Hub

242. PS Flowers asked the Claimant for a copy of his FMA Report which was later provided to her. The Claimant indicated that he did not know what went on in IST and Cheryl Flower's drew the Claimant's attention to information contained on the IST notice board – the White Board *'IST What we do'*. They agreed what the Claimant felt able to do in IST.

243. Cheryl Flower recorded this in her Blue Book [376]. On 28 August 2018 the Claimant had also emailed PS Flowers which, amongst other matters, confirmed the work that he had undertaken and made no reference to the conversation of 21 August 2018.

244. Cheryl Flower also reflected the work in her email to PS Gittoes, PS Stuart Williams and Inspector Jonathan Duckham of 3 September 2018, who at this point at taken over responsibility for overall management of the Hub and IST from Insp Damien McKeon [381]. That email also evidenced that Cheryl Flower had provided work for the Claimant to carry out in the working week, which were basic administrative tasks and disposal of property.

245. She also emailed the Claimant at the same time, the contents of which were largely a repeat of her earlier email to PS Gittoes [385]. PC Flowers' email of 3 September 2018 to the Claimant appears to have triggered a reaction in the Claimant however as he responded to her later that day referring to the conversation that they had on his first day back in work. He now complained that he considered that she had been '*demeaning and unthoughtful*' in asking what he could do; that it was '*embarrassing and had a detrimental effect on my existing condition, making me feel initially overwhelmed by being back in work'*. It referred to PS Flowers having 'dismissed' him when he had attempted to discuss previous issues.

246. That response from the Claimant in turn upset PS Flowers. That much was also clear to us from her live evidence at this tribunal hearing. She also stated so as much in her email to Insp Duckham and PS Gittoes [383]. Her perspective of the conversation differed in terms of the tone of the conversation with the Claimant, a difference which has persisted in the evidence which formed part of this claim.

247. We preferred the evidence of PS Flowers. In addition, the Claimant's email of 3 September 2018 struck us as being at odds with the email that the

Claimant had sent earlier that week on 28 August 2018, an email that had made no reference to his discontent at the earlier meeting [380]

248. It was also our view that PS Flowers was also disappointed with her supervisors; that she had not been informed that the Claimant had been joining IST and that she had not been provided with information relating to him. She felt that this had exposed her to criticism as well as causing her upset. She followed this up the next week with an email chasing an action plan for the Claimant and again confirming the work that she had provided for the Claimant [390].

249. The Claimant and Cheryl Flowers continued to communicate regarding the Claimant's daily and weekly tasks. The Claimant had no problem working in IST at this time, undertaking very basic tasks with Cheryl Flowers acting as a supportive manager. The Claimant confirmed as much on cross examination and that IST was not a pressured environment for him.

250. Despite this, the Claimant still struggled in the workplace - again he confirmed as much on cross examination.

251. Whilst there was no formal Action Plan in place for the Claimant at this stage written on proforma documentation, the Claimant was being provided with support and his role appears to have been broken down by Cheryl Flowers into constituent tasks as recommended by the FMA: the Claimant was given only simple tasks and was restricted from public contact.

252. The Claimant now says that his concern was that he was going to go back to the Hub. By the end of September 2018, the Claimant had finished his Bible course and his flexible working to accommodate that study had ended. He was in communication with Dean Gittoes regarding return to the Hub and was informed by email on 25 September 2018 that the '*current intention'* was for him to remain in IST for a further 4 weeks before moving back to the Hub to Dean Gittoes Team [400]. In that email, Dean Gittoes also confirmed that on the Claimant's return to the Hub he would prepare a suitable plan for his duties in the Hub.

253. The email was intended to be reassuring, and we found that it was reasonable for it to have been read as such, with the Claimant being informed that the work he would undertake at the Hub would be risk assessed in line with the FMA Report and the Claimant's own views and that he would not be allocated work that the Claimant felt was beyond him or was detrimental to his health or progression. The Claimant was told by Dean Gittoes to put any concerns that he held about returning to the Hub in writing [402] and in the

meantime he also wrote to the Claimant indicating that it appeared that 29 October 2028 was the most suitable day for him to return [408].

Comments from PC Scott Mathews/Edwards

254. The Claimant alleges that between 24 August 2018 and 10 October 2018, PC Scott *Mathews* would mock him by making the sound of a church choir / hymn singing and make the sign of a cross every time he encountered the Claimant[16]. Within the draft List of issues, on 29 September 2020 the Claimant amended the name to Scott *Edwards[17].*

255. Whilst we did not hear from Scott Edwards, we were not persuaded on balance of probabilities that such conduct had arisen for the following reasons:

a. The Claimant had not provided the correct name of the individual until late in these proceedings;
b. This was surprising as the Claimant had been in contact with Scott Edwards following his resignation. The earlier text message exchanges gave no indication that the Claimant had any issue or concern with Scott Edwards – the tone is friendly.
c. No other Respondent witness had witnessed such conduct.

256. Whilst reference is made to such concerns by the Claimant in a text dated 22 March 2019, no response from Mr Edwards is included within the Bundle. The text message from the Claimant and the Claimant's evidence alone did not persuade us that the Claimant had proven on balance of probabilities that such conduct had been repeated conduct by Scott Edwards. We had addressed the additional issue of whether the Claimant had proven the requisite statutory purpose or effect if we are wrong on this finding within our conclusions.

Grievance Outcome

257. It appears that whilst Chris Owens met the Claimant on 23 November 2017 as part of the Grievance investigation, he did not commence his investigation in earnest until the following February as a result of Christmas and annual leave and that this involved him preparing notes of matters discussed and information received rather than taking formal statements.

258. He held concerns that despite having evidence from the Claimant, the Claimant had relied on matters that third parties had told him had happened or

[16] Amended Particulars of Claim Para 35 [16]
[17] List of Issues para 5.a.iv.

been said about the Claimant, but the Claimant had been unable to identify those other individuals and considered this hampered his investigation and that the comments relied on were somewhat historic, having been made during his time in Aberdare in 2015/2016 some three years prior.

259. We accepted his evidence that his investigation was a time consuming task but that he did attempt to speak to the majority of individuals that the Claimant had named. He did not speak to the individual that the Claimant had alleged had made comments about him back in 2016 as he was now retired, but did speak to the managing PS in relation to her management of the situation at the time and accepted that the Claimant had confirmed at the time that he did not wish for the matter to be taken further. He also reviewed the Claimant's professional development reviews and noted that the Claimant had not been put forward for promotion as it was not considered that the Claimant was ready at the time.

260. He aimed to meet the Claimant in May 2018 to discuss the Grievance further, but due to the Claimant's ill health that continued throughout the summer, the first opportunity to meet the Claimant again did not arise until October 2018 and on 4 October 2018, the Claimant attended a Stage 1 Grievance meeting with CI Chris Owen when the draft Grievance Report was provided to the him.

261. The Claimant was informed at that meeting that the majority of his complaints had not been upheld. The Claimant was unhappy with the outcome and disclosed further evidence, including email messages dating between June 2014 and 2016, in relation to the Claimant's concerns that he had been deliberately and unfairly deprived of opportunity to be developed for promotion [579-625]. Chris Owen concluded that there was nothing in this additional material to demonstrate that this had been the case.

262. On 10 October 2018, the Claimant reported sick with stress and anxiety [433] and on 12 October 2018, the Grievance meeting was reconvened. Following that meeting Chris Owen set out his conclusions in a detailed letter [640]. He was provided with a right of appeal and a copy of the detailed report supporting the conclusions was provided [645-678].

