EMPLOYMENT TRIBUNALS

Claimant: Mr J McCall

Respondent: The Chief Constable of Avon and Somerset Constabulary

Heard at: **Bristol (via VHS)** **On:** **18 February 2023**

Before: **Employment Judge Leith**

Representation
Claimant: Ms Grossman (Counsel)
Respondent: Mr Ley-Morgan (Counsel)

RESERVED JUDGMENT

The Claimant was disabled within the meaning of section 6 of the Equality Act 2010 at the relevant times (between 12 September 2018 and 11 November 2019).

REASONS

Claims and issues

1. The Claimant claims disability discrimination.

2. A Preliminary Hearing for Case Management was conducted by Employment Judge Bax on 3 October 2022. He listed the case for an open Preliminary Hearing, to consider the question of whether the Claimant was, at all times material to the claim, disabled by reason of mental health issues within the meaning of s.6 and sch.1 to the Equality Act 2010.

3. The issues to be considered at this hearing were set out in more detail in the list of issues at EJ Bax's CMO, as follows:

> "2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
>
> 2.1.1 Whether the Claimant had a physical or mental impairment. [the Claimant relies on] mental illness, consisting of PTSD type symptoms, low mood and anxiety

2.1.2 Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?
2.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
2.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
2.1.5.2 if not, were they likely to recur?
2.1.6 A further issue is relevant as to whether the Claimant had a tendency to physical or sexual abuse of other persons, which is a condition not to be treated as an impairment under reg 4 of the Equality Act 2010 (disability) Regulations 2020

4. I canvassed the issues with both Counsel at the start of the hearing. At that stage, both agreed that I would only need to determine points 2.1.1 to 2.1.5, as 2.1.6 would be a matter for any final hearing (subject to my decision on disability). Both further agreed at that stage that the list of issues set out above was correct, and the relevant period was from 12 September 2018 (the date of the first misconduct allegation against the Claimant) to 11 November 2019 (the date of the Claimant's termination). The Claimant's position regarding the earliest act of alleged discrimination shifted somewhat during the course of cross-examination; but in the absence of any formal application to amend the claim, I will deal with the entirety of that period in my judgment.

Procedure, documents and evidence heard

5. I heard evidence from the Claimant, who gave his evidence by way of a pre-prepared disability impact statement, about which he was asked questions. I had the benefit of helpful oral submissions from Mr Ley-Morgan and Ms Grossman, which in Mr Ley-Morgan's case were supplemented by written submissions.

6. The Claimant requested the following adjustments to the hearing process:

    a. Regular breaks while giving evidence;
    b. Unscheduled breaks if he found the process overwhelming;
    c. Permission to turn off his camera and microphone while taking a break (on the understanding that he was not permitted to discuss the case with anyone else while under oath);
    d. Permission to drink tea while participating in the hearing, as a calming measure;
    e. Permission for his Counsel to ask some open questions by way of examination in chief to ease him into the process of giving evidence.

7. Mr Ley-Morgan, on behalf of the Respondent, took no objection to the adjustments sought. Having considered the overriding objective, I made the adjustments sought. The Claimant did get upset on some occasions while giving evidence, and did require a short unscheduled break.

8. At the start of the Claimant's evidence, it became apparent that he did not have access to a full copy of the bundle that had been prepared for the Preliminary Hearing. There was a considerable delay while the Claimant's solicitors sought to ensure that he had the correct documents available to him. There were further technical difficulties during the hearing. The Claimant was accessing the bundle on his mobile telephone; every time he closed the bundle for any reason, he had to request a fresh password from his solicitor in order to download it and access it again. As a result of these issues, submissions were not concluded until approximately twenty past three. I indicated that I would therefore reserve my judgment.

Law

9. The starting point is s.6 of the Equality Act 2010 ("EqA 2010"):

> "(1) A person (P) has a disability if—
>
> a. P has a physical or mental impairment, and
>
> b. the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
>
> (2) A reference to a disabled person is a reference to a person who has a disability.
>
> (3) In relation to the protected characteristic of disability –
>
> a. A reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
>
> b. A reference to persons who share a protected characteristic is a reference to persons who have the same disability
>
> (4) This Act …applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly …
>
> a. a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability…
>
> b. a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability
>
> (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1)."

