



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4116985/2018

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Held via Cloud Video Platform on 9 to 13, 16 & 19 November 2020

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Employment Judge F Eccles  
Tribunal Member J Burnett  
Tribunal Member H Boyd

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Claimant  
Represented by:  
Mr C Edward -  
Counsel & Mr  
G Bathgate -  
Instructing  
Solicitor

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Scottish Police Authority

Respondent  
Represented by:  
Mr C MacNeill -  
QC & Ms C Pender -  
Instructing Solicitor

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The **unanimous** Judgment of the Employment Tribunal is that (i) the respondent did not discriminate against the claimant by failing to comply with a duty to make reasonable adjustments; (ii) the respondent did not discriminate against the claimant by treating him unfavourably because of something arising from his disability; (iii) the respondent did not harass the claimant in relation to his disability & (iv) the claim should be dismissed.

### REASONS

#### BACKGROUND

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1. The claim was presented on 24 August 2018. The claimant claimed direct disability discrimination, failure to make reasonable adjustments, discrimination arising from disability and harassment. The claim of direct discrimination was subsequently withdrawn. The claim was resisted. The

respondent accepted that the claimant is a disabled person for the purposes of proceedings under the Equality Act 2010. The respondent denied having discriminated against the claimant. The claim was sisted from 9 November 2018 to 9 February 2019 to allow the parties to complete an internal grievance procedure.

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2. The claim was listed for a final hearing at which the claimant was represented by Mr C Edward, Counsel, and Mr G Bathgate, Instructing Solicitor. The respondent was represented by Mr C McNeil, QC and Ms C Pender, Instructing Solicitor.

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3. Pursuant to Section 12 of the Employment Tribunals Act 1996 and Rule 50(3)(d) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("Rules of Procedure 2013") the Tribunal made a Restricted Reporting Order prohibiting the publication of matter identifying the claimant until liability and if appropriate remedy had been determined in the proceedings. During the final hearing, the claimant was allowed additional time to process and answer questions. Parties and witnesses were allowed regular breaks to take account of tiredness, lack of concentration or anxiety.

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4. The final hearing was held remotely using Cloud Video Platform (CVP). The parties provided witness statements which, subject to agreed deletions on grounds of relevancy, stood as their evidence in chief. The Tribunal heard oral evidence from the claimant; Y, the claimant's wife; Alison Geddes, Registered Mental Health Nurse and Derek Balfour, trade union representative. The witness statements of Dr Natalie Gallacher, the claimant's General Practitioner and Peter Blair were not challenged by the respondent in cross examination. For the respondent, the Tribunal heard oral evidence from Nicky Page, Head of Employee Relations and Reward; Jude Helliker, Director of People and Development and Barry Donnachie, Training Business Partner. The witness statements of David Lyle and Steven Meikle were not challenged by the claimant in cross examination. On the first day of the final hearing, the Employment Judge could not be seen on the CVP due to technical issues. The Employment Judge could be heard by parties and she could see and

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hear the parties. It was agreed that the hearing should proceed. The technical issues were resolved for the remainder of the hearing.

5. The parties provided the Tribunal with a Joint Bundle of productions. The parties provided the Tribunal with written submissions which they supplemented with oral submissions on the final day of the hearing.

### FINDINGS IN FACT

6. The Tribunal found the following material facts to be admitted or proved: the claimant has been employed by the respondent since 26 August 2014. He is a member of the respondent's senior management team in their People and Development Department. He is team leader of five other employees who report to him. During the period of claim his team was office based. The claimant was employed as Head of Strategy and Specialist Services (P8) until 5 February 2018 when his post changed to Head of Wellbeing & Inclusion (P9). The location for both posts is the respondent's premises in Dalmarnock where the claimant has his own office. The respondent is a public body with responsibility for policing in Scotland. The respondent is a large employer. The respondent's People and Development Department has around 640 employees and an annual budget of around £30 million.

7. Towards the end of 2016 the claimant was anxious about his health and how it was affecting his work. He has a history of mental health issues including Obsessive Compulsive Disorder and depression. The claimant's General Practitioner ("GP") recommended that he consult a specialist about his health concerns. Following an assessment on 12 May 2017 the claimant received a diagnosis of Autism. The assessment was conducted by Joy Nisbet, Chartered Clinical Psychologist and Alison Geddes, Psychological Therapist/Registered Mental Health Nurse. The claimant was provided with a report from Aspect Psychology (P10) confirming his diagnosis. The report (P10) concluded that the claimant fulfilled the relevant criteria for a diagnosis of Autism, "*a lifelong pervasive developmental disorder*" which "*affects how a person communicates with and relates to other people, and how they experience the world around them*". The author of the report (P10) was certain that the

claimant would be “eligible to request reasonable adjustments at work to support and assist him in the workplace”. The report (P10) concluded as follows;

5           *“Planning around the more challenging types of situations experienced by (the claimant) will be most important to ensure that he is provided with support and opportunity to learn how to better manage such situations for the future. It is important to understand that (the claimant) will find asking for help difficult hence requesting assistance from an Autism specific service. He will require support in his discussions around his Autism in the way of an advocate. As*  
10           *(the claimant) struggles to come to terms with his late diagnosis, he will require a careful and sensitive attitude from herewith. Please don’t hesitate to contact us if you require further information.”*

8.       The claimant experienced stress and anxiety on learning of his diagnosis as an Autistic person. It was not something that he felt comfortable about discussing with others. After some deliberation he decided to make his line manager, Jude Helliker aware of the diagnosis he had received from Aspect Psychology. He was concerned about how being an Autistic person was affecting his work. He was concerned about his job security. Jude Helliker had been appointed as the respondent’s Director of People and Development in  
15       June 2017. Jude Helliker is based at the respondent’s headquarters in Tulliallan. The claimant met with Jude Helliker on 20 July 2017 at Tulliallan. At their meeting, the claimant informed Jude Helliker that he had been diagnosed as Autistic, something that he described as “quite a shock to him”. He requested that Jude Helliker treat his diagnosis as confidential. Jude Helliker  
20       assured the claimant that she would comply with his request. The claimant informed Jude Helliker that the respondent has an Autism Society that can provide support to line managers and employees. He sought Jude Helliker’s support in reducing his levels of stress and anxiety at work. He expressed uncertainty about informing other colleagues of his diagnosis. He sought Jude  
25       Helliker’s reassurance that she would respect his privacy and right to confidentiality. The claimant identified areas of work that he found challenging including lack of advance notice of meetings, communication, sensory  
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overload, changes to his work role, interruptions during his lunch break and having to drive to more than one place during the working day in particular to Tulliallan. The claimant suggested that he might be allowed to work from home when his diary allowed it and to dial in to meetings to reduce driving time.

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9. On or about 24 July 2017, the claimant provided Jude Helliker with a letter (P12) and a copy of the report from Aspect Psychology (P10). In his letter (P12), the claimant requested as a “*work adjustment*” that he be allowed to use the respondent’s flexi-time arrangement, work from home “*on days where (my) calendar allows it*”, retain his parking space and office at Dalmarnock and remove some of his work responsibilities. Jude Helliker was supportive of the adjustments suggested by the claimant. The claimant reiterated his request that Jude Helliker respect his confidentiality and highlighted that the report (P10) was “*for her eyes only*”. The claimant requested that Jude Helliker return the report (P10) to him. Jude Helliker complied with the claimant’s requests. She did not divulge his diagnosis to any other employees and having taken notes (P13) for her own purposes, returned the report (P10) to the claimant. In relation to “*reasonable adjustments*”, Judge Helliker noted from the report “*to make workplace autism friendly and for others to understand X. Allow X to function as well as he is equipped to*”. Jude Helliker that did not refer in her notes (P13) to the claimant requiring “*support in his discussions around his Autism in the way of an advocate*”.

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10. Around the same time, the claimant was in contact with the respondent’s Occupational Health providers, Optima Health. The claimant made Jude Helliker aware of this and that he intended to refer himself for an assessment. The claimant provided Optima Health with a copy of the report from Aspect Psychology (P10). Optima Health assessed the claimant and provided him with a report (P15) on 17 August 2017. The purpose of the report (P15) was to provide clinical advice and recommendations based on the claimant’s recent diagnosis. The author of the report, Victoria Hargreaves noted that having spent time reviewing the report from Aspect Psychology, she was of the opinion that “*despite his diagnosis there were no barriers to (the claimant)*

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*being able to undertake the duties of the post*". The report recommended the implementation of *'some local adjustments'* to ensure that the claimant has an *"appropriate supportive workplan in place which allows him to continue to function and manage his day to day activities"*. The report highlighted two specific areas for consideration: structure, particularly around the claimant's diary and communication, with regular performance reviews being particularly helpful to allow the claimant to understand clear direction and identify any areas of difficulty. The report (P15) recommended that information and guidance should be clear and concise as *"people with (the claimant's) type of autism are likely to take instruction in its most literal sense"*.

11. The author of the report from Optima Health (P15) noted that the claimant had not yet chosen to share his diagnosis with anyone else in the respondent organisation. The author expressed the view that sharing his diagnosis with Jude Helliker was a positive step forward for the claimant and that once he was ready, he may choose to share his diagnosis with selected members of his team. The claimant provided Jude Helliker with a copy of the report from Optima Health (P15). Jude Helliker was supportive of the suggestions made in the report.
12. The claimant remained anxious about his diagnosis and how it might affect his work. He was particularly anxious about his workload and uncertainty around a proposed restructure. During August 2017, the claimant applied to change his hours to a four-day condensed week and to work from home subject to diary commitments. He remained anxious about travelling for work beyond Dalmarnock. Jude Helliker discussed with the claimant her concerns that working compressed hours might place him under increased pressure at work and not allow him enough time to rest. The claimant did not share Jude Helliker's concerns. Jude Helliker authorised the claimant's application for flexible working during September 2017. As requested by the claimant, Jude Helliker did not disclose the claimant's diagnosis.
13. The claimant met with Jude Helliker on or around 13 September 2017. The claimant became upset during the meeting. He informed Jude Helliker of his medication and that it made him drowsy. The claimant requested weekly one

to one meetings with Jude Helliker. The claimant was anxious about his diagnosis and how it was affecting his work. He was concerned about having to drive to Tullialan . The claimant wrote to Jude Helliker by letter dated 4 October 2017 (P18/100 – 101) as follows;

5            “Dear Jude

**X – EMPLOYEE NUMBER XXXXXX**

10            *I am writing to you in hard copy as I understand that neither of your email addresses is private and both are accessed by other employees. When I made you aware of my Autism diagnosis, in July 2017, the one thing I stressed was the importance of my privacy and confidentiality being respected. Further, due to my Autism, written communication is the preferred option for me as I need to see things in black and white. I also need time to process information, therefore, the written word provides clarity and avoids misunderstandings, which can happen with verbal communications.*

15            *Further to your recent approval of my request for flexible working, I write to advise that I intend to officially commence this on week commencing Monday 23 October 2017. I did originally request a start date of 04 September 2017, when I submitted the forms on 10 August 2017. Could you please confirm agreement, to allow me to have HR make the contractual amendments and update SCOPE?*

20            *Also, following my disclosure to you, of my Autism diagnosis, I would confirm that I have appointments lined up with AXA, to assist me in dealing with this, and for which I will require time out of the office. I will be attending twelve one-hour appointments over the coming weeks/months however I will blank out the time in my calendar and obviously avoid clashing with other commitments wherever possible. I also have to meet with the occupational psychologist who conducted by ADOS assessment which I will manage with flexi time.*

25            *I made you aware of the medication I now take – this has increased from when we spoke in July and I am now taking four separate medications at specific*

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*times of the day. Since receiving my Autism diagnosis, I have to take these pills, which do have side effects, most of which I can hide for short periods, such as my hands shaking.*

5 *However, the principal side effect is tiredness and lethargy. As a result of these side effects, and following GP advice, I cannot continue to put myself at risk of a car accident by driving beyond Dalmarnock on a weekly basis. I will make provision to dial into meetings or send a suitable representative, whichever is more appropriate, depending on the situation and meeting requirements.*

10 *Due to the nature of my work, this situation is easily managed with reasonable adjustments which are required under the Equality Act. There will be occasions where my attendance will be necessary or when dial-in will not suffice and I am comfortable that I can attend these meetings. For example, the Governance Meetings that I attend for Equality, Health/Safety and*  
15 *Wellbeing are on a bi-monthly basis and your monthly SMT meeting.*

*Finally, I would refer to our conversation on Friday 29 September, following the P&D engagement session. Firstly, thank you for the positive feedback on my presentation, that is welcomed. However, in response to your question “why can’t you always be like that?” – the clear answer is because I am*  
20 *Autistic. The reason I perform well in public presentation and meetings is because I prepare and rehearse to enable me to do so. I do not perform well in ad-hoc circumstances or meetings with no advance Agenda or knowledge of what is going happen. Randomness and unpredictably are two things that cause extreme anxiety in people with Autism.*

25 *I have already highlighted the reason for seeking the Autism diagnosis in the first place, i.e. the bullying behaviours from your predecessor and from Janice Howitt. What I seek is your backing in staff meetings, by managing any personal or derogatory comments made to or about me, as I am not making my Autism common knowledge within the function, nor am I able to react*  
30 *appropriately to these kind of jibes.*



*Your support in assisting me with these minor adjustments is necessary and would be very much appreciated.*

*Regards,*

*X”*

- 5 14. Jude Helliker replied to the claimant on 6 October 2017 (P19) confirming that his application for flexible working had been approved with an official start date of the week commencing 23 October 2017. She wrote to the claimant as follows:

*“Dear X*

10 *Re: Request for flexible working arrangements*

*Thank you for your letter of 4 October 2017.*

*I can confirm that your request for flexible working is approved and that your official start date of the new arrangements will be from week commencing 23 October 2017.*

15 *I also acknowledge the further information you have provided in your letter with regard to your changes to medication and the potential for side effects as you have described.*

*You have indicated your need to attend clinical appointments and I am content that you continue to manage this as you outline in your letter.*