263. In essence, Chris Owen concluded that:

a. the Claimant's complaints in relation to comments made about and behaviour towards him whilst he had been at Aberdare had been dealt with appropriately at the time and no further action was to be taken;

b. The Claimant's unsuccessful attempt for promotion in 2016 appears to him to have reflected a belief that the Claimant was not ready for promotion and that this was a rational decision, albeit one that was disappointing for the Claimant
c. There was no unfairness in the Claimant's move to the Rhondda which had come about as part of a wider change in the Northern unit.

264. With regard to his complaint regarding his time at the Hub between April and July 2017, Chris Owens accepted that there had been a disagreement, but that there had been no evidence of unfair treatment of the Claimant.

265. Towards the conclusion of his report, Chris Owen confirmed to the Claimant that he wished to give the Claimant the opportunity to work within his sections in the Northern Unit and that he had opportunities for the Claimant to work in neighbourhood or in Response in the Rhondda or Taff areas. He indicated that a development plan would be put in place to support the Claimant in a role of his choosing with mentoring with the aim that on successful completion of the development plan and a period of acting up or temporary promotion as a means to evidence his suitability for promotion [674]. He gave the Claimant a choice from three postings.

266. Chris Owens was cross-examined on his conclusions. We found him to be clear and unwavering in his responses that his approach to the Grievance was thorough and that he had given the Claimant the opportunity to provide evidence to support his allegations and that he had concluded that the Claimant been unwilling or unable to make the most of the support that he had been offered in relation to reintegrating back to work following his sickness absence in April 2017.

267. On 6 November 2019 the Claimant confirmed his intention to appeal the findings and it was confirmed that Emma Mills, then Head of HR Service Delivery would manage that appeal [682].

FMA Assessment October 2018

268. On 17 October 2018 the Claimant had a further FMA Assessment [411] with Dr Williams. Their notes reflect that the Claimant raised his unhappiness with the Grievance investigation and outcome. The subsequent written report of the same date reflected that the Claimant reported being overwhelmed with the demands of the work in IST and his perceived lack of experience and knowledge in the role.

269. The Claimant's dissatisfaction with the Grievance formed part of the FMA's Overview section. With regard to the Claimant's fitness for work, it was their opinion that the Claimant was unfit for work and it was their further opinion that '*unless his role are suitably addressed with support, mentoring and retraining, it is unlikely that his situation will resolve in terms of work…'.*

270. It was arranged to see the Claimant in a further six weeks and the FMA Assessment indicated that the Claimant was not capable of managing the working environment due to his mental health [418].

Resignation

271. On 22 October 2018, the Claimant contacted ACAS [1] and the Claimant was moved to half pay on 1 November 2018, the Claimant's application to receive full pay having been refused [450].

272. A Stage 1 sickness meeting was organised for 28 November 2018 [448] but on 23 November 2018 the Claimant contacted Emma Mills indicating that he was cancelling the Grievance appeal meeting that had been arranged for 26 November 2018 and explaining that he wished to resign.

273. On 26 November 2018, the Claimant did resign and confirmed that he no longer wished to meet to go through the Grievance appeals process [686/689]. Whilst the Claimant's resignation letter did refer to matters that are now the subject of this litigation, it focussed on the Grievance outcome in relation to his lack of promotion and his time at Aberdare. Emma Mills responded by email on 28 November 2018 offering the Claimant an opportunity to discuss his decision to resign [704] but, on 30 November 2018, the Claimant confirmed that he still wished to resign [707] and the resignation was processed with a termination date of 31 December 2018.

Post-Employment

274. Prior to the Claimant's resignation, he became a company director of his brother's training company, Skill-Serve Training Limited [806]. The documents provided in the bundle from Companies House show the Claimant as being a person with significant control, having a 75% shareholding in the company and he was the only registered director from 1 November 2018. This position did not change until February 2021, when his appointment as director terminated as did his status as a person with significant control [817].

275. He also became a company director in January 2019 of another company, Cariad Homecare Limited. A directorship which did not terminate until February 2021 [820].

276. Both companies showed significant capital and reserves on the statutory accounts filed at Companies House showing as having been signed by the Claimant.

277. At around this time, the Claimant was also in text communication with a former colleague, PC Scott Edwards in which the Claimant spoke of his brother having bought him a training company and that his brother wished to purchase another company which the Claimant would be running [716].

278. The Claimant was cross -examined on his role in both companies. The Claimant denied having completed any documentation and suggested that as he had not completed or signed the accounts, this was now subject to an ongoing investigation with Companies House. He gave evidence that he wasn't familiar with Companies House, stating that '*for anyone in the business world it is a mystery'.* When questioned why he had allowed his name to be involved with the companies for two years, he agreed that this was a concern and that he had raised such concerns with the companies' accountants, but that they had refused to speak to the Claimant, only taking instructions from his brother.

279. The Claimant accepted that his brother had provided him with a BMW as a company car and with wages. When asked what he had done in return for the wages, he indicated that he only had to turn up for the 'odd meeting' and that it was not until June 2019 that he had more involvement with the company. Later in cross examination, when asked to comment on the Schedule of Loss that had been provided by him in April 2019 which did not reflect that the Claimant had received any income post-employment [27], the Claimant altered his evidence and sought to indicate that the monies provided to him by his brother was not wages but a loan only to assist him financially.

280. Having been involved in a criminal investigation relating to his brothers' companies some years before, where he allowed his name to be used as Company Secretary, we considered it not credible that the Claimant would have allowed a similar situation arise without his full knowledge. We found this element of the Claimant's evidence in particular to be wholly lacking in credibility and we concluded more likely than not that the Claimant had engaged with these companies for financial recompense, as reflected in his texts to Scott Edwards, from the time he resigned with the Respondent if not just prior at the beginning of November 2018.

Submissions

281. The Respondent's Counsel presented written submissions comprising 29 pages, the Claimant's Counsel some 28 pages. The Tribunal will not attempt to summarise those submissions but incorporates them by reference. Supplementary oral submissions were also given by both representatives.

282. Mrs Winstone, Counsel for the Respondent, referred the Tribunal to what she considered was the 'ever-changing' nature of the Claimant's case and focussed on the period from November 2017 when the FMA Report was received, conceding that the Respondent had knowledge of the Claimant's disability on receipt of that Report. She also submitted that this was also the date that no adjustment would have made a difference, particularly in the context of a Claimant who feels he is letting colleagues down/feels of no use and is embarrassed, finds simple tasks demeaning yet his 'head goes' if given anything more.

283. The Respondent's Counsel also spoke of credibility being at the heart of the evidence in the case, particularly in the context of the harassment and s.13 EqA 2010 allegations.

284. She referred the Tribunal to the following authorities on reasonable adjustments:

a. **Wade v Sheffield Hallam University** UKEAT/1094/12/LA
b. **Burke v The College of Law and the SRA**
c. **HM Prison Service v Johnson** UKEAT/0420/06/MAA

285. Mr Phillips, the Claimant's Counsel also referred the Tribunal to what the Claimant considered was a shifting defence and referring to the 'complete animus' some of the Respondent witnesses had towards the Claimant and late concession of disability. In turn he submitted that the Claimant was not a liar or avaricious or greedy, but an individual that had been repeatedly been let down by management.

286. The Claimant's Counsel too spoke of credibility of the Respondent witnesses and with regard to the religious discrimination, Mr Phillips invited us to view the harassment/s.13 EqA 2010 allegations in light of the Claimant's mental health and difficulties of proof of other matters that had happened in the past.

