



EMPLOYMENT TRIBUNALS

Claimant: Mr J Hooper

Respondent: The Chief Constable of Avon and Somerset Constabulary

Heard at: Bristol (by Video Hearing)

On: 25 July 2023

Before: Employment Judge Barton

Representation

For the Claimant: Mr Sood (counsel)

For the Respondent: Mr Ley-Morgan (counsel)

RESERVED JUDGMENT

The Claimant is disabled for the purposes of bringing his disability discrimination claim against the Respondent. The disability is a mental impairment of adjustment disorder.

REASONS

Introduction

These reserved reasons are produced following the preliminary hearing that took place on 25 July 2023.

1. The Claimant was a Detective Constable with the Avon & Somerset Constabulary. He had been a police officer in Thames Valley from 1998. He then served in the Avon & Somerset Constabulary from 1 October 2001 until he was dismissed on 3 March 2022 without notice for gross misconduct.
2. The gross misconduct encompassed two types of behaviour. Firstly, the sending of six text messages between 11 March 2019 and 3 December 2019 “texting misconduct” and secondly the typing of an unsent email on 5 June 2019 and the typing of two unsaved entries onto the police NICHE computer system on 5 June and 29 June 2019 “typing misconduct”.
3. By a claim form presented on 4 June 2022 the Claimant brought the following complaints:

- i. Unfair dismissal.
 - ii. Discrimination on the grounds of disability.
4. There was a Telephone Case Management Preparation Hearing on 14 March 2023 before Employment Judge Horder. During that hearing the Claimant accepted that by reason of s.200(1) of the Employment Rights Act 1996 he is not entitled to claim stand-alone unfair dismissal as he was a serving police officer. At that hearing it was clarified that his complaint of 'unfair' dismissal forms part of the unfavourable treatment he relies upon as part of his discrimination claim. It is not therefore a stand-alone claim. Further, it was agreed that his claim was not a claim of direct discrimination. The respondent accepts that dismissal can form part of the unfavourable treatment insofar as it relates to any act of discrimination if proven – page 32 of the bundle.
 5. The hearing on 25 July 2023 was listed by Employment Judge Horder to deal with three issues. A further two issues were added between the 14 March 2023 and 25 July 2023. All five issues were considered in the hearing but only the disability issue is the subject of this judgment. The other four issues have been dealt with by way of separate orders that have been sent to the parties. The matter which is the subject of this judgment is whether the Claimant was disabled within the meaning of the Equality Act 2010,
 6. The Claimant and Respondent were both represented by counsel. There was no oral evidence. I was provided with a pdf bundle of 116 pages, a statement from the Claimant and an addendum psychiatric report from Dr Vandabeele. I also had the benefit of skeleton arguments prepared on behalf of the Claimant and Respondent. The parties agreed that two other documents could be added to the evidence, and I admitted those documents, firstly a covering email from Helen Smith introducing her notes that appeared in the pdf bundle and secondly a transcript of the handwritten psychological assessment form that is in the bundle at page 114. The Claimant and Respondent supplemented the written evidence and skeleton arguments by making further oral submissions.
 7. At the start of the hearing the Claimant applied to admit the addendum psychiatric report from Dr Vandabeele as this had not been submitted in time. This application was opposed by the Respondent. I heard fully on this matter from both parties. I did not find that the addendum report was a particularly long document, or that it covered particularly new territory. The addendum report was expected. The Claimant had contacted the tribunal and the Respondent to advise that the addendum report was delayed. I also took into account that the Claimant had little choice but to stick with the expert he had already instructed. Getting a new expert witness would not have speeded matters up. I found that there was no prejudice to the Respondent in admitting the report. I directed myself in respect to the overriding objective to deal with cases fairly and justly having regard to all of the circumstances of the particular case and I allowed the addendum report to be admitted.

8. The Respondent then went on to rely on sections of the addendum report in support of its submissions.
9. I have taken all representations, both oral and written, into account. I reserved judgment. Numbers in bold within square brackets refer to the pages in the bundle.