20 *I am committed to providing you with all necessary reasonable adjustments to allow you to carry out your role. I appreciate how challenging this diagnosis has been for you personally and I wish to give you as much personal support as I possibly can.*

25 *I would also like to apologise for any offence I inadvertently may have caused you at the engagement session last Friday. I was so very impressed by your presentation and contribution to the event I may have been clumsy in my compliment.*

*Finally, I would like to say that I greatly value your contribution – both personally, and as a key member of my senior management team.”*

15. The claimant remained anxious about his workload. He had been struggling to come to terms with his disability and was anxious about disclosing it to his colleagues. He intended to inform his colleagues about his disability after the holiday period and wrote to Jude Helliker by email on 18 December 2017 (P20) suggesting autism awareness training for the senior management team.
16. On 8 January 2018, the claimant wrote to Jude Helliker (P22/108) requesting a one-hour face to face catchup. The claimant explained that he was not able to drive and that Dalmarnock would be the easiest place for him to access. The claimant informed Jude Helliker that he would send her a note of *“areas to discuss in relation to (his) autism and the immediate/urgent need for adjustments and the ways of working”*. The claimant explained that he did not necessarily wish to be absent from work and if they were able to meet that week and agree some minor adjustments, they could probably avoid him having to be absent. He explained that it would be an enormous support to him if she could find the time to see him. He informed Jude Helliker that he was seeing his GP the following Monday to provide her with an update. He informed Jude Helliker that if nothing had changed since his last visit, he anticipated that his GP would insist on signing him off, a situation he would rather avoid. The claimant subsequently informed Judge Helliker (P22/110) that following his GP appointment on 4 January 2018 he planned to work from home during the following week. Jude Helliker replied to the claimant on 8 January 2018 (P22/109) expressing concern about the claimant’s health, recommending that he take his doctor’s advice and take whatever time off was necessary to feel better. Jude Helliker reassured the claimant that she would make arrangements for his work to be covered to *“allow (him) the time”*. She suggested that they speak on the telephone that day or the following day.
17. The claimant’s wife, Y, was growing increasingly concerned about the claimant’s health. On 11 January 2018, Y wrote to Jude Helliker in the following terms (P23);

*“Dear Jude,*

*I am X’s wife and I am writing to you as you and X prepare to meet on Friday as I know that X doesn’t find it easy to talk about himself nor to ask for help. He also doesn’t always articulate himself plainly, so this is just an addition, from me, to hopefully provide some clarity.*

*Firstly, I would say thank you for your kindness to X when he made you aware of his Autism diagnosis and for meeting with him today. He has been striving to address his working situation and his wellbeing however he has been unable to communicate this to you sufficiently, it seems, hence his request to meet with you in person to discuss.*

*His Autism diagnosis has been upsetting and confusing however he has been determined to carry on as “normal” at work and to not let anyone down by not producing in his role or by taking time off from work.*

*He was initially embarrassed to learn that he is Autistic and I suspect that he still feels that way, to an extent hence his reluctance to openly and widely share his diagnosis. He is afraid that people will judge or treat him contrarily when they know. He was adamant that he does not wish to be treated differently however I think he is now starting to appreciate that, actually, he is changed, and therefore he now has to start to take care of himself and to seek support from you and his employer in managing this new world he has found himself in, through no fault of his own.*

*X has been incredibly courageous and strong, these last twelve months especially, whilst going through the diagnostic process and not allowing the outcome to affect his performance in work.*

*However, neither he nor Police Scotland can continue to ignore his disability therefore I am asking that you do listen to him, that you action reasonable adjustments as required to enable him to continue delivering and to ensure that his health and wellbeing do not suffer.*

*X is a valuable employee who enjoys his job and his colleagues and just wants to be the best he can be. All he needs in return is some understanding and*

*some small allowances made to make him feel comfortable but not “altered”. People just need to be kind and to be mindful of his Autism before making demands on him or barging into his office or dropping last minute changes onto him or demanding his presence somewhere other than Dalmarnock.*

5 *He will need to you to lead the way on this or to appoint a suitable “mentor” colleague who can “buffer” for him, and who has an underlying awareness of Autism, who he can turn to if he feels bombarded or confused by conflicting requests or pressures. This has been part of the tension that he has felt over the last few months as he didn’t know where to turn for assistance and he has*  
10 *felt very isolated and unclear as to how to approach things.*

*X will be happy to answer questions from colleagues or take feedback (constructive) upon revealing his Autism. All that he asks in return is that colleagues and management treat him with compassion and mindfulness, as he endeavours to do with them.*

15 *Below is a list of some of the smaller, unnoticeable things that X requires support around and that I know he will not mention to you.*

**Lunch Breaks** – *X needs to take his half-hour lunch break in order to re-set before the afternoon begins. He requires that little bit of quiet time to himself and also does not like to lunch in front of others so to close his door and just*  
20 *breathe for 30 mins will help him immensely. His social energy level is less than that of a Neuro-Typical person and is easily depleted.*

**Meetings** – *X needs to feel supported enough by you to give him the confidence to decline meeting invites as and when he feels he should. He will endeavour to dial-in or provide suitable representation if it is something*  
25 *he cannot attend.*

**Meetings over Lunch** – *understandably these occur and X is fine with having his lunch break prior to or following a lunch meeting however he would request that consideration be given to his Autism. Specifically his Sensory Overload which means he finds it difficult to concentrate in a busy room when there is*  
30 *added distraction of rustling food papers, people eating, a loud clock ticking*

*on the wall etc. Therefore, could an understanding be deliberated that no eating is permitted during meetings.*

*I do appreciate how busy you (all) are so thank you for reading”*

5 18. The claimant met with Jude Helliker on 12 January 2018. At their meeting Jude Helliker discussed with the claimant the possibility of disclosing his diagnosis to colleagues to help them support him. They discussed the claimant’s workload. Jude Helliker agreed that part of the claimant’s workload should be removed from his portfolio with immediate effect. The claimant informed Jude Helliker that he planned to inform some of the wider team about  
10 his Autism diagnosis and sought Jude Helliker’s support during 2018 through communication, regular one to one meetings, fewer last minute changes and less travelling. He requested the respondent arrange training in Autism awareness. The claimant requested that Jude Helliker contact him on a regular basis, preferably weekly, and not to rely on him contacting her to  
15 discuss concerns as this is something with which he struggles.

19. The claimant confirmed by email of 15 January 2018 (P119) that Jude Helliker inform his “*two key clients*”, Chief Police Officers, of his diagnosis. He confirmed that he was going to speak to his “*first reports*”. Jude Helliker informed the Chief Police Officers of the claimant’s diagnosis as requested by  
20 him.

20. Jude Helliker replied to Y by letter of 25 January 2018 (P121) as follows:

*“Thank you for your letter of 11 January 2018 regarding your husband and my colleague, X.*

25 *I am very grateful for you taking the time to give me your personal perspective on X’s recent diagnosis of Autism and the impact it has on him, his work and you as a family.*

*I would like to reassure you that I am mindful of X’s position and wish to do everything possible to enable X to perform at an optimum level and to continue to make a meaningful contribution to our work.*

*I consider X to be a valuable and trusted colleague who performs an important role in my senior management team. I will continue to do all I can to support him, particularly as he manages the communication of his diagnosis to others.*

*Again, thank you for your honesty and support. It is greatly appreciated.”*

- 5 21. On 29 January 2018, the claimant wrote to Jude Helliker by e mail (P27) thanking her for her letter to Y and confirming that he was comfortable that she inform the ‘*the wider team*’ about his diagnosis. He confirmed that he now felt less anxious about sharing his diagnosis having received a favourable and supportive response from those he had informed. Jude  
10 Helliker arranged training in Autism awareness. The training took place on 6 February 2018 and was attended by members of the claimant’s team. Nicky Page, Head of Employee Relations and Reward was also present at the training. The training was facilitated by the National Police Autism Association. During the training, Jude Helliker informed those present that the  
15 claimant had requested they be made aware of his diagnosis of Autism and that they attend awareness training. The training included a video presentation on Autism and communication in the workplace and a presentation from an Autistic person in the respondent’s employment. The claimant subsequently informed Nicky Page in person of his diagnosis.
- 20 22. From 5 February 2018 the claimant’s post was Head of Wellbeing & Inclusion (P9). Jude Helliker was directly involved in redesigning the claimant’s new role. Changes were agreed in consultation with the claimant. The changes allowed the claimant to concentrate on his core duties. The new role was designed to give the claimant greater autonomy over his working time and  
25 control of his workload to facilitate forward planning. The role was designed to allow the claimant to be less reactive and more in control of interactions and meetings with his team. A number of the claimant’s previous responsibilities were assigned to other employees. The claimant was offered a flexible working plan that allowed him to rest during the week. He was  
30 allowed to continue working compressed hours over 4 days. He was allowed to work from home subject to diary commitments. He was allowed to deputise

his attendance subject to leadership and portfolio expertise and to dial in to meetings to avoid travel, in particular to Tullialan.

23. On or around 22 February 2018, emails sent by the claimant to senior Police Officers were brought to Jude Helliker's attention. In terms of the respondent's protocol, the e mails would normally have been sent through Jude Helliker's office and by the claimant direct. Jude Helliker was anxious to discuss with the claimant why he had sent the e mails. They concerned a matter that the claimant had raised with her previously and which she had actioned. Jude Helliker was concerned about the claimant's wellbeing. She contacted him by e mail on 22 February 2018 (P123) requesting that they meet one to one to discuss his e mails and expressing her concerns about his wellbeing. The claimant did not react well to receiving Jude Helliker's e mail (P123). He felt anxious and upset. He took offence at receiving the e mail. He understood that Jude Helliker wished to discuss with him why he had sent e mails to senior police officers. He left the office early and went home. He informed Jude Helliker by e mail (P29) that he had developed a headache which was "beyond extreme" and wanted to be able to drive home. Jude Helliker confirmed by email (P29) later that day that he was right to go home and that she hoped that he felt better very soon. The claimant remained absent from work and provided the respondent with a Fit Note dated 22 February 2018 (P31), confirming that because of stress at work he was not fit for work for 28 days due to 'new diagnosis of autism'.

24. Jude Helliker contacted the claimant by e mail on 1 March 2018 (P32) to reassure him that arrangements were in place to cover his work and that she was always available should he want to have a chat. The claimant replied by e mail on 2 March 2018 (P33) as follows:

*"Thank you for your e -mail yesterday and the work updates.*

*When I presented myself to my GP on Monday, she was very concerned about my general wellbeing, as she has been for some time now, and this, as she knows the difficulties I am experiencing in work.*

*I have continued working since receiving my diagnosis in May 2017 and have actively sought support from you, however, this has been slow in forthcoming which has impacted on my physical health, in addition to my diagnosed Autism, OCD and Anxiety.*

5 *I again approached you in January reiterating my bid to have some small changes implemented to make 2018 more manageable, which to date have still not happened. I simply cannot continue further, as things are and by ignoring my requests to you, and therefore ignoring my Disability, I am being discriminated in line with the Equality Act 2010.*

10 *I am not someone who takes time off work lightly, as demonstrated by my exemplary attendance record. I also have a very strong work ethic as evidenced by my output and achievements. Being absent from work, because my Employer is neglecting me, actually causes me additional and unnecessary angst.*

15 *Our absence policy states that we must have an absence management meeting within 28 days of my absence commencing. In advance of this meeting, could you please ensure that the following is actioned with a view to me returning to work at the earliest opportunity:*

**Workplace Assessment**

20 *In line with the Equality Act 2010, I am classified as disabled, and as such am legally entitled to reasonable adjustments. To date, the adjustments implemented are not enough to fully support me.*

*Therefore, it is crucial that a full Workplace Assessment be undertaken by a recognised Autism support provider – for your convenience, I have attached the links to such providers –*

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*The National Autistic Society (NAS)*

<http://www.autism.org.uk/professionals/training-consultancy/employment/assessments.aspx>



*Concept Northern, who we have a contract with, also do workplace assessments and assistive technologies. Their details are as follows:*

[http://www.conceptnorthern.co.uk/wp-content/uploads/2018/01/Autism\\_Leaflet.pdf](http://www.conceptnorthern.co.uk/wp-content/uploads/2018/01/Autism_Leaflet.pdf)

5 *I am prepared to attend to accommodate an Assessment during my current absence.*

*The outcome of the Assessment would be a report that will outline the measures that Police Scotland have to put in place in line with the Equality Act, with specific timelines.*

10 *I anticipate that I will require ongoing support which is available through this process from either organisation. Concept Northern, particularly, appears to have some innovative supportive technologies, that I would find beneficial.*

### **Annual Leave**

15 *I have pre-planned annual leave for 2 and 5 March (2 days) and 7 days at the end of March. Could you please organise with the SCOPE team for these days to be carried over into 18/19 leave, as I do not anticipate that I will be back in work prior to 31 March 2018, given what needs to be done in advance of my return.*

### **Summary**

20 *I have tried, since July 2017, to explain my health situation and offer ideas that would improve my working life and communication between us, however, and unfortunately, my attempts are not being heeded.*

*From a legal perspective, you, and my employer are failing in the duty of care to me. The measures that I have outlined in this letter will ensure that we get*  
25 *back on track, quickly and allow me to return and remain at work.*

*If you do not make arrangements for a Workplace Assessment and to implement the recommendations provided thereafter in a timely manner, I will*

*be left with no option but to commence a formal grievance process, something I would much rather avoid, for both of us.*

*All I am seeking is meaningful support, consideration and mindfulness towards me, as I have been for seven months now.*

5 *I await your response.”*

25. The respondent contacted Concept Northern on 2 March 2018 (P36/141) to arrange a workplace assessment for the claimant.