287. He referred the Tribunal to the following authority on reasonable adjustments.

a. **CC of South Yorkshire Police v Jelic** UKEAT/0491/09/CEA

Relevant Law

288. The relevant law in respect of disability discrimination is set out below

s.13 EqA 2010 Direct Discrimination

(1) A person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

S.15 EqA 2010 - Discrimination arising from disability

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

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

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

289. As for the correct approach when determining section 15 claims we refer to **Pnaiser** v **NHS England and others** UKEAT/0137/15/LA at paragraph 31.

S. 20 EqA 2010 – Failure to comply with duty to make reasonable adjustments

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

S.21 EqA 2010

(1) A failure to comply with the first … requirement is a failure to comply with a duty to make reasonable adjustments

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

290. The Equality and Human Rights Commission's Code of Practice on Employment contains guidance on the Equality Act, on what is a reasonable step for an employer to take will depend on the circumstances of each individual case (para 6.29). The examples previously given in section 18B(2) DDA remain relevant in practice, as those examples are now listed in para 6.33 of the Code of Practice.

291. In **Environment Agency** v **Rowan** [2008] ICR 218, the EAT set out how an employment tribunal should consider a reasonable adjustments claim (p24 AB, para 27). The tribunal must identify:

(a) the provision, criterion or practice applied by or on behalf of an employer, or (b) the physical feature of premises occupied by the employer;

(c) the identity of non-disabled comparators (where appropriate); and

(d) the nature and extent of the substantial disadvantage suffered by the claimant'.

292. PCP is not defined within the EA 2010. EHRC Code of Practice (6.10) states that the phrase should be construed widely and could include informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions.

293. S.212 (1) EqA 2010 defines 'substantial disadvantage' as one which is more than minor or trivial and whether such a disadvantage exists in a particular case is a question of fact and it is to be assessed on an objective basis (EHRC CoP, 6.15).

S.26 EqA 2010 – Harassment (Disability and Religion or Belief)

(1) A person (A) harasses another (B) if –

(b) A engages in unwanted conduct related to a relevant protected characteristic and

(c) 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

(2) A also harasses B if –

(d) A engages in unwanted conduct of a sexual nature, and

(e) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if –

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account –

(d) the perception of B; b) the circumstances of the case whether it is reasonable for the conduct to have that effect.

294. In **Grant** v **HM Land Registry** 2011 IRLR 748 the Court of Appeal reiterated that when assessing the effect of a remark, the context in which it is given is highly material. An Employment Tribunal should not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive" as they are an important control to prevent trivial acts causing minor upset being caught up in the concept of harassment.

Burden of Proof

295. The burden of proof in discrimination claims rests initially with the claimant but section 136 EqA provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that the respondent has acted in a way that is unlawful, the Tribunal must uphold the complaint unless the respondent shows that it did not so act.

296. Guidance as to the application of the burden of proof was given by the Court of Appeal in **Igen** v **Wong** 2005 IRLR 258 as refined in **Madarassy** v **Nomura International Plc** [2007] ICR 867. The Court of Appeal emphasised that there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the respondent. They are not, without more, sufficient material from which a

Tribunal could properly conclude that, on the balance of probabilities, the respondent had committed an act of discrimination.

297. In relation to reasonable adjustment cases **HM Prison Service v Johnson** 2007 IRLR 951 EAT the EAT make it clear that it is insufficient for a Claimant simply to point to a disadvantage caused by the PCP or physical feature (or now, potentially, lack of auxiliary aid) and then place the onus on the employer to think of what possible adjustments could be in place to ameliorate the disadvantage. This was confirmed in **Project Management Institute** v **Latif** [2007] IRLR 579 where the burden of proof was set out by the EAT in at paragraphs 55 – 57 (p138 AB):

(f) The Claimant must prove that the duty to make reasonable adjustments arose – i.e. there was a PCP and that caused him or her a substantial disadvantage;

(g) the Claimant must identify the "broad nature" of adjustments which should have been made (at any stage during the hearing will be sufficient - paragraph 57).

(h) the Respondent must show that the suggested adjustments were not reasonable given its particular circumstances.

Conclusions

298. Irrespective of our holistic view of this case, the individual allegations stand or fall on their own merits. As will be apparent from our conclusions, the Tribunal has not found this easy to resolve in some instances. As a general proposition we should say that our task was not assisted by the fact that the Claimant's pleaded claim takes the somewhat comprehensive approach of setting out each of the factual matters of which he complains and alleging they are either failures to make reasonable adjustments and/or acts of harassment and / or discrimination arising form disability.

Disability Discrimination- Knowledge

299. Firstly, with regard to knowledge, we were not satisfied that the Respondent had either actual or constructive knowledge of either the Claimant's disability or, in turn, that such disability was likely to put him at a substantial disadvantage in comparison with non-disabled persons, at the point when he joined the Hub in April 2017.

300. We were not persuaded that simply because the Respondent had knowledge of periods of absence as a result of stress in March 2014, at a time

when the Claimant submitted a grievance regarding his time Property, and again in January 2017, when the Claimant was again absent from work on the grounds of stress arising from family matters, that it followed that the Respondent ought to have reasonably known that the Claimant was disabled and/or that his disability was liable to disadvantage him substantially.

301. The Claimant accepted on cross examination that he had not indicated that he was stressed or anxious during his time at Aberdare and took no time off from work. We concluded that until the Claimant started at the Hub, there was no indication of any stress or anxiety which should have alerted them to any underlying disability.

302. Whilst there was a further period of absence in July 2017 through to 3 September 2017, the FMA Report of 7 September 2017 [189] talks of the Claimant's '*confidence and self esteem'* needing building, and a recommendation of only temporary restrictions to duties of a non critical nature to allow him to progress [182]. Simply because the FMA in the 7 September 2017 Report, reported that the Claimant was anxious and panicked about going into work, it did not follow that the Respondent knew or ought to have known at that point that the Claimant was a disabled person particularly as by 27 September 2017 the FMA had clarified that the Claimant should be able to deal with telephone calls and victim witness statements [208]. Further, over this period the Claimant had also been in a position to put together and submit a 13 page grievance relating to his concerns spanning a time period from March 2014, through to the summer of 2017.

303. We concluded that as a result, it could not be said that when he commenced at the Hub or indeed throughout 2017 until the Claimant was again off work in November 2017, that the Respondent ought to have known that the Claimant was disabled.

304. However, we also concluded that it was right for the Respondent to have conceded that on receipt of the 7 November 2017 FMA Report [228] and accompanying functional assessment, received nearly 12 months after the Claimant first was off sick in the Hub, (or within a reasonable time for that information to be received and considered,) the Respondent ought to have known both that:

a. The Claimant was disabled; and
b. that his disability was liable to disadvantage him substantially.

<u>Disability Discrimination: Failure to make reasonable adjustments (s.20 and 21 Equality Act 2010)</u>

305. The Claimant relied a provision, criterion or practice ("PCP") as set out in the Amended Particulars of Claim §39 [19] as follows:

a. The requirement on the Claimant, upon on his return to work from April 2017 onwards, to achieve a prescribed standard of performance and to resume all the ordinary duties of a police officer, with minimum support; ("First PCP") and/or

b. The requirement on the Claimant to work in the HUB from 29 October 2018 ("Second PCP").