10. The Government has issued guidance under section 6(5) of the EqA 2010, entitled 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) ("the Guidance"). The Guidance does not impose any legal obligations in and of itself, but the tribunal must take account of it where it is considered to be relevant.

11. The Equality and Human Rights Commission (EHRC) has published a Code of Practice on Employment (2015) ("the Code"). The Code provides guidance on the meaning of 'disability' for the purposes of the EqA 2010. It does not impose legal obligations but must be taken into account where it appears relevant to any questions arising in proceedings.

12. In considering the question of whether a Claimant is disabled, the Tribunal must apply the four-stage approach approved by the Court of Appeal in *Sullivan v Bury Street Capital Limited* [2021] EWCA Civ 1694 (while remaining mindful of the need to look at the overall picture):

    a) Was there an impairment? (the 'impairment condition');

    b) What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');

    c) Were they more than minor or trivial? (the 'substantial condition');

    d) Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

13. It is usually not necessary to consider the "impairment" condition in detail (*J v DLA Piper UK LLP*). The same case provides that Tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances.

14. There is no definition of 'mental impairment' in the EqA 2010 but Appendix 1 of the Code provides that the term is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities.

15. "Mental impairment" should be given its "natural and ordinary meaning" (*McNicol v Balfour Beatty Rail Maintenance Ltd* [2002] EWCA Civ 1074).

16. Section 212 of the EqA 2010 defines "substantial" as being more than minor or trivial.

17. Paragraph 5 of Schedule 1 provides as follows:

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

        (a) measures are being taken to correct it, and

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

    (2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid."

18. The term "normal day-to-day activities" is not intended to include activities which are normal only for a particular person, or a small group of people.

The word "normal" should be given its ordinary, everyday meaning (paragraph D4 of the Guidance).

19. In considering whether an impairment has a substantial adverse effect on the ability to carry out normal day-to-day activities, it is necessary to take account not only evidence that person is performing a particular activity less well, but also of evidence that a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation (Appendix 1 to the Code).

20. Schedule 1, para. 2 of the EqA 2010 defines "long-term" as follows:

> "(1) The effect of an impairment is long-term if -
>
> (a) it has lasted for at least 12 months,
>
> (b) it is likely to last for at least 12 months, or
>
> (c) it is likely to last for the rest of the life of the person affected.
>
> (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur."

21. In that context, "likely" has been held to mean it is a "real possibility" and "could well happen" rather than something that is probable or more likely than not (*SCA Packaging Ltd v Boyle* [2009] ICR 1056).

22. The effects of a recurrent impairment are to be treated as long-term if they are likely to recur beyond 12 months after the first occurrence (Guidance paragraph C6). The Guidance also says this regarding the long-term element of the definition:

> "It is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the 'long-term' element of the definition is met. A person may still satisfy the long-term element of the definition even if the effect is not the same throughout the period. It may change: for example activities which are initially very difficult may become possible to a much greater extent. The effect might even disappear temporarily. Or other effects on the ability to carry out normal day-to-day activities may develop and the initial effect may disappear altogether."

23. The question of how long an impairment is likely to last must be determined at the date of the alleged discriminatory act, not at the date of the Tribunal hearing (*McDougall v Richmond Adult Community College* [2008] ICR 431).

24. The burden of showing that he is disabled within the meaning of the Act rests on the Claimant.

Facts

25. I make the following findings of fact on balance of probabilities, based on the totality of the evidence before me.

26. I start by making a general observation about the Claimant's evidence. There were two areas where Mr Ley-Morgan suggested that his evidence, given in cross-examination, ran contrary to his pleaded case.

27. The first related to the reason why the Claimant did not engage with the misconduct proceedings. The Claimant's pleaded case was that, due to his psychiatric illness, the Claimant was unable to respond to the allegations against him or to otherwise engage in the misconduct procedure. In cross-examination, the Claimant's evidence was that he was given advice by Occupational Health, Dr Campbell, and the Police Federation that he was not fit to do so, because he would not be able to answer the questions in full. While the answer he gave in cross-examination was rather fuller than his pleaded case, I do not consider that it was inconsistent.