26. Jude Helliker replied to the claimant by e mail on 4 March 2018 (P34) as follows:

10 *“Thank you for your e mail communication dated 2 Mar 2018, entitled ‘Personal Update’.*

*I was disappointed that you perceive that the organisation is not taking its duty of care to you seriously. I have agreed a flexible working plan that allows you to take rest during the week, and in addition have been supportive of you working from home, when this is appropriate. I have agreed to you dialling in to meetings rather than to travel as I acknowledge that you find driving tiring.*

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*I have proactively managed changes within the current management structure (taking account of the duty to yourself and your colleagues) to enable you to have a well-defined portfolio, from that which you previously had. In doing so I have taken account of protecting your status in the organisation whilst making a genuine attempt to accommodate your needs. This has been difficult to accomplish because other colleagues have required to take on additional work in support of these changes. I therefore have had to balance expediency for your needs, with my duty to those individuals taking on further workload, with the genuine organisational need to manage significant people matters on behalf of the organisation.*

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*In addition to this I have had the Senior Team participate in an autism awareness session so that they are in the best place possible to support you.*

I have undertaken all these activities in support of your current diagnosis. Therefore, I must dispute the assertion that I have not taken your diagnosis and disability seriously and any assertion of being neglected by the organisation, because they are simply not true. I genuinely have tried, and will continue, to support and assist you where I reasonably can.

I appreciate you feel that there are further adjustments that can be made – and I am happy to explore the possibility of further reasonable adjustments, over and above those that have already been put into place.

In both furtherance of my commitment to you, response to your email and in line with organisational SOP I feel it is important to progress as follows:

a) Agree a time, date and place for a face to face meeting. My view is that you would benefit most from it being in Glasgow to restrict travel and propose therefore Dalmarnock as a suitable location. If you are able to confirm this is acceptable, I will ask the Executive Support Team to confirm availability within my diary.

b) Refer you to OHU – in line with the Attendance Management SOP which states as follows:

#### 4.9.3 Referral

4.9.3.1 Line Managers have a responsibility to refer any individual who fulfils any of the following criteria to Occupational Health;

- they have been, or are expected to be, continuously absent for over 28 calendar days; or
- they have a Fit Note that indicates, or they have self-reported to their manager, that they are experiencing psychological ill health (including work related stress); or

- *where appropriate under other circumstances e.g. circumstances in terms of the Disability in Employment SOP.*

5 *I believe that a referral to OHU would be beneficial as they will be best placed to advise me of the next steps that may be helpful in respect to supporting you, and the relevant provisions that should be explored. I appreciate there are providers who may be able to assist, which you refer to in your mail, and these may or may not be the appropriate to engage with in order to progress. It is important therefore that expert advice is*  
10 *taken on the matter, and I am sure that OHU are best place to do this. I am confident that when you engage with them, you will outline your thoughts and they will take that into account in any recommendations to the service.*

15 *c) Workplace Assessment – following the aforementioned step, I believe that a full workplace assessment can be undertaken in support of you.*

*Lastly, given the reference you make to your levels of anxiety I feel that a referral to AXA may also be worthwhile. I can do a management referral for you if you feel this would be beneficial, although given your knowledge and experience of the support mechanisms available to you may already be fully*  
20 *engaging with AXA. Alternatively if you have other support paths already available to you that you are utilising, and as such may not feel that this is a necessary step you can let me know whether you feel that a referral will be useful. I will progress as per your preference.*

*I look forward to hearing from you.”*

25 27. The claimant replied to Jude Helliker on 5 March 2018 (P35) in the following terms:

*“I refer to my e-mail dated 2 March and your response dated Sunday 4 March. I would also remind you that I am classified as disabled and currently absent due to work related stress.*

30 *I will respond to your e-mail points, in writing, in due course.*

*In the interim, please let me be clear, once again, on my expectations of you, as my line manager.*

*A Workplace Assessment requires to be carried out at the earliest opportunity and the output from that to be actioned immediately, in order to facilitate an early return to work for me and to make the necessary improvements in communications between us to allow a mutually satisfactory working relationship going forward.*

*By all means, refer me to OH but please do not use the portal for this, as you did previously, as my staff have access to all management referrals. However, you already have a written report from OH, dated August 2017, which makes clear what actions you should have taken and which, to date, have not been implemented. Also, going via OH, at this time, is an unnecessary and unrequired step which will only delay a Workplace Assessment, and lengthen my period of absence.*

*I would further remind you that you are also in possession of my private assessment through Aspect Psychology which was undertaken by a clinical psychologist, and provided to you in July 2017. This report, coupled with the OH report, were enough to allow you to have made a referral for a Workplace Assessment back then, and also to appoint an Advocate, neither of which have been done. Concept Northern, can conduct a thorough assessment of my workplace needs. The output of this will be a report which outlines your requirements in order to comply with the Equality Act 2010.*

*I would ask that you contact Concept Northern (Claire Craig, Wellbeing Manager can assist with this) and arrange for the assessment to be conducted at their premises.*

*With regard to your concern about my 'anxiety', I am receiving medication for this through my GP, as I have advised you on multiple occasions and as OH reference in the aforementioned report.*

*I agree an attendance meeting should be arranged, in Glasgow. I advise that I will have appropriate representation present. I would prefer this meeting*

*place at a neutral location, outwith Dalmarnock, as attending the office, at the moment, would be too stressful.*

*In terms of a timeline, you can assist by ensuring that I return to work as quickly as possible, which can be achieved as follows:*

5 *w/c 5<sup>th</sup> March – Your approval for Concept Northern to conduct a Workplace Assessment.*

*w/c 5<sup>th</sup> March – Concept Northern Workplace Assessment takes place.*

*w/c 12<sup>th</sup> March – Absence Meeting takes place.*

10 *I am seeing my GP on 19 March and would like to be in a position to advise her what you have done to facilitate a return to work.*

*I hope that the above clarifies what is required of you as my line manager.”*

28. The claimant attended a workplace assessment with Concept Northern on 8 March 2018. Concept Northern provided the respondent with a report on 12 March 2018 (145 – 150). The report from Concept Northern (P40/148)  
15 included the following suggestions:

20 *“(The claimant) could benefit from structure around his diary. (The claimant) said he acknowledges last minute things do come up, and there is a need for flexibility, however, those with Autism can find last minute changes cause high levels of anxiety. (The claimant), could therefore benefit from always having meeting times and agendas in advance, to allow him to review these and be comfortable and confident that he is well prepared for these scheduled events.*

25 *(The claimant) could also benefit from communication which is regular, clear in direction and identifies any areas of difficulty. Information and guidance conveyed to (the claimant) could again be clear and concise. (The claimant) could benefit from continuing to work in his office, where there is less noise and he can concentrate on his work load”.*

Concept Northern recommended Brain in Hand and Texthelp Software with an appropriate training package as suitable assistive technology for the

claimant. An order was placed by the respondent to purchase the above on 19 March 2018 (P46). Around the same time, enquiries were made by the respondent about the possibility of Concept Northern and/or Autism Scotland providing disability awareness training.

5 29. The report from Concept Northern (P40/148) referred to the claimant mentioning that he felt a work place colleague who could mentor him could be especially beneficial. Reference was also made in the report (P40/148) to the claimant mentioning that he would not be averse to working from home on days deemed to be acceptable and appropriate as he has the means to  
10 work remotely.

30. The claimant attended an Attendance Support Meeting with Jude Helliker on 13 March 2018. At Attendance Support Meetings management discuss and identify with employees practical support measures to improve or sustain attendance at work. The claimant was accompanied at the meeting by his  
15 trade union representative, Derek Balfour. Nicky Page attended as HR adviser for the respondent. She also acted as notetaker to avoid another person having to attend the meeting and to respect the claimant's privacy. Nicky Page prepared minutes of the meeting (P151 to 153) in which actions from the meeting were identified including the claimant providing Jude Helliker  
20 with details of advocacy and autism awareness training and identification of meetings requiring the claimant's attendance to allow forward planning by the claimant. Methods of communication were discussed at the meeting including the claimant explaining that his preference was to communicate by email rather than face to face or by telephone. He confirmed that he felt able to text  
25 Jude Helliker should he wish to speak to her. Jude Helliker confirmed that she understood that the claimant struggled with unplanned and dynamic requests and explained that she had designed his new post with this in mind. Jude Helliker also confirmed that she had agreed to a flexible working plan for the claimant that allowed him to work a 4-day week and to work from home to  
30 reduce his need to travel.

31. The claimant remained absent from work. The claimant's GP, Dr Natalie Gallacher provided the claimant with a letter dated 16 March 2018 (P42) to

pass to the respondent and Occupational Health in which she referred to “a recurring theme when I have seen (the claimant) is his struggle with work. He has found the workplace a particularly challenging environment and has reported on several occasions he has found his workplace to be fairly unsupportive”. The claimant provided the respondent with a Fit Note dated 19

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March 2018 (P44) confirming that he was unfit to work for a period of 28 days due to stress at work and “new diagnosis of autism”. The claimant informed Jude Helliker that his GP would not allow him to return to work until Occupational Health had assessed him and reviewed his medical information

10 32. Arrangements were made by the respondent to refer the claimant to Occupational Health. Jude Helliker wrote to the claimant by e mail on 23 March 2018 (P50) to confirm that she had contacted Occupational Health and that progress was being made with training and a workplace advocate. Jude Helliker contacted the claimant again on 29 March 2018 by e mail (P51) to

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confirm that she had spoken to Occupational Health and that contact had been made with Concept Northern about training and the purchase of equipment. Jude Helliker provided the claimant with a draft referral to Occupational Health by e mail on 9 April 2018 (P52). She requested that the claimant provide his consent to the referral. The claimant refused to agree to

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the terms of referral (P53/171 - 175). The claimant was anxious that guidance was being sought on whether he was fit to undertake the full remit of his newly designed post. Jude Helliker sought to reassure the claimant she was not questioning his professional ability to carry out his new role. Jude Helliker provided the claimant with a revised referral to Occupational Health (P57/184

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– 186). The claimant refused to consent to the revised referral.

33. Occupational Health agreed to assess the claimant without a referral from the respondent. An assessment was undertaken on 11 April 2018 by Dr Sohail Ahmed of Optima Health. During the assessment, the claimant expressed the view that little had been done to understand or accommodate his Autism

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since July 2017 and that appropriate adjustments had not yet been implemented by the respondent. Dr Ahmed prepared a report following his meeting with the claimant (P59). Dr Ahmed emphasised in his report



(P59/194) that health professionals who work in the area are the best placed to advise on Autism.

34. In his report (P59), Dr Ahmed suggested that the respondent may wish to consider the possibility of implementing various measures including; a phased return to work; partial home-based working; the designation of an appropriate individual to be the claimant's autism advocate; the provision of adaptive technology as recommended by Concept Northern; the provision of written as well as verbal information about any changes at work and when arranging meetings; regular communication of a supportive nature between the claimant and his line manager; if any transportation is required during the course of the claimant's work (with the expectation of the home-to-work commute and the return journey), the provision of transportation initially for approximately three to four months following the claimant's return to work; the provision of agendas in advance of meetings as well as minutes/action points after meetings and an individualised work place stress risk assessment.

35. The claimant remained absent from work due to ill health. He provided the respondent with a Fit Note dated 13 April 2018 (P61) in terms of which he was not fit to work for a period of 28 days due to stress at work and "*new diagnosis of autism*".

36. On 17 April 2018, the claimant wrote to Jude Helliker by email (P63) requesting updates on the following by 18 April 2018:

1 *Confirm receipt of my latest Fit Note dated 13 April 2018.*

2 *Confirm receipt of the report from Optima OH, following my meeting with them last week, Wed 11 April 2018.*

25 *Can you please advise your response to the points raised by the Force Medical Officer.*

3 *Minutes of the Absence Meeting dated 13 March 2018, that took place in Hamilton Police Office.*

4        *Progress with Concept Northern and adaptive technology – is there an expected date when these will be in place and ready for use. Date for training for use of equipment?*

*Appointment of a Facilitator to administer the use of the technology.*

5        5        *Appointment of a Workplace Mentor/Advocate – have Scottish Autism been helpful with this for you. Has someone been identified?*

6        *As stated in the OH report, my intention, all being well, is to return to work **week commencing 30 April** – please provide the return to work plan to enable this.*

10       7        *Confirm that I have carried over 70 hours in Annual Leave, from the 2017-2018 leave year.*

8        *Proposed Communication strategy as stated as required in the Psychological Report dated July 2017 and the OH report dated April 2018.*

15       9        *Proposed Review and Assessment schedule, to review effectiveness of adjustments and monitor my on-going Wellbeing.*

10       *General workplace update of events during my absence e.g. Restructure/SMT updates, minutes etc.”*

20       37.    The claimant and Jude Helliker spoke by telephone on 25 April 2018. They discussed Dr Ahmed’s report (P59) and the claimant’s return to work. Following their discussion, Jude Helliker wrote to the claimant by letter of 25 April 2018 (P65) as follows:

25       *“I write further to our telephone conversation today and in relation to your recent Occupational Health appointment and the recommendations provided to me from Dr Ahmed. It was good to chat to you and I’m pleased to hear that you are doing well and looking forward to returning to work next week.*

*As we discussed earlier, you will give me a call on Tuesday morning to have a quick catch up on your return. I have also written to your direct reports*

*letting them know of your return to work and indicating the proposed phased return over the forthcoming weeks. I am confident that they, as will your colleagues, provide you with support on your return.*

*We have agreed that the first four weeks of your phased return will be as follows:*

*Week 1 – Tuesday – Thursday (10 – 2)*

*Week 2 – Monday – Thursday (9 - 3)*

*Week 3 – Tuesday – Friday (9 – 4)*

*Week 4 – Monday – Thursday (9 – 5)*

*This is in accordance with advice from OHU that your return is phased and proposes a structured return over a period of four weeks, starting at 50% of your contracted hours, returning to full hours on Week 5. I am more than happy to discuss and agree alternative options if you feel at any point this is not suitable.*

*We also discussed your preference to change your free day within your current Flexible Pattern from a Wednesday to either a Friday or a Monday. As Fridays are the most requested day off within the Senior Management team we have agreed that you will take Monday as your free day. It is also less likely to be a day when corporate meetings you are normally required to attend are held. We can obviously review this as we go along in line with the flexible working SOP which will allow us to determine the suitability of the pattern and its impact on service delivery within the team. It will also allow us to assess whether it is having the personal health benefits for you that we might anticipate.*