306. The Claimant contended that these PCPs placed him at a substantial disadvantage when compared to persons without his particular disability as he was unable to perform the duties and/or achieve the standard of performance expected of him. He relied on seven reasonable adjustments, set out at §41 of the Amended Particulars of Claim [19] as follows:

(a) Providing auxiliary aids the Claimant had requested, namely developmental input and the assistance of a tutor or mentor;

(b) Providing retraining in a relatively stress-free environment as recommended by the FMA;

(c) A structured plan with achievable goals with regular reviews. This would have assisted the Claimant's recovery and monitored his progress or identify any issues early on;

(d) Supervisor aware of restrictions prior to arrival in the department;

(e) A long term placement in another deportment which would have given stability and been ideal to grow and gain confidence;

(f) Avoiding unnecessary pressure;

(g) Not requiring the Claimant to return to the Hub on 29 October 2018.

PCP

307. Whilst the Claimant had set out failures to make reasonable adjustments in respect of the PCPs which he says disadvantaged him, we first sought to identify the PCP that had been applied which the Claimant says disadvantaged him, before determining the identity of non-disabled comparators; and the nature and extent of the substantial disadvantage suffered by the Claimant in accordance with the guidance in **Environment Agency v Rowan**.

308. The Respondent has submitted that this was not apt to be a PCP and suggests that the Claimant appears to accept that support was provided but that the advice of the FMA was followed and that this was a necessary adjustment for him to overcome his disadvantage at work, putting forward an alternative PCP.

309. In relation to the First PCP, we concluded that this PCP had been applied to the Claimant when he first joined the Hub in April 2017, when he started work there after his first period of sickness, in a period of time before the Respondent had knowledge of the Claimant's disability.

310. We concluded that the normal arrangements, of requiring a police officer returning to work following a period of absence to work with time limited only restriction (in this case a phased return and restrictions for 28 days on arrest/restraint and shift work,) were put in a place.

311. We further concluded on this basis that the Claimant was required to achieve a prescribed standard of performance and to resume all the ordinary duties of a police officer, with minimum support and further concluded that these arrangements could be said to meet the PCP as defined by the Claimant and were apt to amount to a PCP. In doing so we reminded ourselves that the concept of a PCP is to be construed widely and not to be approached in too restrictive a manner and reminded ourselves that the term 'PCP' is to be construed broadly, '*having regard to the statute's purpose of eliminating discrimination against those who suffer disadvantage from a disability*' (**Lamb** v **Business Academy Bexley** EAT 0226/15 and as commented by HHJ Eady QC in **Carrera** v **United First Partners Research** UKEAT/0266/15 (7 April 2016, unreported), that *'the protective nature of the legislation meant a liberal, rather than an overly technical approach should be adopted*'.

312. Furthermore, we considered that this PCP continued to apply throughout his time at both the Hub and IST as at no point was the Claimant placed in a role whereby it was agreed he would not be required to carry out the role of a fully functioning police officer. Rather, the contrary was true – whilst adjustments were put in place as time progressed, the whole objective was to get the Claimant in a position whereby he was working to the standards of performance and undertaking all the ordinary duties of a police officer with the minimum support that this would require.

313. We did not overly focus on the wording of 'minimum support' in terms of support but concluded that this should be given its ordinary meaning of the least amount of support that any employee who was fully functioning would require or be expected to need.

314. We also accepted the Second PCP had been applied insofar as there were arrangements in place for the Claimant to return to the Hub at the end of October 2018.

315. We then considered whether that PCPs gave rise to a substantial disadvantage in relation to a relevant matter in comparison with persons who were not disabled in that the Claimant asserted that the disadvantage was that he was unable to perform the duties and/or achieve the standards of performance expected of him.

316. The Respondent has submitted that this comparison puts the focus on the Hub staff many of whom also suffer mental health illnesses but who were not disadvantaged by comments regarding their abilities, in particular enquiries into their capabilities. Whilst we accepted the Respondent's evidence that there were many others in the Hub who had a variety of ill-health impairments, some of whom lived with emotional and mental health impairments, who were not so impacted, we also accepted that the majority of the officers there were required to achieve a prescribed standard of performance and to resume all the ordinary duties of a police officer, with minimum support. The Claimant had not joined the Hub to recuperate but for development.

317. FMA Reports made clear that the Claimant was unable to perform many of the duties of a police officer even with support in that from August/September 2017 the Claimant:

(a) Needed tutoring and had limited interaction with members of the public and third parties such as the CPS and instructing solicitors for 5 weeks on his return on 25 August 2017; and

(b) that until 27 September he had had also not been responsible for autonomously handling prisoners. Rather he had been working alongside other police officers, officers who had been carrying out ordinary duties of police officers, although we concluded that from 27 September 2017 to 10 November 2017 he had been capable of taking 'run of the mill' statements from witnesses.

318. As such we concluded that the pool for comparison, if one was required, was the pool of police officers working at the Hub and/or IST and that the Claimant had proved that the First PCP had substantially disadvantaged him in that he was unable to perform the duties and/or achieve the standard of performance expected of a police officer at the Hub/IST. We accepted that an employee who is disabled by reason of anxiety and was returning to work where he was to achieve a prescribed standard of performance and to resume all the ordinary duties of a police officer with minimum support was likely to be put at a substantial disadvantage.

319. We were not persuaded that the Claimant had demonstrated that the Second PCP of being required to work in the Hub from October 2018 had substantially disadvantaged him for the reasons given later in these written reasons.

320. However before turning to consideration of whether it was reasonable for the Respondent to have to take steps that could have avoided that disadvantage in relation to the First PCP, we considered the steps or reasonable adjustments that had in fact been taken by the Respondent in the period from November 2017.

321. In brief, these were as follows

(a) From August 2017:

(i) The Claimant had been on restricted duties and undertaking a phased return;

(ii) He had been allocated specific officers with whom he sat with on a daily basis observing them undertaking tasks, such as taking statements, and would be provided feedback;

(b) From November 2017, he had not been responsible for any prisoners on an autonomous basis, he was not required to attend upon victims, the CPS or legal representatives or indeed any third parties.

(c) This support continued throughout his time at the Hub from his return to work in January 2018 and continued through his time at the Hub

(d) The Claimant was transferred to IST from August 2018, when this support continued through to his resignation. In addition, only very low level tasks were provided to him, as reflected in Cheryl Flower's Blue Book and email communication to her superiors,.

(e) Despite this support by the April 2018 the Claimant was reporting that even this was unhelpful as he felt unable to undertake the tasks that were set for him.

322. At no time was the Claimant placed on any form of performance improvement plan and throughout his time at the Hub from August 2017 and certainly by his return to work in January 2018 he was on restricted duties as reflected in the Restricted Duties Action Plans.

323. We then considered the step or steps it would have been reasonable for the employer to have taken. In the context of each we also considered the steps that the employer had in fact taken.

324. With regard to what the Claimant says in relation to the alleged failures to make reasonable adjustments at para 2c i-xv of the List of Issues, we have

dealt with these in the context of our conclusions more generally in relation to each discrete reasonable adjustment suggested by the Claimant but for completeness, also concluded on the following:

(f) It is not disputed that Karl Emerson made the comments to the Claimant in relation to '*pants on head'* and whether he was '*available for work'*. Whilst these comments have been dealt with in our conclusions in relation to the Claimant's complaints under s.13, s.15 and s.26 Equality Act 2010, for the same reasons we concluded that this was 'banter' that the Claimant had originated, that it more likely than not did not upset him and we were not persuaded that such comments led to the Claimant being unable to improve and perform his duties to the standards expected.