28. The second area related to the first allegation of misconduct, which was said to have taken place on 12 or 13 September 2018. The Claimant's Particulars of Claim said this about that allegation:

> "(The Claimant will say that he has no recollection of this incident)".

29. The Claimant was directed by EJ Bax to provide further and better particulars. Within his further and better particulars, he characterised the Respondent pursuing misconduct allegations regarding that incident as being a breach of s.15 of the Equality Act 2010. He said this:

> "The Claimant is unable to confirm or deny the events that took place.
>
> If the Claimant is found guilty of these allegations, he will say that this conduct was due to his disability, specifically because of his PTSD/anxiety/depression. In an overwhelming situation the Claimant will verbally react."

30. The Respondent took the point that the Claimant had not fully complied with EJ Bax's CMO, in that he had not particularised the things arising from his disability that he said caused the unfavourable treatment. In response, the Claimant amended his further and better particulars to add this:

> "The Claimant verbally reacting due to the overwhelming situation is the thing arising from his disability."

31. The Claimant's evidence was that when he became overwhelmed and emotional, that this may lead him to have outbursts of swearing. It was

suggested to him in the course of cross-examination that, if that was what had happened on 12 or 13 September 2018, it was surprising that he had not discussed it with his GP or any other medical professionals at the time. The Claimant's evidence was that he could recall the incident on 12 or 13 September, and that he agreed he had sworn at the PCSOs as alleged. When it was put to him that that was inconsistent with his pleaded case, his evidence was that he didn't know why the further and better particulars said what they did, and he did not write the document. His evidence was that the incident was, as he described it, just banter with a fellow ex-serviceman.

32. That is a significant departure from the Claimant's pleaded case. He had made, in three different documents, a factual assertion regarding his recollection of events from which he departed immediately in cross-examination. That does, inevitably, adversely impact my view of the credibility of the Claimant's evidence before me. I will deal with specific aspects of Claimant's evidence as it arises in the context of my reasons.

33. The Claimant was a serving Police Officer between 15 September 1997 and 11 November 2019. Prior to his Police service, the Claimant served in the Royal Navy.

34. The Claimant was suspended from duty due to misconduct allegations on 21 December 2018. The allegations related to:

    a. An incident which took place on 12 or 13 September 2018, involving two PCSOs.
    b. An incident (or rather a series of incidents) at a work Christmas party on 13 December 2018.

35. The Claimant's evidence was that he has suffered with his mental health for several years, but that it took a particular downturn in 2014.

36. The Claimant's GP records were in evidence before me. They were heavily redacted. The Claimant's evidence was that he did not know what was under the redacted sections, as the redaction had been carried out by his solicitors. EJ Bax's CMO provided that, while the Claimant was required to disclose his GP records, he could blank out "anything that is clearly not relevant". The Respondent did not, before me, suggest that the Claimant's solicitors had been overly heavy-handed in their redaction or had redacted material that ought not to have been redacted. I proceeded on the basis that the redacted portions were therefore irrelevant to the question I had to determine.

37. The Claimant's GP records showed that in 2014 he was signed off work by reason of "emotional upset". He was referred for counselling.

38. On 6 November 2014 the Claimant contacted his GP surgery. He was described as very upset and tearful. The notes recorded that he had just moved out of the family home.

39. On 23 March 2015 the Claimant's GP notes recorded that he had been in touch with the Mental Health Crisis Team as he was in crisis and needed help. He received a crisis intervention. He was diagnosed Mirtazapine to reduce anxiety, although the notes recorded that he was not keen on counselling.

40. The Claimant was seen in the emergency clinic on 13 April 2015. This followed an incident where he had made preparations to take his own life, although he had not followed through. The assessment notes noted that the Claimant's mood was subjectively and objectively low, his appetite was affected, and his sleep was poor. This followed the Claimant's relationship further breaking down, and him being asked to leave the family home again.