*I would like to undertake with you a work place stress risk assessment in the hope that any potential stressors are highlighted and provisions where reasonable, are put in place to assist you with them.*

*We discussed the issue of travel during your initial return to work. To try and mitigate the need for travel to P&D meetings, I can confirm that the senior*

*team meetings will be moved to Dalmarnock for the next 3-4 months, in acknowledgement of the occupational health report recommendation that driving be minimised for this period.*

5 *We have ordered the technological equipment that Concept Northern suggested and that, once received, you will make arrangements personally with ICT to have this installed and training received. Please let me know if there are any problems with this and I will expedite.*

10 *We are in the process of identifying suitable advocacy training and will consider the two options you put forward for an appropriate advocate. I would expect that we will have an individual identified for your return to work and I will discuss that with you on Tuesday.*

*I am in the process of arranging further autism training for the Senior Management Team, following your request for a more structured approach be taken to training in this area.*

15 *Going forward, I thought it would be helpful to reflect on the broader adjustments that may be required to enable you to fulfil your role. In my reflections, I have reviewed your job descriptions – old and new – and considered the wider expectations of us as senior managers in our organisation. I attach, purely for ease of reference, signed paperwork for your*  
20 *post of Head of Wellbeing and inclusion which includes the Job Description, a copy of your current flexible working contract and your contract and job description for your previous post of Head of Strategy and Specialist Services.*

25 *As senior managers there is a reasonable expectation that travel to meetings for work related purposes is an essential aspect to the role. As lead in driving forward your portfolio of work, you must therefore be in a position to influence, in person at key strategic meetings. There are a range of such meetings that you will be expected to attend, including Senior Management Team meetings and other meetings where you are the senior portfolio holder, such as Health and Safety, Wellbeing and Equality and Diversity meetings.*

I note the suggestion of sending delegates to meetings rather than your own regular attendance. My expectation is that all Tier 2 managers will regularly attend the meetings for which their leadership and specialist expertise or portfolio requires. I anticipate that this will not be a regular occurrence, accepting however that this will be a requirement from time to time. The responsibility for strategically leading the function is within your role description, and removal or dilution of this could have an implication for the role, and by extension the roles of direct reports. Short term accommodation of this to support you while other adjustments are made, and to allow you to fully return to normal working arrangement, will obviously be facilitated.

I anticipate that you will engage with the travel unit in respect to any travel arrangements that you may have over this period, and beyond, as appropriate, in order that you are able to manage the workload whilst minimising the need to drive, in line with the OHU advice. I would also draw your attention to the Business Travel SOP which outlines our responsibilities in ensuring we make appropriate and safe travel arrangements in order to carry out our duties.

We can have a further discussion when you get back to work about your new role, which we have designed to remove some of the activities you had previously undertaken, most specifically the management of Reward and the SPRM project. I appreciate that much of this has already been transferred to Nicky Page as Head of Employee Relations and Reward, however you may need, upon your return to work, to ensure that outstanding elements that relate to your previous role and responsibilities are appropriately managed and handed over to the relevant Senior Manager.

Within this level of role there will always be a requirement for informal, ad-hoc and dynamic meetings where it is less possible to control. I expect that you will endeavour to accommodate such requirements, within reason, but where you find it not possible to meet such demands you may arrange with me, in advance where possible, for alternative arrangements to be made. I would expect this to be the exception rather than the rule, particularly given your

*level of seniority and the requirement for your personal expertise and leadership.*

*Within the Occupational Health report it outlines that there may be benefits to allowing you to work from home on a regular basis. I have done and will continue to support occasional homeworking where this is necessary and practical, and agreed in advance. However, as the strategic lead for an important area of work I feel that it is essential for the success of this role that you are available to your staff for strategic decision making, and to ensure that they are fully supported in the work that they are responsible for driving forward.*

*I am also conscious that the tier two leadership role within P&D is not only portfolio orientated, but is about the wider influence that we as leaders have in assisting to break down the silos that, as we have discussed as a team, exist to the detriment of the function. I see all the tier two roles as playing a key and active part in ensuring we achieve the business benefits of closer working relationships and much more proactive engagement; availability to both subordinates and peers is a key element towards achieving this goal.*

*I acknowledge that the report comments expressly on 'door-stopping'. I anticipate that in the dynamic environment that we operate in there will always be an uncontrollable requirement for Senior Management engagement at short notice; this however, should only occur when absolutely required. I hope that any unnecessary door stopping is proactively managed by ensuring that we apprise the team and your colleagues of your expectations and that we address matters through structured meetings schedules thereby limiting the requirement for door-stopping. I know that you will set expectations for your management team in respect to unnecessary interruptions and structured engagement, and I would anticipate that you will look to use these controls to proactively manage unnecessary interruptions. I intend to raise this issue specifically with the other Tier 2 managers your direct reports in anticipation of your return to work.*

*You will be aware of the Special Leave SOP Page 34 – time off to attend medical appointments. I point this out to address concerns raised in the report relating to time off to attend appointments. The SOP outlines the provisions that are in place and advises that where possible individuals are requested to arrange medical, dental, optical and other medical appointments at times out with their normal working day. Where this is not possible, annual leave or flexi must be used to cover the absence. Paid leave for hospital appointments will be accommodated and individuals will be required to show appointment cards if paid leave is required. On this basis I can give you assurances that I am happy to support the provisions as laid out.*

*I hope that this information as outlined in response to the report is helpful. I am eager to have you back to work and I know that this is shared by your colleagues and team.*

*Please remember the following supportive mechanisms that are available to you both internally within SPA/PSOs and externally via your Employee Assistance Programme, AXA PPP Healthcare, tel: 0800-531-6091, [www.axabesupported.co.uk](http://www.axabesupported.co.uk)*

38. In addition to her letter, Jude Helliker sent the claimant the text of an e mail (P64) she has sent to his direct reports confirming that he would be returning to work on a phased basis and the arrangements agreed as regards flexible working, meetings and travel. The claimant returned to work on 1 May 2018. He felt anxious about returning to work. He felt anxious about his job security. He contacted Jude Helliker by e mail (P68) on 2 May 2018 to request a change to his start time to avoid rush hour traffic. Jude Helliker confirmed by return that this was “*absolutely no problem*”.

39. The claimant felt stressed about driving from Dalmarnock to Tulliallan. The journey time for the claimant by car is around one and a half hours. In response to the claimant’s concerns about driving to Tulliallan, Jude Helliker did not insist that the claimant attend all Senior Management Team meetings in person. The claimant was asked to attend a meeting in person at Tulliallan

of the Equality and Diversity Steering Group. The claimant was asked to attend the meeting as the work of the Equality and Diversity Steering Group was part of his portfolio and over which he had strategic lead. The meeting was arranged to start at 10.30am on 15 May 2018. The claimant declined to attend in person and confirmed that he would dial-in to the meeting.

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40. The claimant consulted his GP on 11 May 2018. He was provided with a Fit Note (P70) dated 11 May 2018. The Fit Note recorded that because of stress at work he “*may be fit for work, taking account of the following advice: a phased return to work and amended duties*”. The Fit Note contained the following comments: “*including functional effects of your condition(s): autism. I would suggest phased return with altered work pattern and hours. I would advise avoidance of driving due to side effects of current medication – sedation effects are dangerous and currently unsafe to drive*”. The claimant sent the Fit Note to Jude Helliker by e mail on 15 May 2018 (P69) in which he referred to having to “*refrain from driving*”.

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41. Jude Helliker read the claimant’s e mail (P69) on the morning of 16 May 2018. She was immediately concerned by the comments in the Fit Note (P70). She was a 40-minute drive away from Dalmarnock. She had to attend a planned meeting. She considered that the concerns raised by the claimant’s Fit Note (P70) were urgent and required a face to face meeting with the claimant. She contacted Nicky Page for HR support. Nicky Page is based in Dalmarnock and was aware that the claimant’s car was in the staff car park. The claimant’s home is around 10 miles from Dalmarnock. Nicky Page concluded that the claimant had driven to work.

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42. Nicky Page had a good working relationship with the claimant. Their relationship was mutually supportive both personally and professionally. They worked well together. Jude Helliker instructed Nicky Page to speak to the claimant as a matter of urgency about her concerns over him driving to work given the comments on his Fit Note. Having read the Fit Note (P70), Nicky Page was also very concerned about the potential implications for the claimant of driving. Her primary concern was the claimant’s wellbeing. She was also concerned about the potential risk to other road users should the



claimant drive and reputational damage to the respondent. Nicky Page decided to obtain legal advice about driving while medically unfit before meeting with the claimant. She did so on the understanding that the advice would be confidential. She spoke to Duncan Campbell, Head of Legal Services who obtained legal advice from a Staff Officer (P72). The advice was copied to Jude Helliker and Nicky Page later that morning. They spoke by conference call and agreed that Duncan Campbell and Nicky Page should meet with the claimant as a matter of some urgency given management concerns for his safety and wellbeing. They agreed that the meeting should be face to face and that the claimant should be given notice of the meeting.

43. Around 11am, Nicky Page went to the claimant's office where he was in a meeting with a colleague, Barry Donnachie. Nicky Page intended to meet with him in private. She apologised for the interruption and informed the claimant that she needed to speak to him about an urgent matter. The claimant told Nicky Page that he would come to her office when he was free. The claimant did not display any signs of distress. Nicky Page returned to her office where she met with the claimant a few minutes later. Nicky Page informed the claimant that she needed to meet with him about a welfare matter. She stressed that the meeting was to provide advice and support. She suggested that Duncan Campbell attend to provide any legal advice that might be required. The claimant became agitated and asked about the reason for the meeting. He refused to attend a meeting with Duncan Campbell. On being informed that the meeting was about his recent Fit Note and ability to drive, the claimant questioned how Nicky Page and Duncan Campbell knew about the Fit Note. Nicky Page sought to reassure the claimant that Duncan Campbell's involvement was in his formal capacity as Head of Legal and that his privacy would be protected. The claimant became angry and aggressive. He questioned Nicky Page's involvement. She sought to explain that she was acting in her HR capacity. Nicky Page sought to reassure the claimant that the purpose of meeting was his welfare and to provide him with support. The claimant stated that he would not attend a meeting without a representative. He became increasingly aggressive. Nicky Page sought to reassure the claimant that the purpose of meeting with him was to discuss concerns

regarding his welfare. He shouted at Nicky Page "*have you ever seen an autistic person have a meltdown because you're about to*". The claimant left Nicky Page's office without further explanation.

5 44. The claimant returned to his office. Nicky Page was concerned that the claimant had left her office before they had discussed the respondent's concerns about him driving given the terms of his Fit Note. She was concerned that he may drive home. She discussed her concerns with Duncan Campbell. They agreed that Nicky Page should speak to the claimant face to face and warn him about the potentially serious consequences of driving given  
10 the terms of his Fit Note. They decided that given the claimant's earlier reaction, Nicky Page should meet with him alone rather than suggest a meeting at which Duncan Campbell was also present.

15 45. Around 25 minutes later, Nicky Page returned to the claimant's office. She took with her information from the DVLA website about the legal requirement to disclose medical conditions that might affect a person's ability to drive. She was concerned for the claimant's welfare. She did not want him to attempt to drive home given the terms of his Fit Note. She was anxious to meet with him and explain that, based on legal advice provided by Duncan Campbell, if he attempted to drive home, the respondent would be obliged to refer the matter  
20 to Road Policing and that he ran the risk of a fine of up to a £1,000. Nicky Page was concerned that the claimant's reaction to police intervention would be worse than his reaction to her meeting with him.

25 46. Nicky Page found the claimant upset and angry. She acknowledged that the claimant was upset and confirmed that she required to discuss a pressing welfare matter with him. Nicky Page referred to the comments on the claimant's Fit Note (P70) that it was '*dangerous and unsafe to drive*'. Nicky Page informed the claimant that she was concerned about his wellbeing, whether he was travelling for business or for any other reason. The claimant stated that it was his duty to get himself to work. He referred to the  
30 respondent having been aware for some time about his need for driving restrictions and that to raise it with him now was '*malicious*'. He was critical of the respondent and in particular Jude Helliker. He referred to Jude Helliker

as having “*pressured and bullied*” him into driving to Tulliallan’. He criticised Jude Helliker for not supporting him. Nicky Page did not challenge the claimant. She did not wish to escalate the situation. She allowed the claimant to express his opinion that the Fit Note (P70) did not prevent him from driving to work. The claimant referred to the situation being a breach of his privacy. He demanded to know whether Duncan Campbell was aware of his Autism diagnosis. Nicky Page informed the claimant that Duncan Campbell had seen his Fit Note for the purpose of providing legal advice and that his privacy would be respected. The claimant was angry, frustrated and upset at being challenged. He asked why Jude Helliker could not ‘*have got off her fat arse and driven down from Tulliallan and told him herself*’. Nicky Page sought to explain to the claimant that it was considered appropriate that she raise the matter with him. Nicky Page was concerned by the claimant’s reaction.

47. The claimant informed Nicky Page that he was going home. Nicky Page offered to arrange for someone to take him home. The claimant said that he would get home by himself. Nicky Page remained concerned that the claimant intended to drive home. She informed that claimant that if he drove it could constitute an offence and that she would have to report the matter to Road Policing for his own and public protection. Nicky Page referred the claimant to information she had obtained from the DVLA website. She informed the claimant of the possibility of a £1,000 fine should he drive in circumstances where his health or medical condition affected his ability to drive. Nick Page sought to reassure the claimant that she was informing him of her concerns to try and avoid such a situation arising. The claimant confirmed that he was fit to drive to work and referred to the respondent being aware of his driving restrictions and of failing to support him.