(g) We did not conclude that Damien McKeon had told the Claimant that he had to *'leave the organisation'.* Rather, we accepted that the conversation had simply been Damien McKeon asking the Claimant why, if working in the Police made him ill, did he just not leave. We did not accept that this was a conversation that caused the Claimant any disadvantage, whether in resulting in him being unable to do the role to the standard expected of him or otherwise.

Developmental input and assistance of a tutor or mentor

325. We were not persuaded that the Claimant had poor support and supervision after Chris Evans left on 8 October 2017- we concluded that he did have work allocated and did have dedicated colleagues who we found were likely to have continued with that support during Chris Evans' absence. As the Respondent had submitted, we concluded that his support structure stayed in place following Chris Evans' departure and that this would not have given rise to the Claimant being unable to perform his duties or work towards achieving the standard of performance expected of him.

326. We concluded that the Claimant had been provided with developmental input and support from his supervising officers, initially Stuart Williams and latterly Dean Gittoes and Cheryl Flowers. This support broadly took the form of regular meetings with the Claimant, limited/no interaction with third parties or members of the public and being given no responsibility for managing prisoners autonomously.

327. Whilst we accept that the Claimant wasn't provided with a formal 'mentor', or allocated the same individual officer to support him at every shift, he was allocated specific officers he regularly sat alongside and observe and the tasks that he was required to undertake were simple tasks. That he worked a different shift pattern to other officers rendered it reasonably impracticable in our view for the same individual to be working alongside the Claimant at every

shift. Notwithstanding this the Claimant worked in an open-plan area and had access to his colleagues, who he sat alongside, and had dedicated supervisors.

328. We concluded and accepted that the Claimant had 'tutoring' in the form of observing a task and given feedback by experienced officers working alongside the Claimant albeit no one specific individual.

329. Whilst we accept that Ian Francis' role as a mentor in February 2018 was not continued, we were not persuaded that this isolated incident led to the substantial disadvantage for the Claimant either in the short or long term. We accepted the evidence from Stuart Williams that other officers did work with the Claimant on a daily basis despite him being unable to name individuals and that this would have taken the form of the tutoring that has already been described of observation and feedback.

330. Regular meetings with management from January 2018, when he returned to work took place initially with Stuart Williams as reflected in his supervision notes and then, whilst at IST with Cheryl Flowers, as reflected in her contemporaneous emails, a period of time which the Claimant considered supportive.

331. In those circumstances, we also concluded the Claimant was provided with adjustments by the form of support upon his arrival at the Hub in January 2018 that had continued and increased throughout his time there, and further increased during his time at IST with Cheryl Flowers when a very simple plan and duties were provided to the Claimant.

332. We also concluded that he had received developmental input and the assistance of supervisors throughout his employment from September 2017 when he was supervised by Chris Evans, from January 2018 by Stuart Williams and latterly from Dean Gittoes and Cheryl Flowers.

333. We were **not** persuaded that in those circumstances having someone with the moniker 'mentor' or 'tutor' would have had any impact on his ability to perform the duties or achieve the standards of performance expected of a police officer.

334. For these reasons we do not uphold this claim.

Providing training in a relatively stress-free environment/ Long term placement in another less stressful department

335. We deal with these two adjustments collectively and concluded that it was more likely than not that the stress experienced by the Claimant did not arise from the physical environment or department that was the Hub and that it was more likely than not that training or a long term placement in another department would not have alleviated the stress experienced by the Claimant.

336. In turn, whilst we accept that the FMA had advised on 7 November 2017 that the Claimant be moved to a non-stressful environment, we concluded that placing the Claimant elsewhere in the Respondent's organisation, either for re-training or as a long term placement as a police officer would not have been a reasonable adjustment as we concluded that it had no prospect of ameliorating or removing the disadvantage.

337. This was as a result of our conclusion that it was more likely than not that what was causing the Claimant to deteriorate throughout his time within the Hub and then in turn IST was not the Hub or IST physical environment (or indeed the lack of support or a formal 'structured plan',) but the stress **he** felt of simply working alongside functioning officers. This was reflected in the fact that even when the Claimant did feel supported and had a plan for his work, such as his time in the Hub from August 2017 – November 2017 working with PC Chris Evans, and his time in IST from August to October 2018 working with PS Cheryl Flowers, he still presented as sick and his anxiety appears to have worsened during these periods. In that regard we also concluded that not requiring the Claimant to return to the Hub in October 2018 would have had no impact on the Claimant's ability to perform.

338. We had already found that it was more likely than not that the other areas suggested by the Claimant, of being a police officer within MASH or Property or licensing, would have been equally stressful for the Claimant as it would have entailed him working alongside functioning police officers and we concluded that it unlikely that this would have alleviated the disadvantage for the Claimant of being unable to perform his duties.

339. All roles suggested by the Claimant would have carried with them the inherent interaction with third parties, if not time pressured work, some involving difficult child protection procedures. As was evident by the Claimant's own communication with the FMA, what appeared to be causing stress for him was a complex and contrary mix of his feelings of uselessness when working alongside fully functioning police officers, coupled with an inability to undertake even the most basic of tasks. This would not have changed in our view by simply moving him to a different department as a police officer.

340. The only adjustment to the environment, which we concluded was the environment of working alongside fully functioning police officers, would have been to remove the Claimant from his position as a police officer. This was not an adjustment that had been requested by the Claimant during his employment by the Respondent nor indeed argued with any force during this litigation.

341. Despite the Claimant having been a serving police officer for many years, to the level whereby in 2015 he acted up as PS, and despite the Claimant functioning in his role as PC in the Hub through to November 2017

during which time he was managing prisoners, he was by the beginning of 2018 unable to undertake the most basic tasks of a PC.

342. In those circumstances we concluded that any transfer to an alternative department as a police officer would not have been a reasonable adjustment as we further concluded that moving the Claimant to an entirely new area may very well have increased his feelings of hopelessness when faced with new surroundings and new tasks.

343. We concluded that retraining elsewhere would not have ameliorated or removed the inability to improve and perform the role of police officer and did not consider this claim to be well founded.

Structured plan with achievable goals with regular reviews

344. We concluded that the work plan that had been put in place for him by Chris Evans and latterly Cheryl Flowers had been supportive and designed to improve the Claimant's confidence, yet the Claimant still presented as sick.

345. To an extent the work at the Hub was repetitive with different prisoners being presented by Response for the Hub team to manage on a daily basis. The Claimant has not argued or sought to argue that the Respondent should have completed or had not completed the Hub Competencies document although it has been suggested within the Claimant's written submissions that tasks should have been broken down to their **constituent** tasks.

346. Rather the Claimant relies on the failure by the Respondent to complete the Respondent's pro forma Recuperative Duties Action Plan weekly reviews. However, we did not conclude that this failure impacted on the Claimant's ability to work towards the achievement of prescribed standards of performance/ resume the ordinary duties of a police officer.

347. We had made findings that regular reviews, in the context of the actual shifts that the Claimant had completed, had been undertaken and whilst the Respondent supervisors did not complete the pro formal weekly Action Plan reviews, we concluded that completing this form would have made no difference to the Claimant's recovery and in turn ability to comply with the PCP. Likewise we concluded that breaking the role down to constituent tasks would not have been likely to have ameliorated or removed the inability the Claimant had in performing his role.