41. The Claimant was hospitalised at Rowan Ward. He was discharged on 17 April 2015, but with follow-up support from the crisis team. The discharge notification from Rowan Ward indicated that no ICD10 diagnosis had been given, and the Claimant was not clinically depressed. It noted that the Claimant was admitted following a suicide attempt. The Claimant was prescribed Conazepanm, Zolpicleum (7 days worth of each) and Ierothyroxine. He was signed off work, with the reason given as "emotional upset".

42. On 22 March 2016 the Claimant's GP notes recorded that he had been sent home from work due to anxiety/emotional upset. The records reported that he was feeling low, anxious and hopeless. He was diagnosed mirtazapine 15mg (28 days). The GP notes recorded the problem as "anxiety with depression".

43. The Claimant was reviewed on 19 April 2016. The problem was again recorded as "anxiety with depression". His dose of Mirtrazapine was increased to 30mg (28 days).

44. The next relevant entry was on 22 June 2016, when the Claimant was singed off work by reason of essential hypertension.

45. On 22 September 2016 the Claimant had a telephone consultation with his GP. The diagnosis was recorded as anxiety/depression. He was prescribed Mirtrazapine.

46. He was reviewed on 13 October 2016. He indicated that he no longer wished to take Mirtrazapine, and that he was feeling better and was ready to return to work.

47. On 5 January 2017 his medical records noted that he was "clearly not really engaging at the moment but mental health may be affecting this. Wait and see if he presents". That was between a number of redacted entries (which I infer related to a condition which is not the claimed disability).

48. The next unredacted entry on the Claimant's GP records was for 23 May 2018. It noted that he referred to "massive stress at work". It noted also that he was on Ramipril 5mg. It was not clear from the medical records before me when the Claimant had first been prescribed Ramipril.

49. On 15 July 2019 the Claimant saw his GP again. The majority of the records for that visit were redacted, which I take it to mean they were for a condition not relied upon as a disability within these proceedings. The notes recorded that he was very emotional and did not see the point of life.

50. On 16 July 2019, the Claimant attended his GP. The problem was described as "stress related problem". The notes recorded that the Claimant had been suspended from work and was not sleeping. The notes indicated that the Claimant was unhappy with Mirtrazapine that he had been prescribed previously. The Claimant was prescribed Zopiclone 7.5mg – described in block capitals as "occasional use for sleep".

51. On 1 August 2019, the Claimant attended his GP again. The notes described the problem as "anxiety with depression". The Claimant was prescribed Ramipril and Citalopram (28 days in each case).

52. On 19 September 2019, the Claimant attended his GP again. The notes said this:

> "In crisis. Crying++ [redacted section]. Thoughts jumbled. Suspended from the Police, not sleeping, hearing coming up in November. Divorced, no family, always got his support from talking to police but not has been told to have no contact with them as suspended. Keeps re living attending hangings and significant RTA's, heads rolling off etc. Seems to have significant post traumatic stress. Tried to hang himself in 2014. Ran out of citalopram 10 days ago. The more we talk the more distressed he becomes. I am the only person he can talk to and be honest with. Has days when he doesn't get out of bed."

53. The Claimant was at that point urgently referred by his GP to the psychiatric crisis team. He was seen by Sarah Giles, CPN, on 30 September 2019. Ms Giles recorded that the Claimant described having low motivation, and spending three days in bed the previous week because he couldn't face the world. She further recorded him describing not being able to sleep, having poor appetite, having difficulty concentrating and experiencing flashbacks often triggered by hearing children screaming.

54. Under the heading "Summary / Impression from Assessment", Ms Giles recorded this:

> "James is suffering from a significant stress disorder as a result of him being exposed to repeated traumatic incidents whilst serving as a police officer."

55. The Claimant was seen on 11 October 2019 by Dr Michael Campbell, Consultant Psychiatrist. In a letter to the Claimant's GP dated 25 October 2019, Dr Campbell noted that the Claimant described sometimes waking up crying and staying in bed for long periods, although at other times he would try to socialise and keep himself busy. He recorded that the Claimant described being like that for over four years. He additionally recorded that the Claimant descried his sleep being reduced to as little as one hour per night, as he is frightened to sleep.