48. Nicky Page sought to reassure the claimant that his welfare was her priority. She offered to take him home herself or if he preferred another colleague. The claimant replied that he would contact his wife. The claimant said that he would be seeking legal advice. He referred to having a disability and of the respondent and Jude Helliker treating him “*appallingly*”. The claimant said

that he would go to his GP and obtain an amended Fit Note. The claimant requested a note of their meeting. He informed Nicky Page that he was going home and would "*not be back*". Nicky Page informed the claimant that she knew he was upset and expressed the hope that on reflection he would understand why she was obliged to raise the issue of him driving and that her motivation had been his welfare. The claimant said that he would visit his GP and be signed off sick due to lack of support from the respondent. The claimant had a tremor in his hand. He drew the tremor to Nicky Page's attention and told her to inform Jude Helliker of his physical reaction to their meeting. Nicky Page again offered to make arrangements for him to travel home. The claimant told Nicky Page to leave his office. Nicky Page said that she was agreeable to this, but that she would return in an hour to check his arrangements for travelling home. The claimant said that as his wife was busy Nicky Page should return in two hours.

15 49. The claimant asked Brian Donnachie to drive him home. He told Brian Donnachie that he had been "*reported to the police*". He became very upset and started to cry. Brian Donnachie was taken aback by the claimant's reaction to his meeting with Nicky Page, He drove the claimant home. At the claimant's request, he drove Y back to the office where she collected the claimant's car. They both felt concerned and distracted by the claimant's earlier behaviour during their journey back to Dalmarnock.

25 50. Nicky Page returned to her office and began to prepare a note of her meeting with the claimant (P71). The claimant arranged for Barry Donnachie to drive him home. Brian Donnachie drove Y back to Dalmarnock where she had collected the claimant's car. The claimant contacted a Police Officer colleague, Steven Meikle, with whom he has a good working relationship. He told Steven Meikle that he had been threatened with arrest by Nicky Page and Duncan Campbell for dangerous driving. He asked that Steven Meikle speak to Y when she arrived at Dalmarnock to collect his car. Y repeated what the claimant had told him. He offered his view that driving, having taken medication, would not in itself constitute dangerous driving but would perhaps be some other offence. He did not discuss Jude Helliker.

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51. Before two hours had passed, Nicky Page became aware that the claimant had left the office. Duncan Campbell informed her that the claimant's car was no longer in the car park. Nicky Page was anxious that she had not been made aware of any arrangements for the claimant to travel home. She checked CCTV covering the car park and observed Y collecting the claimant's car. She observed Steven Meikle speaking to Y on the CCTV. She spoke to Steven Meikle who informed her that Y had collected the claimant's car and that he would keep in contact with the claimant in a supportive capacity. This reassured Nicky Page who was upset and concerned about the claimant's behaviour earlier that day. Nicky Page also spoke to Barry Donnachie who confirmed that he had taken the claimant home and that Y had collected his car. Based on his reaction towards her intervention on 16 May 2018, Nicky Page did not consider it appropriate to contact the claimant while he was absent from work.

52. Y wrote to Jude Helliker by e mail on 17 May 2018 (P73) in the following terms;

*"Good Morning,*

*I am X's wife and am contacting you on his behalf to advise that X has been signed off from work, by his GP. X is unable to telephone the SCOPE absence line himself, this morning. This absence is as a direct result of the unscheduled meeting that took place yesterday morning between X and his colleague and peer, Ms Nicki Page, when X was ambushed, threatened and intimidated, in his own office, which should be a safe space for him.*

*As he is no longer safe at work, and due to the subsequent and inevitable distress that has been caused to him, his GP has no option but to sign him off.*

*I have attached hereto, two GP Fit Notes. The first is a revised Fit Note, dated 11 May 2018, and which replaces the Fit Note forwarded to you on Tues 15 May, also dated 11 May 2018, which relates to GP advice regarding X's phased RTW and his ability to drive, at the moment. The original Fit Note should have specified that X should refrain from driving **long distances** eg*

over 20 miles. This was an oversight which has subsequently been updated, and overwrites the original version. This Fit Note should therefore be added to X's HR Record in SCOPE, accordingly.

5 The second Fit Note is dated 16 May 2018 and is excusing X from work on grounds of Work Related Stress.

Given X's vulnerability as a Disabled employee with Autism, I would request that any and all communications to, or about, X are channelled via me. You now have my email address and my contact telephone numbers are XXXXX XXX XXX / XXXXX XXX XXX.

10 **Under no circumstances should X be contacted directly.**

I would advise that this email, it's content and attachments, are strictly for your eyes only and not for onward distribution to anyone else employed in Police Scotland. I would also request that you respect X's right to confidentiality and therefore refrain from discussing the details of his absence with his colleagues and peers.

Please do not hesitate to contact me, at any time, if there is communication that requires to be passed onto X".

53. Y enclosed with her e mail (P73) a Fit Note dated 16 May 2018 (P74) for 11 May 2018 containing the following comments;

20 "Phased return with altered work pattern and hours as suggested and discussed between Dr Gallacher and X. It would be best that he avoid driving for long periods of time in view of his medication. He feels able to drive to and from work only but no distances over around 20 miles. This will be reviewed regularly and if the problem continues or worsens this may be revised".

25 54. Jude Helliker wrote to Y on 22 May 2018 (P75) as follows;

"Dear Y,

As confirmed in my email of Friday the 18th of May, where I advised I would consider your email of the 17<sup>th</sup> and respond, I am now able to do so.

5 *Firstly, I note you confirm that you will be acting in an advocacy capacity for X at this time, which the organisation anticipates to be a short term arrangement. I note that X has authorised you to act on his behalf and I am not averse to this position in so far as it assists X and the organisation in progressing to a positive outcome. In order to ensure this I must make two points. Firstly, the contractual duty the organisation has is to X, and as such the organisation can only agree to your advocacy where all information provided by the organisation to you in your capacity as X's representative is shared directly with X. Secondly, the organisation has a duty to X and,*

10 *whereas the arrangement proposed is acceptable in a short term capacity, the organisation anticipates directly engagement with X as necessary to discharge all relevant duties.*

15 *I would also wish to indicate that the organisation feels that further engagement with OHU is necessary following the differing medical advice that has been received in respect to X's ability to drive within the two notes submitted – this is of concern to the organisation, particularly given the safety concerns that were highlighted in Dr Gallacher's initial advice; which initiated the action taken by the organisation in direct response to both the welfare duty to X, and the wider public protection obligation that we have in policing. As you will be aware X was advised that he should utilise the travel unit to make travel arrangements for the period of his phased return, in order to avoid driving, and this arrangement was considered appropriate and a reasonable adjustment. A more developed assessment is now required given the concerns that X has expressed around driving, as well as his GP's direct*

20 *comments.*

25

*In the last paragraph of your email you expressly note that X has the right to confidentiality, which I concur with – however, you extend this into a request that none of the content of your email can be shared with others within Police Scotland. I cannot support this position, I am the advocate of the organisation and I am obliged to have due regard to the organisation's duty to X. This requires me to take expert advice and guidance in order to ensure that these*

30 *duties are discharged. HR supports all line managers in respect to relevant*

Force procedures etc, particularly as it relates to absence management and reasonable adjustments associated with disability. The expertise of HR staff is essential in ensuring that appropriate outcomes are reached. I am no different to other managers within the organisation in that I also require to seek advice and guidance as necessary to appropriately discharge my duties. I have already taken steps to ensure that X's confidentiality is respected that extends out with normal process for other employees. I will continue to ensure that the highest level of confidentiality is maintained in so far as is reasonable and practical, whilst allowing me to discharge my duties.

I will ensure as per your request, and in line with organisational procedure, that SCOPE is appropriately updated; and I also note your point in respect to the Fit Note provided being an update – however, I must be clear that this does not 'overwrite' the position originally provided to the organisation. This is particularly relevant as it was the express detail of that initial submission which initiated the organisation's direct concerns for X's welfare that required the urgent intervention that took place. This intervention I must reiterate was carried out purely with X's wellbeing at heart.

Your email outlined that X perceived Ms Nicky Page to have 'threatened and intimidated' X. Police Scotland takes any allegations of inappropriate behaviours seriously. Ms Page was directed to operate in the capacity of Agent of the organisation to ensure that immediate welfare and public safety concerns were progressed to X's attention with alacrity to ensure the wellbeing of both X and the wider general travelling public, and in order to protect X from any further consequences of driving where is was 'dangerous' and 'unsafe' to do so. Whereas, the conversation would have been difficult on account of the subject matter, and X's perception that his GP had not intended such restrictions to be enforced as had been expressed within the submitted Fit Note, the organisation viewed it essential to advise X of the concerns without delay. This did necessitate an unscheduled meeting, however, in these circumstances the organisation still anticipates relevant professional courtesy, if Ms Page therefore acted out with the standards that



*such circumstances might necessitate then X should document his concerns direct for investigation under the grievance procedure.*

5 *Finally, I have made the point throughout my correspondence that the intervention undertaken was grounded purely in the organisation having welfare concerns for X; and the organisation believes that it acted in X's interest in an attempt to protect X from the implications that could have arisen from driving following a direct GP submission confirming it 'unsafe' and 'dangerous' to do so. Again, I appreciate that his GP may since have revised this opinion, but the organisation acted in good faith based upon the*  
10 *information that was available at the time.*

*Finally, it is regrettable that X has had the response he has had to a meeting that was progressed to ensure his wellbeing, and to protect his interest. I look forward to engaging further to progress his successful return to work".*

55. Jude Helliker wrote to Y again on 25 June 2018 (P77) as follows;

15 *"Dear Y*

*Further to my correspondence to you dated 22 May 2018, I wanted to provide you with an update for discussion with X.*

20 *X's current fit note expired on the 21 June 2018. I have not yet received confirmation of X's intentions regarding his sick leave or return to work as we have not received any reporting through the SCoPE line. I would not have anticipated that X would return as fit unless you had notified me – so I am working on the assumption that X is intending/or has already visited his GP for further guidance. I am looking to ascertain how X is doing and whether he has been to his GP. I would be grateful for an early update from you.*

25 *I enclose a letter detailing X's sick pay entitlements, from which you will note that X is due to go onto half pay with effect from 16 August 2018. This is a standard procedure and I would be grateful if you could ask him to note the contents therein.*

As per my previous correspondence, I wish to progress a referral to our OHU. This referral is key part of a process that would better allow me to support X in his return to work and at work following return; it is essential that we get an up to date medical opinion. The referral would also allow me to get a better understanding of his current position and what can be done to facilitate X in the workplace. Can you please discuss this with X and confirm that he is content that I progress a referral? Previously when I attempted to get agreement with X in respect to referral this was not reached. Without being able to seek proper advice and guidance from our OHU provider, by expressing a full picture of the current arrangements and challenges, I am unable to fully support X.

Following on from previous correspondence with X and OHU, I would like to reiterate the adjustments which I have already put in place to support X to be at work;

1. Phased Return – X was supported with a phased return comprising phased hours and days over a 4 week period.
2. Office Space – OHU outlined that an office was important for X in respect to reducing sensory distractions – X has an enclosed office within the wider Dalmarnock P&D open plan office and therefore there was no requirement to make any adjustments to ensure that a relevant environment is available for X;
3. Home Working – I have always supported occasional homeworking where this is practical, and agreed in advance. However, I would reiterate that as the strategic lead for Wellbeing and Inclusion, it is essential for the success of this role that X is available and visible to his staff and able to offer leadership support as he is responsible for driving forward his strategic portfolio;
4. Appointments – I advised X that he will be supported in taking responsible time off to attend appointments in relation to management of his disability in line with the current provisions detailed within the standard operating procedure;

5. *Flexible working – A plan had previously been approved at X’s request for a compressed week of 4 days, initially with the rest day agreed as a Wednesday. X indicated this was not working and I agreed that the free day could be accommodated on a Monday to allow for 3 days off in succession, which is what X indicated would be most beneficial for him. I also agreed that I would review this with X as part of the Flexible working SOP, to ensure that it continued to meet his needs as well as the needs of the organisation;*
6. *ICT – We have sourced ‘Read – Write-Gold’ through IT, and the ICT department have confirmed that this is available to X;*
7. *Meetings – X is the strategic lead within his area of P&D. I have made my expectation clear that X will personally require to attend meetings that are relevant to him leading his strategic portfolio. This is an essential requirement of this level of role. However, I equally confirmed that in the short term arrangements could be made for X to dial in to meetings as appropriate, and also supported delegation to direct reports to attend some meetings from time to time.*
8. *Driving – X also raised concerns about his current ability to drive for work related purposes. In order to minimise the need for driving I advised X to engage with the travel unit so that alternatives to driving could be facilitated via that route. This allows X to manage his workload whilst reducing the amount of driving that may be required.*
9. *Breaks – OHU raised that breaks were important (as they are for the wellbeing of all staff). X, as a senior manager, has management of his diary and should arrange breaks as appropriate to support his wellbeing. X has previously built lunch breaks into his diary and I would anticipate that he would continue to manage this process without a requirement for any direct support;*
10. *Training of Senior Management – the Senior Management team all participated fully in an autism awareness session. Following this X indicated that he wanted a further session delivered by specialists in this area to the senior management team; this has been scoped through a provider and is being progressed to delivery.*

11. *Advocacy – X has previously outlined that he would benefit from Advocacy at work and I had discussed this with him, and referenced this in my April letter, specifically with a view to understand who X viewed as potentially appropriate for this role – this was in order that they could be approached to find out if a) they would be happy to undertake this activity and b) if they would be happy to undergo training to support them in to do so. X suggested two names that may be suitable and I asked him to further consider his preference and I would be grateful for X's final thoughts regarding this and we can make the arrangements.*

12. *Work based Stress Risk Assessment – I would welcome the opportunity (when X is fit to do so) to engage in developing a Stress RA to support X which I indicated in my previous correspondence. An indication of when X may be able to participate in this process would be welcomed.*

*Thank you for your consideration and I look forward to hearing from you soon”.*

56. The claimant submitted formal grievances against Jude Helliker and Nicky Page on 25 June 2018. The claimant presented a claim to the Employment Tribunal on 24 August 2018. The claimant remained absent from work until September 2018.