348. We did not conclude that the Claimant had been left for hours without work and concluded that despite the FMA recommendations, the Claimant was still unable to perform. That the tasks were considered menial for the Claimant and embarrassing was a continuing theme of the evidence, but it appeared to us that the Claimant wanted it both ways: he was unable to undertake the ordinary duties of an officer in the Hub or IST, yet when has tasked to observe

to build up his confidence or simpler administration task, an element of humiliation crept in as he was not performing as a fully functioning police officer.

349. What the Respondent put in place was a reasonable step of supporting the Claimant in his return to work of regular meetings and daily support. We were satisfied that the duty to make the further reasonable adjustment did not arise as we were not persuaded that the disadvantage would have been reduced or eliminated by the specific proposed adjustment and concluded that adjustments that were reasonable in relation to the work and supervision were provided.

350. For these reasons we do not uphold this claim.

Supervisors being aware of restrictions

351. With regard to the adjustment of ensuring supervisors were aware of restrictions prior to arrival in a department, we considered whether giving all those having interaction with the Claimant copies of the relevant FMA reports, in particular Cheryl Flowers and Ian Francis as suggested by the Claimant, would have been a reasonable step.

352. Ian Francis was not a supervisor of the Claimant and further the supervisors needed to be provided by the Claimant with consent for disclosure to them in some instances which was not provided for some weeks after the Respondent had received them. We were not persuaded that supervisors and colleagues (as has been suggested by the cross-examination and Claimant submissions,) being aware of restrictions before the Claimant's arrival in the department would have been practicable in the context of confidentiality and data protection rights that exist to protect employees.

353. However, even if that is not right, in the context of the brief conversations that did take place regarding what the Claimant could and couldn't do, the supervisors were provided with the reports immediately afterwards and we did not conclude that a failure to be provided with them in advance would have reduced or removed the disadvantage of being unable to perform as pleaded.

354. Both conversations, with Ian Francis and particularly Cheryl Flowers, relied on by the Claimant in submissions, were simply enquiries what the Claimant could and couldn't do. To ask an employee what they were and were not capable of doing and telling the Claimant to look forward, was a reasonable step and we were not persuaded that this had resulted in the disadvantage complained of or would not have arisen even if they had sight of the FMA reports.

355. Furthermore, the conversations relied on are two brief conversations over the course of a two year period relied on, the Reports were provided to both immediately after the conversations relied on and we did not infer from that, that had such conversations not taken place, this would have impacted on the asserted disadvantage.

356. Whilst we accept that the situation for the Claimant as well as Ian Francis and Chery Flowers was not ideal, in that they were not fully aware of the restrictions on the Claimant, we were not persuaded that the failure to provide the supervisors with advance copies of the FMA Reports was a failure to make a reasonable adjustment.

357. The claim is not well founded and fails.

Avoiding unnecessary pressure

358. We concluded that no unnecessary pressure had been placed on the Claimant during his time at the Hub or IST and that simply asking the Claimant if he could take a statement from a prisoner and immediately suggesting that he could observe when the Claimant indicated that he could not, did not amount to 'pressure' as has been submitted on behalf of the Claimant.

359. Whilst we accept that avoiding unnecessary pressure can amount to an adjustment, we did not accept that the Respondent had failed to comply with its duty to make reasonable adjustments in this regard and the complaint fails.

Not requiring the Claimant to return to the Hub in October 2018

360. With regard to the adjustment of not requiring the Claimant to return to the Hub on 29 October 2018, as had been submitted by the Respondent, this would have been an opportunity for the Claimant to improve his performance under the supervision of Dean Gittoes and we were not persuaded that the PCP of requiring the Claimant to return gave rise to a substantial disadvantage. The fact that had periods of sickness absence whilst there did not lead us to conclude that the Hub itself was causing the substantial disadvantage claim.

361. On that basis the claim fails.

362. However we also concluded that even if we are wrong in our conclusions on substantial disadvantage, the arrangements whereby the Claimant was to return to the Hub in late October 2018 was not a failure to make a reasonable adjustment for the reasons provided with regard to the adjustment of the stressful environment. We concluded that this was not an adjustment that would have prospect of ameliorating or removing the Claimant's asserted disadvantage in any event.

363. Ultimately, we concluded that it was more likely than not that no adjustments would have improved the Claimant's performance in his role or

his ability to perform. What was causing the Claimant issues was his relationship with the Respondent as an organisation, a relationship that had deteriorated in the mind of the Claimant as a result of his lack of promotion back in 2016 and we were not persuaded that any adjustments would have made any difference.

364. In our judgment, on the evidence before us and in particular the FMA Report of it was difficult to conceive of any alternatives which would have had any prospect still less a likelihood, of enabling the Claimant to return to work with the Respondent.

365. The Claimant had been working in what he considered supportive environments during his time at the Hub with Chris Evans and his time in IST with Cheryl Flowers in the lead up to his resignation. Despite those periods, and significantly the period in IST, the Claimant still became too unwell to work. We accepted the Respondent's submissions that a number of reasonable adjustments were put in place to alleviate the disadvantage for the Claimant but that nothing that the Respondent could have done in addition to that (including the additional adjustments set out in the Claimant's written submissions) would have alleviated the disadvantage presented by the Claimant's medical state including his 'confirmed antipathy' towards the Respondent.

366. Antipathy which we considered was reflected as far back as the first FMA Report in September 2017, when the Claimant indicated that he had lost faith in the organisation, a position he repeated to Dr Williams again in November 2017, when he reported the he found it very difficult to overcome his symptoms and that there was a 'lack of trust'. Whilst the February 2018 FMA Report was more encouraging, by April 2018 the Claimant had deteriorated such that it could be said that it was likely that at that stage, despite the FMA recommendations, that the situation was irretrievable such that any adjustments may be considered pointless.

367. We concluded that the adjustments made at the time for the Claimant were reasonable. In making such a conclusion we have considered the package of adjustments that the Respondent did make and concluded that when taken together, they addressed the effects of the Claimant's disadvantage. However we also concluded that further adjustments from around April 2018 were likely to have been pointless in any event.

368. For these reasons we do not uphold the Claimant's claims for failure to comply with the duty to make reasonable adjustments and the claims are dismissed.

<u>Direct Disability Discrimination (s. 13 EqA 2010)/ Harassment (s.26 EqA 2010)</u>

369. The Claimant relied on the following matters to demonstrate less favourable treatment (s.13 EqA 2010), alternatively unwanted conduct (s.26 EqA 2010);

a. PS O'Sullivan with a prepared letter for the Claimant and then becoming angry with the Claimant at a meeting on the 2nd July 2017;

b. Claimant left for hours without work to do which included full shifts of 10 hours from February to April 2018;

c. August 2017 - April 2018 - Claimant continued to be asked if he had his pants on his head;

d. 24th August 2018 Claimant was asked by PC Flower 'what can you do' and asks him to stop looking back and look forward;

e. Late August 2018 telling the Claimant that he will have to move back to this substantive role at the Hub in one month's time, extended to two months' time;

370. We concluded that the Respondent did not have knowledge that the Claimant was a disabled person at the point of the meeting in July 2017 with PS O'Sullivan and as such the direct discrimination claim fails.

371. However it had also been our finding that Matthew O' Sullivan had not become angry with the Claimant and that element of the complaint (whether s.13 or s26 EqA 2010) was not proven and fails,

372. Further, we did not conclude that the preparation or content of the note amounted to less favourable treatment, even if the Claimant had established knowledge. In relation to the appropriate comparator for the purposes of his direct disability discrimination complaint, the Claimant relied on a police officer doing the same role without the Claimant's disability. We also concluded that the treatment complained of, of preparing such a note in advance of a further meeting, was a reasonable step for Matthew O'Sullivan to have taken and would have been undertaken by him when facing concerns relating to a new officer that he was responsible for supervising. It was therefore not less favourable treatment because of disability and/or harassment on the grounds of disability.