56. Dr Campbell described the Claimant's mental state as follows:

> "Mental State Examination: He was initially very tearful and then apologetic about it. He struggled to attend Foundation House as he had attended here previously as a professional. He was able to make good rapport, generally, thought there seemed to be a lot to talk about and he seemed quite overwhelmed and anxious."

57. Dr Campbell referred to the Claimant having witnessed a number of distressing incidents at work and recorded that this suggested a series of quite severe traumatic experiences. He suggested that the Claimant should be prescribed Quetlapine, and additionally suggested alternative antidepressants if the Claimant's Citalopram was not successful. He did not, however, record any diagnosis.

58. On 1 December 2019, the Claimant attended his GP – the problem was described as a "essential hypertension" – the records noted that he was taking Ramipril 10mg regularly, and that his mental health was improving. The notes also recorded that he was taking Quetlapine one or two a day.

59. On 4 December 2019, following a requestion from the Respondent's Occupational Health department, Dr Campbell provided further advice regarding the Claimant. The advice was sought regarding the Claimant's capability to attend any formal meetings, in the context of the ongoing misconduct proceedings. At that point Dr Campbell had not seen the Claimant since their appointment on 11 October 2019. An appointment arranged for 19 November had been rescheduled as the Claimant had not felt well enough to attend.

60. Under the heading "Diagnosis and Prognosis", Dr Campbell said this:

> "As I have met Mr McCall on one occasion and during that appointment he was quite distressed and emotional and did not wish to go over all his traumatic experiences, his diagnosis is still not clearly established. He clearly has about a four-year history of anxiety and increasing emotional distress and difficulty managing his feelings and coping, generally. A series of a large number of traumatic experiences, both in the armed forces and as a police officer are likely to have been the main underlying aetiology of this

presentation. However, added to this, his relationship with his wife deteriorated and he said that she was unable to listen to his stories that he shared with her and this and other matters led to their relationship deteriorating. He is now going through divorce proceedings. This has all had a significant impact on him…"

61. Dr Campbell then described the Claimant's current medication, after which he said this: "We still need to assess him further to consider whether he suffers from PTSD, although this seems likely."

62. The Claimant's oral evidence, in the course of cross-examination, was that Dr Campbell had told him that he had PTSD. His evidence was that this was also recorded Dr Campbell's second letter. That is, of course, not quite what Dr Campbell said. I can, however, see why the Claimant may have believed he was being told he had PTSD given that Dr Campbell's opinion was that it was likely that that was the Claimant's diagnosis.

63. There were various Occupational Health records in evidence from the Respondent Occupational Health department. I will not recite all of the Occupational Health records, but of particular relevance:

    a. On 14 September 2017, the notes recorded the Claimant describing that he only slept for 3 or 4 hours per night, and that he suffered from sadness/depressed mood (but not all the time). The notes reflected that after attending a suicide, he went home and heard a child scream outside which caused him to freeze. The advice sent to the Claimant's manager following that consultation noted that:
        i. The Claimant had been experiencing some difficulties in his personal life which resulted in him having episodes of heightened stress and anxiety at work.
        ii. The Claimant felt that he was suffering from PTSD, which had been triggered by attending suicide incidents, and was causing him to have periods of heightened stress and anxiety.
        iii. The Claimant had attended counselling previously, both internal and external to the Respondent.
        iv. The Claimant struggled with anxiety when attending sudden deaths, especially those involving hanging or suicide.
    b. On 23 January 2018, the notes recorded that the Claimant's mental health was improving, but that he was still not sleeping.
    c. On 4 January 2019, the notes recorded the Claimant describing that he was generally upset all the time, and was not sleeping well as he was thinking about the investigation and not seeing his son. The notes further recorded loss of interest, lack of energy/fatigue, loss of appetite, sadness/depressed mood and difficulty concentrating.
    d. On 15 May 2019, the notes recorded the Claimant describing that couldn't sleep, and was only getting two hours sleep per night.
    e. On 16 July 2019, the notes recorded that the Claimant described not sleeping well, feeling overwhelmed and anxiety increasing significantly.