The positions of the parties at the time of the preliminary hearing

10. This summary of the positions of the parties at the time of the preliminary hearing on 25 July 2023 is produced to assist the reader. It is not intended to be, and should not be taken to be, a definitive and binding statement of these positions as they may be presented at the final hearing.
11. The Claimant states that he is disabled, and that he has two recognised mental illnesses namely an adjustment disorder and vicarious trauma. He states that these diagnoses have only been made very recently. The Claimant submits that the decision to hold an accelerated disciplinary hearing was unfair and unreasonable due to his mental health. He unsuccessfully sought an adjournment of the accelerated disciplinary hearing to obtain medical evidence to support his claim of disability in relation to the disciplinary process.
12. A subsequent appeal by the Claimant to the Police Appeals Tribunal (PAT) was dismissed on the papers on 4 August 2022. The Respondent provides the details of the determination of the PAT in its grounds of resistance [14]. In essence the appeal was dismissed as the Claimant had not produced any new medical evidence to support his claim of disability.
13. The Claimant accepted wrongdoing and that his behaviour fell short of the standards expected of a police officer. He asserts that he acted as he did because of his mental ill health. He asserts that the Respondent did not pay any attention to, or investigate, his mental ill health nor did they have regard to his previous excessive workload or the type of cases he had been investigating when arriving at the decision to dismiss him.
14. The Claimant's case is that he was discriminated against on the grounds of his disability while he was a serving police officer and particularly in relation to his dismissal. The Claimant asserts that his diagnosis only became clear after the disciplinary process had concluded. The Claimant states that he did raise the issue of his mental health with the Respondent when completing psychological assessments, replying to the disciplinary notice, and particularly in relation to requesting an adjournment of the accelerated disciplinary hearing on 3 March 2022.
15. The Respondent does not accept that the Claimant is or was disabled under the meaning of the Equality Act 2010. In the alternative the Respondent argues that they could not have reasonably known that the Claimant was disabled.
16. The Respondent's case is that the Claimant had numerous previous opportunities to provide evidence of disability. The Respondent's case is that the Claimant did provide counselling records for the hearing in 2022

but that these did not suggest any mental health issues. The Respondent says that those records positively asserted that the Claimant was not in a dissociative state and was not suffering from PTSD.

17. Further, the Respondent asserts that they made reasonable investigations into the Claimant's health prior to the accelerated disciplinary hearing and during the investigation stage prior to the accelerated disciplinary hearing on 3 March 2022.

Relevant law - Disability

18. A person (P) has a disability if they meet the criteria set out in section 6 Equality Act 2010

“(1) 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 do normal day to day activities.”

19. The claimant bears the burden of showing me that he meets this definition, on the balance of probabilities ***Morgan v Staffordshire University [2002] IRLR 190***. When determining the question of disability, I must also take account of such guidance as I think necessary paragraph 12, Schedule 1 Equality Act 2010. I consider it is necessary to take into account the government guidance “Guidance on matters to be taken into Account in Determining Questions Relating to the Definition of Disability” (the guidance). I have directed myself that the guidance is guidance only and should not be taken too literally or used to adopt a checklist approach ***Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19***.

20. In ***Goodwin v Patent Office [1999] ICR 302***, it was held that there are four limbs to the definition of disability, and this is reflected in the legislation.

- (i) Does the person have a physical or mental impairment?
- (ii) Does that impairment have an adverse effect on their ability to carry out normal everyday activities?
- (iii) Is that effect substantial?
- (iv) Is that effect long term?

21. The term ‘substantial’ is defined under section 212 Equality Act 2010 as being “more than minor or trivial”. Normal day to day activities are things people do on a regular basis such as shopping, reading, writing, conversing, getting washed and dressed, preparing food, eating, carrying out household tasks, walking and travelling, socialising, and working (the guidance, D2 to D9). Normal day to day activities must be interpreted as

including activities relevant to professional life ***Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763.***

22. Paragraph 2 Schedule 1 Equality Act 2010 states that:

- (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 everyday activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

23. For current impairments which have not lasted 12 months, I have reminded myself that I should decide whether the substantial adverse effects of the condition are likely to last for at least 12 months, where 'likely' is defined as "could well happen" C3 the guidance. 'Could well happen' is the meaning of 'likely' in respect of disability in the Equality Act 2010.

24. The issue of how long an impairment is likely to last is determined at the date of the alleged discriminatory act and not the date of the tribunal hearing ***McDougall v Richmond Adult Community College [2008] ICR 431, CA.*** Subsequent events should not be taken into account.

25. Although not directly applicable to the circumstances of the claim before me I have reminded myself that there is particular case law relating to the impairments of depression and anxiety (both of which are often claimed alongside 'stress'). I have done this as the approach set out in these cases provides a useful structure. I directed myself that I must not merely seek out a medical diagnosis and end an analysis on the basis there either is or is not one. In ***Nissa v Waverly Education Foundation Limited UKEAT/0135/18***, HHJ Eady QC (as was) said:

"...the correct question was to consider what the effects of the impairments were at the material time and to consider whether there was information before the ET which showed that viewed at that time it could well happen that the effects of the impairments would last for more than 12 months".

26. In ***J v DLA Piper UK LLP UKEAT/0263/09***, Mr Justice Underhill (as was) drew a distinction between (1) the disability 'depression' as a clinical impairment and (2) the effects of stress and anxiety (which may include low mood and a depressed state) which arise temporarily as a result of an adverse life event (such as the end of a relationship or a dismissal from a job). In such cases, the time or likely time for which the person has experienced substantial adverse effects is likely to be crucial because non-disability related stress and anxiety is likely to subside once the person is removed from the stressor and it is unlikely therefore to be a consistent issue for the person for at least 12 months.

Approach to issue of disability

27. In relation to the issue of disability I will set out the evidence and my findings of fact for each part of the criteria set out in section 6 Equality Act 2010. In making these findings I have had regard to all the written evidence, written submissions, and oral submissions. I will set out below my summary of the Respondent's submissions regarding the Claimant's case regarding disability. While considering the issue of disability I have borne in mind the submissions made by the Respondent at every step in my consideration and fact finding. I have highlighted particular areas of evidence below.
28. The relevant facts, as I find them, are on the balance of probabilities. I have made my findings based on the material presented to me at the hearing on 25 July 2023. I will explain how I have found the facts I have unless they are taken directly from the bundle.

The Respondent's submissions regarding the evidence of disability

29. This summary of the Respondents submissions is intended to assist the reader and should not be taken to be a definitive or binding summary of how the Respondent argues its case or how that case may be pursued at the final hearing.
30. The Respondent submits that the evidence relied upon by the Claimant does not prove, on the balance of probabilities, that the Claimant was disabled at the relevant time (paragraph 26 of the skeleton argument for the Respondent). It is submitted that the medical evidence relied upon at the time of the accelerated disciplinary hearing did not prove disability and the medical evidence advanced at the preliminary hearing before me does not prove disability.
31. The Respondent does not accept that Ms Nel is suitably qualified to make the diagnosis that she has. The Respondent also submits that she should not be providing an opinion as she is a health care professional engaged in treating the Claimant (paragraph 30 of Respondent skeleton argument).
32. In regard to Ms Nel the Respondent also submitted that she had not provided an expert declaration making it clear that her overriding duty was to the Tribunal and not the Claimant. As such the Respondent submitted that her independence was undermined.
33. The Respondent submitted that the Claimant's decision not to supply his GP records undermined his evidence as there was no corroboration. The Respondent also made the point that Dr Vandenabeele had raised the fact that he had not had sight of the Claimants GP records.
34. A further submission was made that all the medical evidence was essentially based only on the word of the Claimant. In essence the Respondent submission is that the various health care professionals are

only repeating and reporting what they had been told by the Claimant and there is no independent corroboration.

Does the Claimant have a physical or mental impairment?

35. The Claimant's evidence comes in the form of his ten page witness statement dated 15 May 2023. This statement refers extensively to documents that form part of the bundle. The documents relied upon are set out below. The Claimant gave no oral evidence and was not cross examined.

Helen Smith	Therapist	Undated	Page 55
Dr Emma Lishman	Chartered Clinical Psychologist	30 August 2020	Page 64
Amanda Burbidge	Specialist Counsellor	23 April 2022	Page 81
Lisa Nel	Therapeutic Counsellor	3 January 2023	Page 85
Dr Pablo Vandenabeele	Consultant Forensic Psychiatrist	8 March 2023	Page 92

36. In his statement the Claimant says, in relation to his claimed disability:

"I have been diagnosed as suffering with an Adjustment Disorder at the time of the behaviour in question, by Dr Pablo Vandenabeele, a Consultant Forensic Psychiatrist. See page 16 15.3 and page 19 15.14.....I have also been diagnosed with vicarious trauma – See page 1 of Lisa NELS (LN) report."

37. Dr Vandenabeele's report is at page 92 of the bundle [92] and Lisa Nel's report is at page 85. The Claimant also refers to the report from Amanda Burbidge [81] and quotes from page one of that report:

"Mr Hooper's mental health and wellbeing has been severely and catastrophically compromised by work related burn out"

38. The Claimant refers to the report of Doctor Emma Lishman [58]

"Dr Emma Lishman diagnosed addictive behaviours."

39. The Claimant also states:

"Since approximately 2015, I have suffered from extreme night visions, witnessed by my wife, believing there was someone in our room. In recent years the visions were predominantly of babies crawling on the ceiling. This issue still continues to this day and I am due to undergo EMDR therapy."

“A gambling addiction clearly impacted substantially on my day to day work/activity, gambling at all hours of the day/night, regardless of where I was, demonstrating “persistent distractibility or difficulty concentrating” and “compulsive activity or behaviour”.”

“The behaviour demonstrated in the “typing” misconduct that resulted in my dismissal was an obvious example of “intrusive thoughts” and further “compulsive behaviour” using language I have never used in my lifetime and again highlighting a substantial impact on my mental health.”

“The level of stress and trauma simply worsened my condition, developing over years in dealing with serious sexual offences, child abuse and death between 2005 and 2020.”

“My 2018 occupational health/psychological review saw the first real indication of me struggling and indicating a willingness to talk about it. ‘Can’t do the job as I would like to’.

“The significance of the impact on my mental health has been well described and diagnosed by various professionals who are clear that excessive unchecked stresses are behind the mental impairments that I have suffered.”

40. The Claimant also quotes from the therapy notes of Helen Smith [55]

“Texting and online gambling were not usual behaviours for a man so dedicated and up to this point professional and very able but were the result of feeling mentally crushed, feeling broken, trapped, very alone and finding escapes from his life/work whilst mentally not feeling his normal sense of self at the time”.

41. Dr Vandabeele [107] provides a summary of the Claimant’s reported symptoms starting at paragraph 15.2 of his report. These included 10 years of sleep disruption, illusions, stress, lowering in self-esteem, lowering in mood, loss of confidence, irritability, a reduced ability to cope and an increase in his gambling.

42. At paragraph 15.3 Dr Vandabeele states that the Claimant’s difficulties can be most readily explained in the context of the Claimant having developed an adjustment disorder (ICD-11 6B43). This being a maladaptive reaction to an identifiable psychosocial stressor or multiple stressors.

43. The view of Dr Vandabeele (at paragraph 15.5) is that it is more likely than not that the Claimant was suffering from a mental impairment during the period from March 2019 to December 2019 [108].

44. Dr Vandabeele was commissioned by the Claimant to write an addendum report. This report was dated 22 July 2023. In a covering email the Claimant explained that he had been unable to submit this report in good time as he had been waiting for it to be completed by the Doctor.

45. In his addendum report Dr Vandenabeele answered further questions posed on behalf of the Claimant. At page 14 of the addendum report (paragraph 2.2) Dr Vandenabeele reports the following:

“Mr Hooper self-reported that some 10 years ago he developed some sleep disturbance and that he also began to experience what appear to be visual illusions. It is not my view that this constellation of symptoms would be sufficient to formulate a diagnosis of an adjustment disorder. However, he also said that from around 2015 he developed additional mental health difficulties on a background of work related stress, namely a lowering in his self-esteem, a lowering in his mood, loss of confidence, irritability, and a general reduced ability to cope; he said that these difficulties persisted until 2022. It is my view that these symptoms would be sufficient to amount to a diagnosis of an adjustment disorder. It appears that the severity of this condition worsened in 2018 and 2019.”

Lisa Nel – Supporting information: Jon Hooper

46. At page 85 of the bundle there is a document from Lisa Nel dated 3 January 2023. This 7 page document begins with the salutation “To whom it may concern”. In the document there is an explanation that the author has been working with the Claimant since May 2022. The author goes on to make a diagnosis that the Claimant developed vicarious trauma during his time with the police force and that he experienced many of the recognised symptoms of vicarious trauma.

47. The author does not provide an ICD-11 or DSM-V classification for vicarious trauma. The author quotes two sources [86] for defining terms of vicarious trauma. The author sets out a series of qualifications in her signature block [91] – BA(Comb)hons, PGCE Adv Dip. Integrative Counselling, L7 Dip Counseling Children & Adolescents, MBACP(Accred). I have noted that the expert’s declaration is not a feature of this document.

Helen Smith – therapy notes

48. The undated notes of Helen Smith [54] record the work that she had undertaken with the Claimant over a period of months.

Dr Emma Lishman – psychological assessment

49. The psychological assessment [58] of Dr Emma Lishman (Chartered Clinical Psychologist) was typed on 30 August 2020 following a meeting with the Claimant on 21 May 2020.

Amanda Burbidge – report

50. This report [81] is dated 23 April 2022 and concludes as follows:

“It is my opinion that perhaps a forensic psychologist might provide Mr Hooper with a very clear and succinct causation for the behavioural ethical breach and would certainly determine if the behaviour arose due to internal personality traits or was as a result of external omissions in support and guidance. I would also support and suggest that a Risk Assessment report by the forensic psychologist be requested which potentially may support a case for a phased return to work (not within the sexual abuse team).”

Impairment - findings of fact

51. The Claimant has provided a written statement setting out the impairments he has identified. I have been mindful of the submissions of the Respondent as to the evidence being in writing only. I do not find that I have reason to doubt the truthfulness of the Claimant's evidence based on what I have been presented with. If the Claimant had been dismissed from the police for a dishonesty offence, then that may have had a different bearing on my view of his evidence. The fact is that the Claimant admitted to his actions in relation to the texting and typing misconduct, this in my view goes in favour of the Claimant's credibility as a witness. I accept the Claimant's written evidence.
52. The Claimant has been diagnosed with an adjustment disorder. This diagnosis has been made by Dr Vandenabeele in a formal psychiatric report commissioned by the Claimant. The diagnosis is further confirmed in the addendum report from the Doctor. Dr Vandenabeele has set out his qualifications and acknowledged his overriding duty to the court. Subject to the points that the Doctor raises in his report regarding a lack of access to GP records and further corroboration, I accept Dr Vandenabeele's diagnosis.
53. The Claimant has been diagnosed with vicarious trauma by Lisa Nel [85]. Although Lisa Nel has provided her qualifications in her signature block, I have no evidence before me about what those qualifications mean or how those qualifications allow Lisa Nel to make a diagnosis. In the report there is a paragraph entitled Defining Terms. Two sources are quoted in this paragraph. On the basis of the information that has been provided there is no evidence of how vicarious trauma is classified or whether it is recognised as a mental impairment. There is no ICD-11 or DSM-V diagnostic criteria for vicarious trauma within the document from Lisa Nell. I have also noted that Lisa Nell is working with the Claimant on treatment and has also not provided the required expert evidence declaration. These two factors further detract from any weight I could give the evidence in the report.
54. On the basis of the available information, I do not find that the Claimant has a mental impairment of vicarious trauma.
55. The reports and notes of Helen Smith, Dr Emma Lishman and Amanda Burbidge do not provide evidence that goes to establish a particular

mental impairment. The documents produced by these three persons are not in the format of expert evidence, they do not have expert evidence declarations, and this further reduces the weight that I can give to these sources of evidence.

56. However, I am mindful of the need to look at the overall picture and I do find that the documents produced by Helen Smith, Dr Emma Lishman and Amanda Burbidge do provide corroboration of the evidence of the Claimant due to the largely consistent self-reporting to different health care professionals over a period of time from August 2020 (Helen Smith) to January 2023 (Lisa Nel).
57. I find that the Claimant had one mental impairment – an adjustment disorder as diagnosed by Dr Vandenabeele.

Does that impairment have an adverse effect on their ability to carry out normal everyday activities?

58. The evidence from the Claimant as set out in his ten page witness statement dated 15 May 2023 was that there had been an adverse effect on his ability to carry out normal everyday activities. At page 8 of his statement the Claimant sets out some of these effects which are reported on by Dr. Vandenabeele. The Claimant also states at page 8:

“...my mental disorder/impairment impacted on my day to day ability to work, my ability to concentrate and resulted in intrusive thoughts and harmful addictive behaviours.”

59. Dr Vandenabeele [107] provided a summary of the Claimant’s reported symptoms starting at paragraph 15.2 of his report. These included 10 years of sleep disruption, illusions, stress, lowering in self-esteem, lowering in mood, loss of confidence, irritability, a reduced ability to cope and an increase in his gambling.

60. There is also evidence of how the impairment had an adverse effect on the Claimant’s day to day social activities (Claimant’s witness statement page 9). Dr Vandenabeele returns to this aspect of disability in his addendum report at paragraph 2.8 (page 6 of 15).

“Further, it is also my view that this condition had a substantial (meaning more than minor or trivial) impact upon his ability to undertake normal day-to-day activities.”

61. I have also taken into account that the reason for the dismissal of the Claimant was that he had failed to carry out his normal everyday professional activities to the standard required.
62. The texting misconduct and typing misconduct are, the Claimant asserts (page 8 of his statement) evidence of how his mental impairment had an

adverse effect on his ability to carry out his normal everyday activities as a serving police officer.

Adverse effect – findings of fact

63. I find that the mental impairments did have an adverse impact on the Claimant's ability to carry out day to day activities. I make this finding based on the evidence of the Claimant in his witness statement and the evidence in the reports of Dr Vandenabeele. I also take into account the reasons for the Claimant's dismissal from the Avon & Somerset Constabulary.

Is that effect substantial?

64. The Claimant's evidence is that one substantial effect of his mental impairment was that he sent the text messages and typed the unsent email and unsaved entries on the NICHE system. This in turn led to his dismissal.

65. The Claimant's evidence is also that his mental impairment had wider ranging effects on his work, domestic and social life. In relation to work the Claimant cites report writing as an example of his work that was detrimentally affected.

66. Dr Vandenabeele in his addendum report at paragraph 2.8 states:

"...Mr Hooper self-reported the presence of loss of confidence, a reduced ability to cope, a lowering in his mood, and an increase in his gambling. I also note from the background materials that he had given up hobbies that he had previously enjoyed. Further, I also understood that his sleep disturbance persisted."

Substantial effect – findings of fact

67. I have reminded myself of the law (as set out above). The term 'substantial' is defined under section 212 Equality Act 2010 as being "more than minor or trivial". Normal day to day activities are things people do on a regular basis such as shopping, reading, writing, conversing, getting washed and dressed, preparing food, eating, carrying out household tasks, walking and travelling, socialising, and working (the guidance, D2 to D9). Normal day to day activities must be interpreted as including activities relevant to professional life **Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763**.

68. My finding of fact is that the effect was substantial. The available evidence shows in my view that the effects of the mental impairment were substantial in both the Claimant's home and work life. The Claimant's written evidence is that he had stopped his hobbies and his home life was

adversely affected. His professional work was also substantially affected, including but not limited to the texting and writing misconduct.

Is that effect long term?

69. The evidence regarding the duration of the effect is found in the Claimant's witness statement, the two reports from Dr Vandenebee and to a lesser extent the reports and other notes that were in the bundle.
70. The Claimant's position was that in his first report Dr Vandenebee focussed solely on the time period of the misconduct (March 2019- December 2019). The symptoms the Claimant says that the symptoms discussed with Dr Vandenebee lasted significant longer and continued beyond March 2022. to this day. The Claimant's case is that the only reason for any improvement in his mental wellbeing was the removal of the main stressor and the work he has done with counsellors. The Claimant asserts that he has continued to face psychological difficulties not only from the impact of the discrimination, but also the trauma that he had suffered whilst working as a police officer.
71. Dr Vandenebee's evidence in his addendum report at paragraphs 2.1 – 2.5 sets out the dates that the Doctor considers are supported by the evidence. In his opinion the adjustment disorder was consistently present from 2015 until around March 2022 when the Claimant was dismissed.

Long term – findings of fact

72. I have reminded myself of Paragraph 2(1) Schedule 1 Equality Act 2010 which says:
- (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.
73. I have found that the available evidence supports my conclusion that the effect of the mental impairment of an adjustment disorder is long term, beginning in 2015 and continuing until after the Claimant was dismissed from the police on 3 March 2022. I do not find that the mental impairment ended exactly on the day the Claimant was dismissed. Based on the available evidence I find that the impairment continued to have an effect until 3 January 2023. This is on the basis that the report from Lisa Nell dated 3 January 2023 makes no mention of any ongoing or future treatment and on that basis, it appears that the Claimant has ceased to require medical intervention.

74. I find that the impairment had a substantial effect on the Claimant at the time of the texting misconduct, the typing misconduct, the investigation, and the accelerated disciplinary hearing.

75. I have noted that there is mention of the Claimant self-reporting a prescription from his GP but in the absence of any GP notes it is not possible to draw any conclusions on this piece of information and how it may affect the duration of the mental impairment that has been identified on the basis of the available evidence.

Employment Judge Barton

Date 22 August 2023

JUDGMENT SENT TO THE PARTIES ON
19 September 2023 By Mr J McCormick

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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