373. Likewise, we did not conclude that the Claimant had proven that he had been left for hours without work to do. Whilst we had accepted that the Claimant may have been left without work on the one shift with Ian Francis

back in February 2018 when he first returned to work at the Hub, he had not proven that he had more generally been left for hours and not that he had been left full shifts. The Claimant had therefore not proven the less favourable treatment/unwanted conduct in relation to that specific complaint.

374. We did make findings in relation to the complaints that:

a. Karl Emerson had asked the Claimant if he had 'pants on his head'
b. Cheryl Flower had asked the Claimant what he could do and asked him to look forward, not back.

375. However we concluded the Claimant had not proven that such treatment/conduct was less favourable treatment and/or less favourable treatment because of his disability.

376. We concluded that as we found that the Claimant had initiated the comments regarding '*pants on head'* and being '*available for work*' and that Karl Emerson had responded in a like fashion, this could not be reasonably considered to be less favourable treatment by the Claimant and such exchange of comments would have arisen even in circumstances of the hypothetical comparator. Likewise, based on those same findings we did not conclude that the comments were made for the purpose of creating the Claimant's dignity or creating the statutory environment for him.

377. Rather, we concluded that the purpose was 'banter' and to engage with the Claimant in the way the Claimant engaged with his colleagues, using comments that the Claimant himself had used and that in those circumstances it was not reasonable for such comments to have the effect that the Claimant was now relying to support his claim of harassment (or less favourable treatment).

378. In relation to being asked by Cheryl Flower 'what can you do?' having made findings that Cheryl Flowers had engaged in a conversation with the Claimant with the aim of ascertaining what he could and could not do, and that this was a reasonable line of questioning to an employee returning from a period of ill-health to a new role (who would be the comparator,) we concluded that this was neither less favourable treatment nor conduct that had the necessary purpose of creating the statutory environment prescribed by s.26 EqA 2010. Likewise, we did not consider it reasonable for such a conversation to have had the effect of creating the requisite environment for the same reasons.

379. Finally, with regard to the Claimant's desire not to return to the Hub, again when considering the Claimant's comparator, we concluded that a PC returning to work after a period of sickness, but without the Claimant's disability, would also be required to return to their substantive role albeit with some restrictions such as a phased return or lighter duties and we concluded that such treatment was therefore not less favourable treatment because of the Claimant's disability.

380. Likewise, we concluded that the purpose of the return to the Hub was not for the requisite purpose of creating the statutory environment for the Claimant in relation to his harassment claim. Quite the opposite, we concluded that the purpose was to support the Claimant and reintegrate him back to his substantive role with a view to him working as a fully serving police officer. We were also not persuaded that it was reasonable that telling the Claimant that he would move back to the Hub to his substantive post would have had the effect of creating the requisite environment.

381. On the basis of these conclusions, the complaints of direct disability discrimination and/or harassment on the grounds of disability are not well founded and are dismissed.

Discrimination arising from disability (s. 15 EqA 2010) / Harassment (s.26 EqA 2010)

382. The Claimant relies on the following matters as acts of discrimination (unfavourable treatment) arising from disability (s.15 EqA 2010) in the alternative as unwanted conduct (s.26 EqA 2010):

a. 18 April 2017 - 2 July 2017: PS Cheryl Flower issuing the Claimant with an informal warning in the office;
b. PC Karl Emerson saying 'does he have his pants on his head today' and 'is he available for work' ongoing between August and November 2017;
c. Upon his return to work on the 1st February 2018, his tutor PC Ian Francis said: 'What the fuck can I do with you then?';
d. PS Alex Gregory discussing the Claimant with PC Francis and said that he is 'no good' to him as he 'can't utilise' him, thus leaving the Claimant with no work to do;
e. 24th August 2018 Claimant was asked by PC Flower 'what can you do' and asks him to stop looking back and look forward;
f. By a grievance outcome not in the Claimant's favour, which was biased, selective and prejudiced.

383. The Claimant's case is that 'something arising' was his inability to work and perform to the prescribed standard of performance and to resume all the ordinary duties of a police officer with minimum support because of his anxiety and depression.

384. The claim that Cheryl Flower had issued the Claimant with an informal warning in June 2017 fails as the Claimant had not proven the act complained of in addition to our conclusion regarding knowledge.

385. The comment made by Karl Emerson regarding 'pants on his head' and whether the Claimant was 'available for work' has already been dealt with in relation to the s.26 EqA 210 claim. Likewise, taking into account our findings that these were comments that the Claimant instigated and that Karl Emerson repeated back, we did not conclude that the Claimant had proven that such comments amounted to unfavourable treatment for the purposes of a s.15 EqA 2010 complaint.

386. Whilst we had found that **Ian** Francis had questioned what the Claimant could '*do'*, we did not consider this in itself unfavourable treatment, simply an enquiry as to what could best be done with the Claimant. The Claimant had not proven the unfavourable treatment alleged, of PC Ian Francis saying to the Claimant*: 'What the fuck can I do with you then?'* or of PS Alex Gregory discussing the Claimant with PC Francis and saying that the Claimant was '*no good'* to him as he couldn't '*utilise'* him and on that basis, such a complaint under s.15 EqA 2010 did not succeed.

387. For the same reasons, that we concluded that the comments made by Cheryl Flower in August 2018 **did not amount** to either less favourable treatment or unwanted conduct amounting to harassment, we did not conclude that her treatment of the Claimant amounted to unfavourable treatment for the purposes of a s.15 EqA 2010 claim.

388. Finally we concluded, that whilst amounting to unfavourable treatment, in not being in support of the Claimant's complaints, it had not been proven to us that the Grievance outcome was because of 'something arising in consequence' of the Claimant's disability. The Claimant had asserted that the outcome was biased, selective and prejudiced, but we had made no positive findings that led us to a conclusion that this had been the case.

389. There had been criticisms of Chris Owen's Grievance investigation but we accepted his evidence in relation to the extent of his investigation and rationale as to why specific witnesses had not been interviewed. We accepted that there had been a delay in the grievance investigation but accepted that

this had been driven largely by the Claimant's own ill-health absence and did not draw any inferences from which the burden of proof would be discharged by the Claimant.

390. Had it been the case that we had made findings of fact which included that the Grievance outcome had been in some way flawed or, as the Claimant had termed it biased, selective and prejudiced, the burden of proof under section 136 EqA 201 may have shifted to the Respondent. However in this case, we concluded that there were no facts from which we could decide, in the absence of any other explanation, that the Respondent had unlawfully discriminated against the Claimant in failing to uphold the Claimant's Grievances because of his inability to work and perform to the prescribed standards and resume all the ordinary duties of a police officer.

391. The Claimant's complaint that the Grievance outcome amounted to a breach of s.15 EqA therefore failed. For the same reasons, we did not conclude that the outcome of the Grievance had harassed the Claimant contrary to s.26 EqA 2010.

392. The complaints of discrimination arising from disability under s.15 EqA 2010 and/or harassment on the grounds of disability (s.26 Equality Act 2010) were not well founded and are dismissed.