64. The Claimant's evidence in his impact statement was that his condition comes in waves. His evidence was that when he is suffering from a small wave, he can cope on a daily basis although it may take him longer to complete some tasks. When he is suffering from a medium wave, he must force himself to get out of bed, shower and eat, and he will find it very draining to do so, meaning that he limits social contact. When suffering from a big wave, he cannot function and completely loses contract of his thoughts and emotions.

65. His evidence was that if he saw people or places he related to traumatic events, he would become overwhelmed and emotional, and that this may lead him to have outbursts of swearing, shouting or other out of character actions. His evidence was that he manages his exposure to triggers by trying to map his journey through, for example, the town where he lives to avoid places that will trigger him.

66. His evidence was that even when having a milder episode, he would struggle to socialise (in order to avoid seeing someone who may trigger him). His evidence was that he would struggle to sleep and experience nightmares, and that his appetite could be very poor.

67. When asked specifically about the period between September 2018 and November 2019, the Claimant's oral evidence was again that his symptoms vary. His evidence was that at his worst, he wouldn't wash, and couldn't cope with everyday life. He described having flashbacks to traumatic incidents, which could be triggered by (for example) a smell, or the sound of a child screaming.

68. The Claimant's evidence was that he often avoided seeing his GP was because he they referred him to talking services, which required him to keep going over matters and re-live them. His evidence was that some of the medication he was prescribed caused him to have nightmares and suicidal thoughts. There was reference in the GP notes to medication causing side effects, although the nature of the side-effects was redacted.

69. There was no expert evidence before the Tribunal. The evidence of Dr Campbell was not expert evidence. His second letter was provided in the context that he was asked, by the Respondent, to comment on the Claimant's condition and specifically his fitness to engage in a quasi-judicial process. The purpose for which the letter was written was therefore to provide evidence to a decision-making regarding the Claimant's condition, rather than (for example) to update the Claimant or his GP. Dr Campbell is a Consultant Psychiatrist; he is self-evidently qualified to opine on the matters on which he had been asked by the Respondent to comment. So, although I do not treat his letter as expert evidence, I nonetheless consider that it is evidence on which I can put significant weight.

70. The GP and OH records before the Tribunal are, similarly, not expert evidence. They do, however, present a contemporaneous record of how

the Claimant was presenting to medical professionals, and what he was saying to them, throughout the period from 2014 onwards.

71. Bearing that in mind:

    a. The Claimant's evidence that he struggled to sleep and suffered from nightmares was echoed in several places in the GP and OH records, as well as in the assessment carried out by Sarah Giles on 30 September 2019. I find that the Claimant has, as a result of his mental health, struggled to sleep sporadically since at least 2017, on occasions being able to sleep for as little as one hour per night.
    b. The Claimant's evidence that his appetite was affected and that he struggled to eat was echoed in the note of the Claimant's emergency clinical review in April 2015, the OH records from January 2019, and the assessment carried out by Sarah Giles on 30 September 2019. I find that the Claimant has, as a result of his mental health, had periods when his appetite is affected and he struggles to eat since at least 2015.
    c. The Claimant's evidence that he would become overwhelmed and lose control of his thoughts and emotions was consistent with the GP notes for March 2015 (which recorded that he was in crisis), and both of Dr Campbell's letters. Dr Campbell's letter indicated that the situation had, at that point, persisted for four years. It is also consistent with the Claimant's suicide attempt in 2015. I find that the Claimant has, since 2015, become overwhelmed on occasion and lost control of his thoughts and emotions.
    d. The Claimant's evidence that he experienced flashbacks or would "freeze" when confronted with triggers was echoed in the OH records from 14 September 2017, the GP records from 19 September 2019, the assessment carried out by Sarah Giles on 30 September 2019. The OH records recorded the Claimant describing being triggered by a child screaming, which again was consistent with his evidence to the Tribunal. I find that, since at least September 2017, the Claimant has experienced flashbacks or "freezes" caused by triggering events. These are not only triggered by attending traumatic incidents such as suicides, but also by, for example, the sound of a child screaming or by walking past a property which he associated with a traumatic event.

72. The Claimant's evidence was that he had, at times, disengaged from the services offered by his GP. His GP had reached the conclusion, in January 2017, that he was doing so (albeit in the context of other health issues). There was also reference in the GP records to the medication he had been prescribed causing him side-effects (although the nature of the side-effects was redacted). That is consistent with the evidence the Claimant gave. I therefore do not infer that the Claimant's failure to engage regularly with his GP during the relevant period indicated that he was not suffering adverse effects as a result of his condition, or that the any adverse effects were trivial.

Conclusions

Was there an impairment?

73. The conditions relied upon by the Claimant are Post Traumatic Stress Disorder, anxiety, stress, and depression.

74. The Claimant's GP records refer to "anxiety with depression" on 22 March 2016, 19 April 2016, 22 September 2016 and 1 August 2019. They referred to a "stress related problem" on 16 July 2019. The report of Sarah Giles on 30 September 2019 referred to the Claimant having a "significant stress disorder". Finally, Dr Campbell indicated that it was likely that the Claimant was suffering from PTSD.

75. None of those constitute a formal specialist diagnosis. But there is, of course, no need for the Claimant to be formally diagnosed with a recognised mental health condition in order to meet the impairment condition. Based on the evidence from the GP records and from Dr Campbell, I am satisfied that the Claimant had a mental impairment at all relevant times. Importantly, and bearing in mind in particular the evidence of Dr Campbell, I am satisfied that the effects the Claimant suffered were more than simply reactions to adverse life events or circumstances.

What were its adverse effects [on normal day-to-day activities]

76. I have found that the impairment had the following effects on the Claimant:
    a. His sleep was impaired; at times he was only able to sleep for as little as one hour per night. Sleeping is a normal day-to-day activity. Furthermore, an inability to sleep will inevitably have a detrimental effect on an individual's ability to function in numerous other ways.

    b. His appetite was affected and he struggled to eat. Eating is, again, a normal day-to-day activity. And again, failure to eat properly will inevitably have a knock-on effect on an individual's ability to function in other ways.

    c. He would become overwhelmed and lose control of his thoughts and emotions. At its most stark, this led him in 2015 to make preparations to take his own life (although he did not follow through on those preparations).

    d. He experienced flashbacks or would "freeze" when confronted with triggers. Mr Ley-Morgan suggested in submissions that, as this arose from situations where the Claimant experienced sudden death in his role as a Police officer, it could not be said to be an effect on normal day-to-day activities. To the extent that the Claimant was triggered by attending upsetting or traumatic calls at work, that must be right. Attending, for example, the scene of a suicide is an unavoidable part of the work of a Police officer, but it is by no means a normal day-to-day activity. But I have found that the Claimant could also be triggered by hearing a child screaming, or by walking past a property he associated with a traumatic event.

Being able to walk around one's local area is a normal day-to-day activity. So too is being in a place where one might be exposed to the sound of a screaming child. The Claimant's impairment therefore had an adverse effect on his ability to function in public, since he faced the risk of encountering a trigger which would cause him to flashback or freeze.

Were they more than minor or trivial?

77. It follows from what I have said above that, in my judgment, the effects on the Claimant's life were more than minor or trivial. At worst, they significantly affected his ability to sleep, to eat, and to function in society.

Was there a real possibility that they would continue for more than 12 months?

78. As at the start of the relevant period, 12 September 2018, the Claimant had been suffering from the adverse effects of his impairment since at least the Spring of 2015 – a period of over three years. The effects had fluctuated during that period, but they had continued for more than 12 months from the first occurrence. I therefore conclude that the long-term requirement of the test in s.6 of the Equality Act 2010 was met at the start of the relevant period. I am fortified in that conclusion by the advice of Dr Campbell, who in December 2019 indicated that the Claimant had a four-year history of anxiety and increasing emotional distress and difficulty managing his feelings and coping.

79. It follows that the Claimant was disabled for the purposes of the Equality Act 2010 at the relevant times.

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Employment Judge Leith
Date: 20 February 2023

Reserved Judgment & reasons sent to the Parties on 06 March 2023

For the Employment Tribunals