## 20 **NOTES ON EVIDENCE**

57. When giving his evidence, the Tribunal found the claimant to be very focused and articulate. He gave detailed answers and repeated points that he wished to make at regular intervals during his evidence. The Tribunal did not doubt that the claimant has struggled to cope with his diagnosis as an Autistic person and the importance that he attaches to the diagnosis in seeking to explain and address the difficulties he experiences at work. The claimant however struggled to concede that he could misinterpret events or the motivation of others, and whether due to Autism or not, this weakened the reliability of his evidence in certain material respects. His recollection of when and for what purpose notes, including his note of a meeting with Occupational Health (P21), and draft correspondence (P11) were prepared was less clear

and when challenged about their accuracy the claimant was unable to recall timing and specific events, in part due to the passage of time.

58. The claimant had a tendency to adopt extreme positions. For example, in relation to the recommendations made by Concept Northern, it was the claimant's position that "*None of this was implemented*" (paragraph 22). This was clearly inaccurate. In particular, the respondent purchased the technology recommended by Concept Northern and arranged autism awareness training. The claimant also stated (paragraph 33) that "*Major pressure was being put on me to drive from Dalmarnock up to Tullialan*". Again, this was not supported by the evidence before the Tribunal. While it was clearly the respondent's position that there would be occasions when the claimant's attendance at Tullialan was required for strategic reasons, there was no evidence of "*major pressure*" being put on him to drive to Tullialan. To suggest otherwise was misleading.

59. A significant part of the claimant's case was concerned with the incident on 16 May 2018. It was the claimant's evidence that as an Autistic person he interpreted the Fit Note provided to the respondent "*differently to a person who does not have Autism*" and that following his diagnosis he "*struggled to explain things*". (paragraph 33). While the Tribunal found that the claimant had obtained the Fit Note because he felt unable to drive to Tullialan, it was not persuaded from the evidence before it that as an Autistic person he interpreted "*currently unsafe to drive*" as "*confirming that I could drive to my work from home and return*". (paragraph 33) The claimant's evidence in this respect was evasive and unpersuasive. It was not consistent with the evidence before the Tribunal that as an Autistic person the claimant will often adopt a literal rather than implied interpretation of exchanges in social interaction and communication (P15).

60. The Tribunal was also not persuaded that the claimant's recollection of events on 16 May 2018 was reliable. While it was not in dispute that the claimant experienced an extreme reaction to Nicky Page raising concerns with him about driving to work given the terms of his Fit Note, the Tribunal was not persuaded that he was "*subjected to harassment and intimidation at the*

*instance of Ms Page*". (paragraph 102). The Tribunal did not find that Nicky Page had threatened the claimant, ignored his warnings or abused him as claimed. Based on the evidence before the Tribunal, to suggest that Nicky Page had verbally abused him on 16 May 2018 was an example of the claimant's tendency to exaggerate events. On balance the Tribunal preferred the evidence of Nicky Page about their interactions on 16 May 2018. The Tribunal found that Nicky Page was very concerned for the claimant's welfare on a personal and professional level. To state, as the claimant did, that she "let me walk out of Dalmarnock that day with no concern for my wellbeing or safety" (paragraph 103) was inaccurate and misleading.

61. In his submissions, the claimant proposed a finding in fact that he sought the backing of Jude Helliker in staff meetings "*where derogatory remarks or jibes were made about him*". The Tribunal found no evidence of any such behaviour during the period of claim when the claimant was under the management of Jude Helliker. On the contrary, the Tribunal found that the employees with whom the claimant worked during the period of claim, and in particular Jude Helliker and Nicky Page, sought to support the claimant following his diagnosis of Autism, in particular to work effectively in his role. In relation to the incident on 16 May 2018 and overall, the Tribunal did not find that the claimant was "*treated as a neurotypical person with no consideration given (to this aspect of) my Autism*". (paragraph 2 of supplementary statement) While Jude Helliker may not have responded to the claimant's diagnosis in exactly the manner he wanted, for example attending weekly one-to-one meetings with him, the Tribunal did not find that this was because she questioned his diagnosis (paragraph 4 of supplementary statement). The claimant's evidence that Jude Helliker advised the claimant at their meeting on 13 September 2018 that "*she did not believe (he) had Autism*" (paragraph 13) was not credible. The claimant was unable to provide a convincing explanation as to why, if such a statement had been made, it was not recorded in what he described as "notes of what happened on the day" (cross examination). (P16). It was also inconsistent with subsequent correspondence from Y (P23) in which Jude Helliker was thanked for her kindness to the claimant when he made her aware of his Autism diagnosis

and the claimant's evidence that Jude Helliker "*was kind when I told her of my diagnosis on 24 July 2017*". (cross examination).

5 62. The claimant called his wife, Y to give evidence. While the Tribunal would expect a person's spouse or partner to be supportive of their claim, Y's refusal or inability to identify any occasions on which the respondent may have responded appropriately to the claimant's diagnosis weakened her evidence. She described the respondent as having provided "*zero support*" and of "*doing nothing*" (cross examination) in response to the claimant's diagnosis. She was evasive when answering questions, even the most straightforward, and in particular those which sought to challenge the claimant's interpretation of events. Y was involved in supporting the claimant throughout the period of his claim, having been in direct contact with Jude Helliker as early as January 2018 (P23). Before the Tribunal however she sought to distance herself from any matters that did not directly support the claimant's case, for example that 10 Jude Helliker had been kind to the claimant on being informed of his diagnosis. This limited the weight that the Tribunal felt able to attach to her evidence when making its findings. 15

20 63. Derek Balfour gave evidence about accompanying the claimant to the meeting with Jude Helliker and Nicky Page in March 2018. In his witness statement, Derek Balfour stated that Jude Helliker had "*vocalised her disapproval of flexible working and flexibility in the workplace*" (paragraph 4). When challenged on specifics however, he was candid in confirming that he could not recall the conversation in full and was unable to recall any discussion about the claimant being allowed to work compressed hours. While 25 it was not in dispute that Jude Helliker had expressed concerns about the additional pressure on the claimant of working longer days, on balance the Tribunal preferred her evidence that she had not expressed a blanket disapproval of flexible working. Jude Helliker's agreement to allow the claimant to work compressed hours and on occasions work from home was 30 inconsistent with such a position.

64. The witness statements of Dr Natalie Gallacher and Peter Blair were taken as read (under deletion of passages challenged as irrelevant) and were not

contested. In his witness statement Peter Blair referred to the training provided by the respondent on Autism and in particular communication with an Autistic person. In her witness statement, Dr Natalie Gallacher confirmed that she had seen the claimant on a regular basis since October 2016 with  
5 mainly mental health symptoms and also physical ailments (paragraph 2). She gave evidence about providing the claimant with Fit Notes (P31 & 70), a medical report for his referral to Occupational Health (P42) and the medication prescribed to alleviate the claimant's anxiety, poor sleep and agitation.

65. Alison Geddes was directly involved in the claimant's assessment that  
10 resulted in a diagnosis of Autism (P10). She was able to provide the Tribunal with an overview of the claimant's diagnosis and Autism generally. Her comments on the response of the respondent to the claimant's diagnosis during the period of claim and conduct of Jude Helliker as his line manager was based on what she had been told by the claimant. Similarly, her evidence  
15 in relation to events on 16 May 2018 was based on what she had been told by the claimant in particular how he claimed to have been treated by Nicky Page. The Tribunal's reservations about the reliability of the claimant's evidence in respect of the conduct of others towards him were similarly applicable to the evidence of Alison Geddes, for example her reference to the  
20 claimant's meltdown and that "*the actions of his colleague exacerbated matters*" (paragraph 9).

66. The Tribunal found Nicky Page to be a highly persuasive and credible witness. She gave her evidence in a straightforward and honest manner. Her evidence was detailed and withstood close scrutiny during cross examination. The  
25 Tribunal accepted her evidence that she had enjoyed a good working relationship with the claimant until the incident on 16 May 2018. The Tribunal found that Nicky Page was motivated by a sense of concern for the claimant's wellbeing. While she was also concerned about the safety of the public and the potential for reputational damage to the respondent should the claimant  
30 drive while certified medically unfit, her primary concern throughout was the claimant's well-being. The Tribunal found that on balance Nicky Page's recollection of events on 16 May 2018 was more reliable than that of the



claimant. She had responded to the instruction that she speak to the claimant as a matter of some urgency. She made arrangements to meet with the claimant in private. She allowed the claimant an opportunity to complete his meeting with Brian Donnachie. She remained calm when communicating with the claimant. The Tribunal did not find that she acted in an aggressive or confrontational manner as suggested by the claimant. Nicky Page had prepared a note of the events on 16 May 2018 (P71) shortly after the event and was able to recall what had occurred with some accuracy. The Tribunal was not persuaded that Nicky Page was motivated to misrepresent events on the day in question.

67. The Tribunal also found Jude Helliker to be an impressive witness. Her evidence was detailed and withstood thorough cross examination. When challenged about her actions, Jude Helliker's evidence was clear and persuasive. When challenged for example about her decision to ask Nicky Page to speak to the claimant on 16 May 2018, she was able to explain in clear and persuasive terms that she had assessed the situation to be of some urgency, she was a 40 minute drive away from Dalmarnock and had a planned meeting to attend, the issue required a face to face meeting and Nicky Page, at least until then, had been on good terms with the claimant. Overall, the Tribunal was persuaded that throughout the period of claim, Jude Helliker was motivated to provide the claimant with support and to protect his welfare. The Tribunal did not find, as suggested by the claimant, that Jude Helliker acted out of any malice towards him. The evidence before the Tribunal supported Jude Helliker's position that the claimant's attitude towards her as his line manager materially changed when she challenged him about sending e mails to her seniors in February 2018 as evidenced by his correspondence to her from 2 March 2018 onwards. The Tribunal found that this change in attitude by the claimant negatively affected his ability to recognise the steps taken by Jude Helliker to implement his requests for adjustments to his working environment which during the period of claim included awareness training; redesigning the claimant's role; authorising flexible working; allowing the claimant to work from home; allowing the

claimant to attend meetings remotely by telephone to reduce the need to travel and the purchase of supportive software.

68. The evidence of Barry Donnachie was not challenged to any material extent. He was in a meeting with the claimant when Nicky Page first entered his office on 16 May 2018 and when he described her demeanour as “*just normal*”. (paragraph 8) He described the claimant as “*calm at that point, no signs of distress because if I had picked up anything like that I would have chapped his office*”. (paragraph 9). He supported Y’s evidence about being distracted during the journey back to Dalmarnock. The evidence of David Lyall was not challenged. His evidence was concerned with steps taken by the respondent in response to the claimant’s diagnosis of Autism including steps taken to respect the claimant’s privacy, contact with Occupational Health and the purchase of IT software.

## THE ISSUES

69. The issues before the Tribunal were as follows;

### **Failure to make reasonable adjustments - Sections 20 & 21 of the Equality Act 2010**

1. Did the respondent apply a provision, criterion or practice that put the claimant as a disabled person at a substantial disadvantage in comparison with persons who are not disabled; and
2. If so, did the respondent take reasonable steps to avoid the disadvantage?

### **Discrimination arising from disability – Section 15 of the Equality Act 2010**

3. Did the respondent treat the claimant unfavourably because of something arising in consequence of his disability; and
4. If so, can the respondent show that the claimant’s treatment was a proportionate means of achieving a legitimate aim?

**Harassment – Section 26 of the Equality Act 2010**

5. Did the respondent engage in unwanted conduct relating to the claimant's disability; and
6. If so, did the conduct have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

**DISCUSSION & DELIBERATIONS**

70. The claimant complained of failure on the part of the respondent to make reasonable adjustments; discrimination arising from disability and harassment relating to disability. The respondent accepted that as an Autistic person the claimant is a disabled person for the purposes of proceedings under the Equality Act 2010.

**FAILURE TO MAKE REASONABLE ADJUSTMENTS**

71. In terms of Section 20(3) of the Equality Act 2010, there is a requirement to take such steps as it is reasonable to have to take to avoid a substantial disadvantage to a disabled person in comparison with persons who are not disabled caused by the application of a provision, criteria or practice ("PCP"). The Code of Practice on Employment (2011) provides at Paragraph 6.10;

*"The phrase (PCP) is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, or qualifications including one-off decisions and actions."*

72. In terms of Section 21 (1) of the Equality Act 2010, a failure to comply with the requirement in Section 20(3) is a failure to comply with a duty to make reasonable adjustments. In terms of Section 21 (2) of the Equality Act 2010, a person discriminates against a disabled person if they fail to comply with the duty to make reasonable adjustments in relation to that person.

73. In his submissions on behalf of the claimant, Mr Edward referred the Tribunal to the case of **County Durham & Darlington v Jackson UKEAT/0068/17/DA** and in particular paragraph 25 where His Honour Judge Shanks in the EAT

set out the following propositions in relation to a claim of failure to make reasonable adjustments;

- 5
- (1) *It is for the disabled person to identify the PCP of the Respondent on which she relies and to demonstrate the substantial disadvantage to which she was put by it;*
- 10
- (2) *It is also for the disabled person to identify at least in broad terms the nature of the adjustment that would have avoided the disadvantage; she need not necessarily in every case identify the step(s) in detail but the Respondent must be able to understand the broad nature of the adjustment proposed to enable it to engage with the question whether it was reasonable.*
- (3) *The disabled person does not have to show the proposed step(s) would necessarily have succeeded but the step(s) must have had some prospect of avoiding the disadvantage.*
- 15
- (4) *Once a potential reasonable adjustment is identified the onus is cast on the Respondent to show that it would not have been reasonable in the circumstances to have had to take the step(s).*
- (5) *The question whether it was reasonable for the Respondent to have to take the step(s) depends on all relevant circumstances, which will include:*
- 20
- (a) *the extent to which taking the step would prevent the effect in relation to which the duty is imposed;*
- (b) *the extent to which it is practicable to take the step;*
- (c) *the financial and other costs which would be incurred in taking the step and the extent to which taking it would disrupt any of its*
- 25
- activities;*
- (d) *the extent of its financial and other resources;*
- (e) *the availability to it of financial or other assistance with respect to taking the step;*

(f) *the nature of its activities and the size of its undertaking;*

(6) *If the Tribunal finds that there has been a breach of the duty, it should identify clearly the PCP, the disadvantage suffered as a consequence of the PCP, and the “step(s)” that the Respondent should have taken”.*

5 74. Mr MacNeill submitted that there had been no real attempt by the claimant to identify PCPs in relation to which the respondent was obliged to make adjustments. When identifying a PCP, Mr MacNeill referred the Tribunal to the recent case of **Ishola v Transport for London 2020 ECWA Civ 112** in which Lady Justice Simler observes that in the context of a PCP, “*practice*”  
10 “*connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or “practice” to have been applied to anyone else in fact. Something may be a practice or done “in practice”, if it carries with it an indication that it will or would be done again in the future if a hypothetical similar case arises*”.  
15 Lady Justice Simler went on to state that “*although a one-off decision or act can be a practice, it is not necessarily one*”.

75. In his submissions, the claimant identified four provisions, criteria or practices (“PCP”) which he claimed put him at a substantial disadvantage as follows;

#### **PCP#1**

20 76. The respondent’s practice of requiring senior employees to work in the office and not at home. Whilst ad-hoc arrangements could be made, it was the respondent’s policy, submitted Mr Edward, that employees should attend the office for work as the norm. Exceptions could be made on an ad hoc basis to work at home where this was ‘*necessary and practical and agreed in advance*’  
25 (P65). The claimant referred to Jude Helliker’s evidence in her statement at paragraph 43 that “*it would not have been reasonable for X to work one or two days from home each week plus having a free day on a Monday. He would not have been visible to his team or available to make strategic decisions as per his role*”.

77. The claimant submitted that the PCP of senior employees being required to work in the office caused him substantial disadvantage. Working in the office, submitted Mr Edward, caused the claimant anxiety in having multiple face to face interactions, staff turn up at his office, unsolicited conversations and in the general unpredictability of being in the office. The claimant, submitted Mr Edward, found the multiple interactions during the day to be draining and would result in him going straight to bed on arriving home from work. Mr Edward submitted the claimant experienced physical side effects from stress and anxiety caused by his Autism which included stomach issues and gastric upsets. This required the claimant to make multiple trips to the communal bathroom in the office.
78. Had the claimant been allowed to work from home, submitted Mr Edward, this would have reduced the frequency of personal interactions resulting in the claimant being less tired at the end of the working day and week. The respondent, submitted Mr Edward, could have allowed the claimant to work for a number of days at home during the week as the norm, retaining days in the office to maintain face to face relationships with his reports and other colleagues.
79. The respondent did not accept that there had been a failure to allow the claimant to work from home. Mr MacNeill submitted that while the respondent did not dispute that presence of employees in the office was their practice and that the claimant found working in the office tiring, the respondent denied that the claimant was not allowed to work from home. Jude Helliker, submitted Mr MacNeill, had a positive attitude to flexible working which included working from home.
80. The Tribunal was not persuaded that the respondent had a PCP of requiring senior employees to work in the office and not at home, or if it did, that this was applied to the claimant. It was not in dispute that Jude Helliker agreed to the claimant working from home. While there were conditions attached, the Tribunal did not consider them to be unreasonable. During the period of claim, the claimant was a team leader. His team was office based. He had leadership responsibilities for his team and projects that required him to attend meetings

for strategic reasons in particular meetings concerned with his portfolios. The claimant did not dispute that there would be occasions when he would be required to work in the office to fulfil his role. The claimant himself referred to working from home "*on days where my calendar allows it*". (P12). It was unclear to the Tribunal how many days each week the claimant considered reasonable for him to be permitted to work from home. He was allowed to work compressed hours. Jude Helliker did not dispute that she had concerns about the claimant's ability to fulfil his role if he was "*to work on (sic) or two days from home each week plus having a free day on a Monday*". (paragraph 43) During the period of claim however, he was allowed to work from home as "*necessary and practical and agreed in advance*" (P65/208). The claimant had control of his work diary. His job had been re-designed in part to give him increased autonomy and the ability to plan and structure his working day. He had his own office in Dalmarnock and was able to organise when he held meetings with team members. There was no evidence that on any particular occasion he had been refused a request to work from home to reduce his levels of tiredness. On 5 January 2018 (P27/110) the claimant notified Jude Helliker that due to "*the stress and strain of the last six months*" he planned to work from home the following week. There was no evidence that Jude Helliker was anything other than sympathetic in her response to the above and no evidence that the claimant was not allowed to work from home.

## PCP#2

81. The second PCP identified by the claimant was the respondent operating a practice of neurotypical communication with employees. Mr Edward submitted the practice put the claimant at a substantial disadvantage as he often perceives and interprets communication and information differently from a neurotypical person. Mr Edward gave as an example the email sent by Jude Helliker to the claimant on 22 February 2018 (P28) requesting a one to one meeting to discuss emails which the claimant had sent directly to senior police officers. The claimant, submitted Mr Edward, interpreted the email as being forced to attend Tulliallan and being given a "*hard time*" over the emails. The claimant became extremely stressed and anxious, submitted Mr Edward

and had no one, such as an advocate, to advise him on the interpretation of the email. Mr Edward also referred to the claimant having an autistic meltdown on 16 May 2018. Mr Edward submitted that prior to the autistic meltdown, Nicky Page had engaged with the claimant as a neurotypical person. Her communication, submitted Mr Edward, was confrontational and the claimant interpreted warnings given by her as threats. Mr Edward submitted that the claimant was unable to articulate his explanation regarding the contents of his Fit Note, that is the context in which it was in response to him explaining to his GP that he was unfit to drive other than short distances.

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10 82. The adjustments identified by the claimant to avoid disadvantage was the appointment and training of an autism advocate. Mr Edward submitted that if an autism advocate had been appointed, communication would be less likely to be misinterpreted. The claimant's interpretation could have been discussed with the advocate. The advocate could have assisted in conveying the claimant's position. Mr Edward submitted that it is likely the incident of 15  
16 May 2018 would not have developed in the way it did as an autism advocate would have been able to de-escalate it. He or she, submitted Mr Edward, could have helped the claimant to articulate his position and feel less threatened by the situation or perhaps have reduced his perception that it was threatening and accusatory.  
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83. The claimant submitted that had the respondent obtained suitable technology such as the Brain in Hand software, the incident on 16 May 2018 would have been less likely to escalate as an appropriate responder could have intervened to de-escalate the situation. The claimant also submitted that had 25  
the respondent put in place a communication strategy the incident could have been dealt with differently from the outset and again would not have escalated.

84. The respondent acknowledged that a workplace advocate was mentioned in the report from Aspect Psychology (P10). Mr MacNeill referred to the 30  
evidence of Jude Helliker about being asked to return the report which left her dependent on her notes in which she did not record the suggestion of a workplace advocate. Mr MacNeill submitted that in any event, during the



ensuing months, the claimant's concern was less focused on an autism advocate than on flexible working hours, clear communication, less driving and more working from home than his diary allowed. Mr MacNeill referred to expressions of appreciation by the claimant and his wife for the kindness and support received from Jude Helliker from July 2017 to February 2018. Mr MacNeill also referred to the claimant's anxiety not to be treated differently from everyone else as referenced in Y's letter of 11 January 2018 (P23). When the claimant did wish the senior management team to be informed of his diagnosis, submitted Mr MacNeill, he correctly placed his trust in Jude Helliker that she would do so in a sensitive, respectful and appropriate way. Mr MacNeill also referred to Y suggesting that Jude Helliker might be the claimant's "mentor". Mr MacNeill submitted that this was the first time a mentor or advocate had been mentioned since the uncopied Aspect Psychology report (P10). Mr MacNeill submitted the claimant had not himself mentioned it either at the time of the initial disclosure nor at any point during the rest of 2017. The claimant's focus, submitted Mr MacNeill, had been on other adjustments as mentioned above. It makes sense, submitted Mr MacNeill, that as the claimant's own approach to his diagnosis evolved over time, at the same time as he was contemplating sharing his diagnosis, his thoughts would also turn to having support in communicating with his colleagues. It was disingenuous of the claimant and Y, submitted Mr MacNeill, to suggest that Aspect Psychology had recommended an advocate and ten months later in May 2018, nothing had been done about it.

85. The Tribunal did not accept that the respondent only operated a practice of neurotypical communication and failed to adjust its method of communication with the claimant following his diagnosis of Autism. When the claimant first informed Jude Helliker of his diagnosis in August 2017 he requested that she did not disseminate information to others about his disability. Jude Helliker agreed to this and respected the claimant's privacy. The report from Aspect Psychology (P10) refers to the claimant requiring support from an advocate "*in his discussions around his Autism*". While the claimant's relationship with Jude Helliker deteriorated from February 2018 onwards, the Tribunal was satisfied that until then he felt able to discuss his diagnosis with her and how

it affected his working life. For another employee or person to have been approached by Jude Helliker at that time to undertake such a role would have been contrary to the claimant's request that his diagnosis remain confidential and that the report was "*for (your) eyes only*". Y referred in her  
5 correspondence of 11 January 2018 (P23) to the appointment of a "*suitable mentor colleague who can buffer for him*". By this time the claimant was agreeable to disclosure of his diagnosis. Autism awareness training was arranged which included methods of communication. It was not in dispute that Jude Helliker did not take steps at that time to officially identify a person to act  
10 as an Autism Advocate for the claimant.

86. The Tribunal was not however persuaded that the existence of an Autism Advocate would have prevented the claimant's reaction to the correspondence he received from Jude Helliker in February 2018 (P28). He informed Jude Helliker in January 2018 (P117) that it is "*easier for (me) to have written communication which allows me to read and manage the detail at my own pace*". Jude Helliker notified the claimant in writing that she wished to meet with him. This was consistent with the method of communication requested by the claimant. The claimant knew what Jude Helliker wished to discuss with him. He knew it concerned his work and that he was likely to be  
15 challenged about sending emails to senior Police Officers. The existence of an Autism Advocate could not have removed that fact or avoided the necessity of Jude Helliker having to communicate with him about the matter. The evidence before the Tribunal did not persuade it that the existence or involvement of an Autism Advocate at that time would have resulted in a  
20 different reaction on the part of the claimant to being challenged about his work.

87. Similarly, in relation to the incident on 16 May 2018 the Tribunal was not persuaded that the respondent failed to adjust their method of communication with the claimant in response to his diagnosis of Autism. The Tribunal was  
30 satisfied that Nicky Page's conduct and method of communicating with the claimant on 16 May 2018 was reasonable and justified having regard to the nature of the respondent's concerns for the claimant's welfare. The claimant

had not displayed any sign of distress when Nicky Page requested that they meet in her room. When the claimant made it clear that he did not wish to meet with Duncan Campbell, the decision was made, again not unreasonably, that a meeting should take place but one to one with Nicky Page. The claimant had not suggested previously that this method of communication was unacceptable to him and had on occasions requested such meetings with Jude Helliker. It was unclear from the evidence before the Tribunal how the existence of an Autism Advocate would have resulted in a different outcome to the situation on 16 May 2018. The claimant reacted adversely to the respondent challenging his right to drive given the terms of his Fit Note (P70). The evidence before the Tribunal did not persuade it that the existence of an Autism Advocate would have made any material difference to the claimant's reaction. The claimant knew what the Fit Note said; it was unsafe for him to drive. He knew that he had driven to work. The situation was understandably stressful for the claimant. An Autism Advocate would not have changed the situation in which the claimant found himself. There was no persuasive evidence before the Tribunal that the subsequent involvement of people supportive of the claimant and knowledgeable of his diagnosis has made any significant difference to his interpretation of events or the motives of those involved. The Tribunal was not persuaded that an Autism Advocate would have been effective in preventing the claimant's reaction to being challenged about driving. The Tribunal found that the claimant's reaction was to being challenged about his driving while medically certified unfit to do so and not to the method or manner of communication by the respondent.

88. As regards the use of technology to assist the claimant at work, the Tribunal was satisfied that during the period of claim, the respondent purchased the assistive technology identified as suitable for the claimant in March 2018 (P46) including Brain in Hand and the relevant training package. The Tribunal was not persuaded that there had been any unreasonable delay on the part of the respondent in acquiring the above technology or that there was evidence of unreasonable delay on their part, in particular given the claimant's absence from work around the time of its purchase, in facilitating its use by the claimant.

**PCP #3**

89. The third PCP identified by the claimant was the respondent's operation of a policy requiring employees to physically attend meetings at Tulliallan. The claimant, submitted Mr Edward, was put at a substantial disadvantage by the above policy as he found driving to Tulliallan extremely stressful. It caused him anxiety. The alternative, offered by the respondent, was to take public transport from Dalmarnock to Tulliallan. The claimant, submitted Mr Edward, ought to have been allowed to partake in meetings by video or audio-conferencing. He could have been allowed to send a person to deputise if applicable.

90. It was not in dispute that the claimant was on occasions required to attend meetings at Tulliallan in particular given his senior management role. It was also not in dispute that the claimant found driving from Dalmarnock to Tulliallan stressful and tiring. The Tribunal found however that in response to the above, arrangements were made to hold meetings at Dalmarnock, for the claimant to attend meetings by telephone and for the claimant to deputise his attendance at meetings. The Tribunal did not find that the only alternative offered to the claimant of driving to Tulliallan was public transport. The claimant knew, for example, that arrangements could be made through the respondent's travel unit (P77) for him to attend meetings at Tulliallan without having to drive. The claimant did not suggest in his evidence that he should never be required to attend meetings in Tulliallan where for example deputising would be inappropriate for strategic reasons. Video conferencing was not suggested by the claimant as an adjustment during the period of claim and the Tribunal was not persuaded that at that time it was something that the respondent ought reasonably to have considered as an adjustment.

**PCP #4**

91. The claimant identified the fourth PCP as the respondent operating a practice of failing to offer him support. Failure to support him, submitted Mr Edward, caused the claimant stress and anxiety. The claimant required to feel supported in his working environment. Not only did the claimant require

adjustments to his working environment, submitted Mr Edward, he also required to be reassured that his disability was being heeded. The claimant, submitted Mr Edward, also required that support be in place. The claimant, submitted Mr Edward, complained of a lack of support in the meeting on 13 September 2017 and repeatedly thereafter. The lack of support, submitted Mr Edward, resulted in the claimant feeling unable to cope at work. He was unable to attend work between 22/23 February 2018 and 30 April 2018.

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92. The adjustment identified by the claimant was the respondent carrying out a workplace assessment. This, submitted Mr Edward, ought to have involved an Autism Specialist or specialist organisation to assess the claimant's situation at work. The respondent, submitted Mr Edward, ought to have put in place a structured programme of support such as regular one to one meetings with the claimant's line manager, regular performance reviews and regular telephone calls (for example on a monthly or quarterly basis). Mr Edward submitted that the above supportive measures would have lessened the claimant's stress and anxiety and he would have been reassured by the existence of a structured programme of support, as well as by its execution.

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93. The respondent denied that they operated a practice of failing to offer support to the claimant or for that matter that the alleged practice amounted to a PCP. Mr MacNeill referred to the supportive relationship that existed between the claimant and Jude Helliker until February 2018 when the claimant was challenged about sending e mails to senior police officials.

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94. The Tribunal agreed with the respondent that the practice of failing to offer him support did not amount to a PCP within the meaning of Section 20(3) of the Equality Act 2010. In particular, it was unclear how the practice was said to apply to non-disabled comparators. The Tribunal was not persuaded in any event that the claimant was denied reasonable levels of support by the respondent on disclosing his diagnosis of Autism. While the support provided may not have been exactly what the claimant sought from the respondent at various stages during the period of claim, when viewed objectively the Tribunal was satisfied that the respondent had provided the claimant with a supportive working environment. The claimant did not dispute that the

diagnosis of Autism had caused him stress and anxiety. The Tribunal was satisfied that the respondent, through Jude Helliker in particular, had responded to the claimant's diagnosis in a supportive manner. It was also misleading to suggest that there was no specialist involvement in the assessment of the claimant's work situation given the evidence of contact in particular with the Police Autism Association in February 2018, Concept Northern in March 2018 and Optima Occupational Health in April 2018.

### **DISCRIMINATION ARISING FROM DISABILITY**

95. In terms of Section 15 of the Equality Act 2010, a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that treatment is a proportionate means of achieving a legitimate aim.

96. The claimant, submitted Mr Edward, was treated unfavourably by the respondent because of the Fit Note (P70) he submitted on 15 May 2018. The Fit Note (P70), submitted Mr Edwards, arose in consequence of the claimant's disability.

97. The treatment, submitted Mr Edward, was unfavourable for several reasons as follows:

(i) *the claimant's preferred method of communication was email. Ms Page interrupted a meeting between the claimant and Barry Donnachie in the claimant's office. The request for an urgent meeting was conveyed to him orally. The manner in which Nicky Page initially contacted the claimant caused him stress and anxiety. The claimant described her manner as abrupt and aggressive;*

(ii) *the claimant attended Ms Page's office and was told that there was to be a meeting at which the Head of Legal Services for Police Scotland (Duncan Campbell) would be present "in a formal capacity" (statement, para 15). The meeting was to take place immediately;*

(iii) *the claimant was not provided with advance notice of the meeting, nor its purpose nor was an agenda provided;*

(iv) *no support was given to the claimant at the meeting in Ms Page's office, nor was there an offer of support in the meeting to be held with Mr Campbell;*

5 (v) *when the meeting resumed in the claimant's office, he was informed that if he drove he would be reported to the police; the police were likely to stop him; and that he could be fined by the DVLA;*

(vi) *the claimant was left alone in his office with no support offered to him;*

(vii) *in the days after the incident, no offer of support was made to the claimant either directly or indirectly.*

10 98. The respondent denied that any treatment of the claimant on 16 May 2018 was because of something arising in consequence of his disability. The Fit Note (P70), submitted Mr MacNeill, referred to "*side effects of current medication*". The only evidence of medication being taken by the claimant at the time, submitted Mr MacNeill, was medication to deal with his night terrors  
15 (Quetiapine) which was given to assist with agitation and distress, mainly to help patients sleep and an antidepressant (Sertraline). There was no evidence, submitted Mr MacNeill, that the claimant was on medication for his Autism. The concern over the sedation effects of the claimant's medication, submitted Mr MacNeill, was unrelated to his disability and thus any less  
20 favourable treatment did not arise out of the claimant's disability. If miscommunication between the claimant and his GP resulting in an erroneous Fit Note is to be relied upon, submitted Mr MacNeill, only the most general evidence about the effects of Autism has been led and less about the specific effects on the claimant. For this miscommunication to be attributed to the  
25 claimant's Autism, submitted Mr MacNeill, expert evidence would have been needed to establish the connection. There is no evidential basis, submitted Mr MacNeill, on which the Tribunal can make a finding that the two are connected.

30 99. Mr MacNeill submitted that in any event, the treatment of the claimant on 16 May 2018 was a proportionate means of achieving a legitimate aim. The respondent sought to avoid the claimant driving contrary to medical advice

which suggested that it was dangerous and unsafe, thereby potentially putting himself and other road users at risk.

100. The Tribunal should prefer the evidence of Nicky Page, submitted Mr MacNeill, as regards events on 16 May 2018 and in particular as regards their interactions. Nicky Page is not a person attempting to cover up her own abusive behaviour, submitted Mr MacNeill. She had a long and positive history with the claimant which she clearly hoped would continue. It is implausible, submitted Mr MacNeill, to think that she acted in the way described by the claimant.
101. Mr MacNeill also referred to the evidence of Barry Donnachie in which he described a polite, appropriate initial encounter between Nicky Page and the claimant. Barry Donnachie's recollection of events, submitted Mr MacNeill, does not fit with the claimant's description of Nicky Page setting out to ambush him, bursting in or acting in an abrupt or aggressive manner. Other than speculation, submitted Mr MacNeill, there is nothing to suggest that an e-mail or telephone call from Jude Helliker, a personal journey from Tulliallan to Dalmarnock by Jude Helliker or any other form of approach would have been received any more favourably by the claimant. On the one hand, submitted Mr MacNeill, the claimant complains that he was expected to meet with Nicky Page and Duncan Campbell, on the other he expresses anxiety about meeting alone with Nicky Page.
102. The problem that the claimant had on 16 May 2018, submitted Mr MacNeill, was not the conduct of Nicky Page but, as was the case on 22 February 2018, his reaction to being challenged about his conduct. There is no evidence, submitted Mr MacNeill, that that is connected in any way to his diagnosis other than that the initial adverse reaction seems to have led on to a meltdown. People in the general population, submitted Mr MacNeill, react badly to being challenged about their conduct and there is no foundation for any view that this is a manifestation of a diagnosis of Autism.
103. The Tribunal should find, submitted Mr MacNeill, that having become aware that the claimant had driven to work on the morning of 16 May 2018, the



respondent was obliged to take action to make sure that the claimant did not drive away from Dalmarnock; the actions of the respondent in bringing this to the claimant's attention were reasonable and proportionate & Jude Helliker, Duncan Campbell and Nicki Page acted at all times with the welfare of the claimant at the front of their minds.

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104. In response to the issue of justification, the claimant submitted that Jude Helliker and Nicky Page were aware of the Fit Note (P70) from early morning on 16 May 2018. They both took advice before approaching him. They had time to inform him by email or by telephone of their concerns. There was time and the opportunity for an informal chat with the claimant. The claimant could have been informed of their concerns before being invited to a meeting with the Head of Legal Services. The respondent had a legitimate aim of having regard to the claimant's welfare and their potential liability should he drive. However, submitted Mr Edward, the treatment of the claimant was not proportionate. Further, submitted Mr Edward, the treatment was partially as a result of a lack of adjustments and support which ought to have been in place for the claimant. Had there been an Autism Advocate, submitted Mr Edward, the treatment of the claimant would have likely involved them. Had there been a communication structure and strategy in place, the communication between Nicky Page and the claimant could have taken place in a manner less likely to cause the claimant stress. The treatment by the respondent, submitted Mr Edward, was unnecessary given the adjustments and support that could have been in place and which the respondent had failed to make.

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105. From the evidence before it, the Tribunal was satisfied that the claimant's disruptive sleep and anxiety were sufficiently connected to his Autism for the claimant to show that the Fit Note (P70) was issued as a consequence of his disability. The claimant's evidence of his disruptive sleep and anxiety on learning of his diagnosis was persuasive and the Tribunal did not accept the respondent's submission that the effect of the medication on the claimant's ability to drive was unrelated to his disability.

106. The Tribunal however did not find that the claimant was treated unfavourably because of his Fit Note (P70). The Tribunal did not find that Nicky Page had treated the claimant in the manner described by him. The Tribunal found that Nicky Page had requested a meeting with the claimant in a manner which according to Brian Donnachie, a neutral bystander, was made in a non-threatening manner and that did not leave the claimant exhibiting any sign of distress or anxiety. The Tribunal found that Nicky Page then went on to discuss her legitimate concerns about the Fit Note (P70) with the claimant in a non-confrontational manner and, at the request of the claimant, in the absence of Duncan Campbell. The Tribunal did not find that Nicky Page's conduct was anything other than supportive and at all times motivated by concerns for the claimant's welfare.

107. If the claimant was treated unfavourably, something that the Tribunal could not accept from the evidence before it, the Tribunal was satisfied that the treatment was a proportionate means of achieving a legitimate aim. The claimant had provided the respondent with the Fit Note (P70). It stated in clear and unambiguous terms that the sedation effects of the claimant's medication were dangerous and that it was unsafe for him to drive. The day after providing the respondent with the Fit Note (P70) the claimant drove to work. In all the circumstances, the Tribunal was satisfied that the respondent was entitled, if not obliged, to raise their legitimate concerns with the claimant about his welfare and the welfare of other road users should he attempt to drive home. The respondent's aim of seeking to prevent the claimant from driving given the terms of the Fit Note (P70) was legitimate. The Tribunal was also persuaded that Nicky Page meeting with the claimant as opposed to sending an e mail, to inform him of the respondent's concerns, was proportionate. Nicky Page acted in a sensitive and appropriate manner. Given the nature of the respondent's concerns she was obliged to raise the respondent's concerns with the claimant as a matter of some urgency. She was obliged to ensure that the claimant understood the respondent's concerns and the potential consequences should he drive home. It was not a meeting that required an agenda for the claimant to understand its purpose. The claimant was not being disciplined. Jude Helliker and Nicky Page were treating the

matter as a welfare issue. The approach made by the respondent was supportive and it is misleading to suggest that the claimant was either left alone in his office without support or offered no support after the incident. The Tribunal was satisfied that in all the circumstances, meeting with the claimant face to face was a proportionate means of achieving what the Tribunal considered to be the legitimate aim of preventing the claimant from driving given the terms of his Fit Note (P70).

## HARRASSMENT

108. In terms of section 26 of the Equality Act 2010, a person (A) harasses another (B) if (A) engages in unwanted conduct related to a relevant protected characteristic and 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. In terms of section 26 (4) of the Equality Act 2010, in deciding whether the conduct has the effect referred to above, each of the following must be taken into account: (a) the perception of B; (b) the other circumstances of the case and (c) whether it is reasonable for the conduct to have that effect.
109. The claimant submitted that his treatment on 16 May 2018 related to his disability. The Fit Note (P70) arose because of his disability and his ability to drive related to his disability. In turn, submitted Mr Edward, the conduct of Jude Helliker and Nicky Page on 16 May 2018 was related to his disability. The conduct of Jude Helliker and Nicky Page, submitted Mr Edward, had the effect of violating the claimant's dignity. It had the effect of creating an intimidating and hostile environment for him.
110. The respondent submitted that the conduct of Nicky Page on 16 May 2018 did not relate to a relevant characteristic. The conduct, submitted Mr MacNeill, related to the Fit Note (P70) and the claimant's apparently certified inability to drive safely. The medication giving rise to that concern was unrelated to the claimant's disability, submitted Mr MacNeill. While the perception of the claimant is to be taken into account, submitted Mr MacNeill, if the Tribunal accepts that Nicky Page acted in the way she described and as

was described by Barry Donnachie, her conduct could on no account be described as creating an intimidating, hostile, degrading, humiliating or hostile environment. Everything was done, submitted Mr MacNeill, to approach the matter as sensitively as possible, to keep the issues as low key as possible, and to preserve the claimant's confidentiality so far as that was consistent with ensuring he did not put himself or others in a position of danger.

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111. The Tribunal did not find that Nicky Page had behaved in the manner described by the claimant. The Tribunal did not doubt that for the claimant Nicky Page raising the respondent's concerns with him was unwanted conduct. The Tribunal was also satisfied that Nicky Page's conduct related to the claimant's disability to the extent that the claimant was issued with the Fit Note (P70) as a result of the side effects of medication for sleep disruption and anxiety following his diagnosis of Autism. In all the circumstances of the case however, the Tribunal was not persuaded that Nicky Page's conduct towards the claimant on 16 May 2018 or that of Jude Helliker had either the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The claimant had a supportive working relationship with Nicky Page. She was asked by Jude Helliker, in part because of their supportive relationship to speak to claimant of the respondent's concerns about him driving to work. Nick Page was aware of the claimant's diagnosis of Autism and deliberately raised the respondent's concerns with him in a non-confrontational and supportive manner. She spoke to the claimant in private and sought to reassure him that his privacy was being and would be observed. In all the circumstances, the Tribunal could not accept that it was reasonable for the conduct of Nicky Page or Jude Helliker to have the effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

## CONCLUSION

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112. In all the circumstances and for the above reasons, the Tribunal concluded that the claimant had failed to establish that the respondent had discriminated against him by failing to comply with a duty to make reasonable adjustments; by treating him unfavourably because of something arising from his disability

or by harassing him in relation to his disability. The claim must therefore be dismissed.

Employment Judge: Frances Eccles  
Date of Judgment: 15 January 2021  
Entered in register: 22 January 2021  
and copied to parties

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