Religious discrimination (s. 13 EqA 2010) / Harassment (s.26 EqA 2010)

393. The Claimant relied on the following matters as both unwanted conduct and/or to demonstrate less favourable treatment:

a. From February 2018 - April 2018 - PC Karl Emerson said *'you can talk, Father Ted*';
b. Easter Sunday 2018 - a colleague said '*Jesus did not even exist*, and *the Bible is a pile of nonsense'*;
c. PC Ian Francis said to PS Barwood that the Claimant '*could do with some Jesus*' whilst walking past him;
d. PC Scott Mathews made the sign of the cross, saying '*forgive me father'* and making the sound of a church choir in a comedic voice from February 2018 to October 2018.

394. On the basis of our findings in relation to the factual allegations in relation to:

a. the comments from Karl Emerson and Ian Francis, that these comments had not been made, these claims did not succeed.

b. the comments from Scott Edwards (attributed to a Scott Mathews in the pleadings,) having come to the same conclusion, based on our finding that the Claimant had not persuaded us on balance of probabilities that Scott Edwards had engaged in such conduct, any claim in relation to this allegation likewise did not succeed.

395. In relation to the comments made on or around Easter Sunday 2018, we did find that such comments had been made.

396. We wrestled with the Claimant's comparator as we considered that such circumstances would have been materially different to that in this case, of the Claimant discussing his Christian faith with colleagues in Merthyr, the majority of whom would likely have been brought up within a Christian community, irrespective of whether they had faith themselves.

397. We concluded that an appropriate comparator would have been a person of a different faith having comments made about that faith from others who lived in a community who followed or had adopted that faith. We were not persuaded on the evidence, that such a conversation or similar comments would not have taken place or been made or that such a comparator would have been treated more favourably and in those circumstances we concluded that the Claimant had been unable to show potentially less favourable treatment from which an inference of discrimination could properly be drawn.

398. We also concluded in any event that it was more likely than not, that the reason for the comments was not because of the Claimant's faith, but because of the Claimant's propensity to proselytise within the workplace and that as a result it could not be said that the reason for the treatment was because of the protected characteristic of religion or belief and on that basis the claim would fail.

399. In relation to his s.26 EqA claim in relation to the same allegation, whilst we accepted that such a comment would be unwanted conduct for an individual who followed the Christian faith, we did not accept that this had either the required statutory purpose or effect. Taking into account our findings of the context that the comments were made i.e. of an individual who regularly spoke of his faith and invited discussion, who proselytized, the Claimant had not proven to us on balance of probabilities that the comments were made for the purpose of creating the statutory environment for him.

400. Likewise, in deciding whether the conduct had the effect on the Claimant, we took into account not just that the Claimant's evidence on the impact of the

comments, but also the wider circumstances of the case and whether it was reasonable for these comments to have that effect on him (s.26(4) EqA 2010).

401. We were not persuaded on balance of probabilities that the Claimant had either proven that the comment had created the required statutory effect or that it was reasonable for these comments to have had this effect on him.

402. Whilst he had referred to it in his resignation letter, he had not complained at the time and had not raised it or included it as part of his Grievance. The Claimant was a Christian pastor and would have been used to non-believers dismissing faith in Christianity when seeking to spread the word. Further, we accepted the evidence from some of the Respondent witnesses that the Claimant would regularly and routinely bring his faith into conversations in work. Where an individual choses to take that step, they should not be then offended when others challenge that faith and indicate that they do not believe. In those circumstances we concluded that it was not reasonable for such comments to have had this effect on him and his complaint of harassment too fails.

403. In relation to the Grievance outcome, not in the Claimant's favour, we were not persuaded that the outcome was biased, selective and/or prejudiced. We concluded that there was nothing in the outcome that we considered flawed. We were not persuaded that the Claimant had proven any primary facts from which we could infer discrimination and the Claimant did not satisfy us on balance of probabilities that the outcome of his Grievance was less favourable treatment because of his religious beliefs.

404. We were not persuaded that a serving PC of a different faith, who had brought a similar grievance, would have had any more favourable outcome to their grievance. On that basis, the s.13 EqA claim failed. Equally, whilst the outcome of the Grievance may very well have been unwanted conduct for the Claimant, for the same reasons the Claimant has failed to demonstrate that there was any causal link between the outcome of the Grievance and the Claimant's religion and belief.

405. The claims brought under s.13 EqA and/or s.26 EqA 2010 for religion or belief discrimination were not well founded and are dismissed

<u>Resignation:</u>

406. Finally, in relation to the question of whether the Claimant resigned in response to the acts of discrimination complained of in relation to his disability,

we concluded that he did not and concluded that the resignation did not amount to a discriminatory dismissal within the meaning of s.39 EqA 2010.

407. Rather, we concluded that he resigned as a result of the outcome of the Grievance which was not supportive of the Claimant's complaints and was borne out of years of discontent by the Claimant with South Wales Police, with his lack of promotional opportunities and relating to historic unhappiness dating back to the time that he returned to work following the criminal investigation against him and more particularly at his time in Aberdare in 2015.

408. For the avoidance of doubt we did not conclude that the Claimant resigned in response to comments that he asserts had been made in relation to his faith or disability as pleaded by the Claimant (§60-67 Amended Particulars of Claim [26]) or because the Claimant failed to make reasonable adjustments (§68 Amended Particulars of Claim). We concluded that neither the comments in the earlier part of the year, nor the indication that he would at some point move back to the Hub were reasons for his resignation. The letter of termination is clear that he was unhappy with the outcome of the Grievance and whilst the Claimant does refer to the more recent comments that he alleged had arisen more recently, during his time at the Hub, the focus was again very much on his lack of promotion and time at Aberdare.

409. As the Respondent put it, the Claimant arrived in the Hub as a disgruntled officer and nothing changed in his attitude. We agree. That he had no positive outcome from the Grievance, a grievance deeply rooted in his unhappiness about his lack of promotion and his time at Aberdare in 2015, was in our view the trigger for his resignation.

410. Having concluded that the outcome of the Grievance was not an act of discrimination in itself we concluded that the Claimant did not resign as a result of that alleged discriminatory act.

411. We concluded that the claim for constructive dismissal was not well founded and is dismissed.

Jurisdiction

412. When considering whether the Claimant's claims had been brought within 3 months of the acts complained of, or whether in the alternative they formed a continuing act, we considered that we heard little persuasive argument from the Respondent to challenge the Claimant's case that from April 2017 the Respondent had applied a PCP which had placed him at a

disadvantage and failed to comply with its duty to make reasonable adjustments.

413. We also agreed with the Claimant's submissions that it would artificial to treat the Claimant's complaints as separate for limitation purposes and that whilst some of the discrete acts of direct discrimination and / or harassment and / or discrimination arising from disability were out of time, we concluded that each was part of 'conduct extending over a period' and an accumulation of events over a period of time and a continuing state of affairs (**Derby Specialist Fabrication Ltd v Barton** [2001] ICR 833).

414. On that basis we concluded that the complaints formed part of continuous conduct alleged by the Claimant and that the 'gaps' between the alleged events arising from January 2018 when the Claimant returned to work did not prevent the 'continuing act' case put by the Claimant, we concluded that the claims were brought within time.

415. If we were wrong on this point, we further concluded that it would have been just and equitable to extend time on the basis that there was no unfair prejudice to the Respondent as many of the issues would have had to be investigated and addressed in answering the claim for constructive dismissal which had been brought in time.

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Employment Judge RL Brace

Dated: 13 September 2021

JUDGMENT SENT TO THE PARTIES ON 22 September 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche