EMPLOYMENT TRIBUNALS

Claimant: Mr J McCaffery

Respondent: British Transport Police

Heard at: Manchester Employment Tribunal

On: 21, 22, 23, 24 and 25 August 2023
11 September 2023 (in chambers for deliberations)

Before: Employment Judge M Butler
Mr J Flynn
Ms J Whistler

Representation
Claimant: Mr P Kirtley (of Counsel)
Respondent: Mr J Cook (of Counsel)

JUDGMENT

1. The claims of discrimination arising from disability are not well-founded and are dismissed.

2. The claim that the respondent failed in its duty to make reasonable adjustments are not well-founded and are dismissed.

3. For the avoidance of doubt, all claims in the case have been unsuccessful and are dismissed.

REASONS

INTRODUCTION

4. The claimant presented a claim form on 13 July 2022, following ACAS conciliation that took place from 17 May 2022 to 27 June 2022.

5. The case was case managed on 22 February 2023 by Employment Judge Leith, at which a list of issues was recorded (these were found at pp.71-74 of the bundle).

6. At a preliminary hearing held in public on 25 July 2023, Employment Judge Grundy

decided that the claimant had a disability by reason of the impairments of dyslexia and dyscalculia. This decision was limited solely to the issues of whether the claimant satisfied the definition of disability under the Equality Act 2010. It made no findings or conclusions in respect of any other matters that were for the final tribunal.

7. The tribunal was assisted by a bundle that ran to 473 electronic pages. There were some additional documents that were admitted into evidence during the hearing. These were effectively added to the back of the current bundle.

8. The tribunal heard evidence from the claimant. The claimant also called Mr P Agate as a witness. Mr Agate alongside his constable role is an elected BTP Federation representative.

9. The tribunal heard evidence from the following individuals, called by the respondent:

    a. Mr J Mottershead, who was the claimant's tutor during his period of training at Carlisle.
    b. Mr J Mitchell, who was the Officer in Charge for Preston, Carlisle and Lancaster at the material times.
    c. Mr G Ashbridge, who was a Police Sergeant who had responsibility for the day-to-day management of the Carlisle office at the material times.
    d. Mr D Rams, who was the Temporary Superintendent of the Pennine Sub-Division of the respondent, which covered Carlisle, at the material times.
    e. Ms F Redmond, who was the respondent's People Business Partner at the material times.

10. The case was initially listed for 5 days. Unfortunately, this was not sufficient time to allow the evidence to be heard, the tribunal to deliberate and make a decision, and then for the tribunal to hand down judgment. The tribunal met on 11 September 2023 to deliberate and decide on this case. A decision was reached on that date. Further time was then needed to write up this decision.

11. This is the decision and the written reasons following this decision having been reserved.

LIST OF ISSUES

12. The list of issues was recorded by Employment Judge Leith at a Preliminary Hearing that took place on 22 February 2023. The claim was recorded as being for disability discrimination only and concerned complaints of discrimination arising from disability and for a failure by the respondent in its duty to make reasonable adjustments. For ease, I repeat the list of issues as recorded below:

1. Time limits

1.1 Early Conciliation having commenced on 17 May 2022, and the Early Conciliation certificate having been issued on 27 May 2022, and the Claim having been issued on 13 July 2022, any complaint about something that happened before 18 February 2022 may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1 2.2 If not, was there conduct extending over a period? In respect of the reasonable adjustments claim, the Tribunal will consider:

1.2.2.1 Did the respondent do an act inconsistent with making the reasonable adjustment(s) contended for? If so, time will run from that date in respect of the reasonable adjustments claim.

1.2.2.2 If not, the ET must consider by what date the respondent could reasonably have been expected to make the adjustment contended for if it was to be made. Time will run from that date.

1.2.2.3 The Tribunal will nonetheless need to consider whether the reasonable adjustments claim and the claim of discrimination arising from disability constituted conduct extending over a period.

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

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 Did he have a physical or mental impairment? The Claimant relies on dyslexia and/or dyscalculia.

2.1.2 Did it have a substantial adverse effect on her 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?

3. Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the respondent treat the claimant unfavourably by:

3.1.1 On 19 January 2022, issuing the Claimant with an action plan in

respect of his work?

3.1.2 On 22 February 2022, placing the Claimant on an Unsatisfactory Probationary Officer Process?

3.1.3 On 3 March 2022, Temporary Superintendent Rams refusing the Claimant's request to withdraw his resignation? The Claimant says that this decision was influenced by his apparently unsuccessful engagement with the probation process.

3.2 Did the following thing arise in consequence of the claimant's disability:

3.2.1 The Claimant's speed and manner of learning.

3.3 Was the unfavourable treatment because of that?

3.4 Was the treatment a proportionate means of achieving a legitimate aim? If the respondent relies on objective justification, it will clarify its position in an amended response.

3.5 The Tribunal will decide in particular:

3.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 could something less discriminatory have been done instead;

3.5.3 how should the needs of the claimant and the respondent be balanced?

3.6 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

4. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

4.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

4.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

4.2.1 The probationary process

4.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was less likely to be able to perform to the standard required by reason of his speed and manner of learning?

4.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

4.5 What steps could have been taken to avoid the disadvantage? The claimant has not suggested any specific steps that could have been taken.

4.6 Was it reasonable for the respondent to have to take those steps?

4.7 Did the respondent fail to take those steps?

13. The issue of disability was no longer one for this tribunal to determine. Employment Judge Grundy had decided that the claimant did have a disability at the material times by reason of the impairments of dyslexia and dyscalculia, at a Preliminary Hearing on 25 July 2023.

14. This tribunal raised concerns with how the reasonable adjustment complaint was being brought at the outset of the hearing. The PCP itself seemed less than satisfactory. The claimant's representative was asked to refine the PCP to explain what specifically about the probation process was it that put the claimant at a disadvantage. Mr Kirtley's initial response was to explain that it was the speed and manner of the claimant's learning that meant the probationary process put him at a substantial disadvantage. However, this did not provide the clarity that the tribunal was seeking.

15. In short, the claimant, and Mr Kirtley as his representative, was given until the morning of day 2 to clarify the PCPs, given that the first day was being used for reading into the case. On day 2, the tribunal again was not provided with a clarification of the PCPs on which the reasonable adjustment complaint was being brought. However, the judge assisted the claimant by working backwards from the adjustments that were contended for as being reasonable adjustments by the claimant (contained in an email on p.451, on 07 March 2023). Following some discussion, the specific PCPs were recorded as follows:

    a. A practice of not providing structured and written materials to support learning.
    b. A practice of not providing an opportunity for repeating processes during phase 2 (that being the tutoring/in-company period) of the learning.
    c. A practice of not providing constructive feedback, with SMART objectives broken down into relevant parts.
    d. A practice of not engaging with Occupational Health in advance of probationary input.

16. For the purposes of enabling the case to get started, we are grateful to Mr Cook's sensible and pragmatic approach of not raising an issue at the beginning of the hearing with those changes. But with the caveat that he would be given permission to seek evidence orally from the respondent witnesses (given these specifics were not known in advance of the hearing) and reserving his position to object to anything deemed to be an amendment to the pleaded and recorded claim in closing submissions. The tribunal agreed to this approach.

17. Indeed, when giving closing submissions, Mr Cook, on behalf of the respondent, only objected to the first of those PCP's. Those listed at b, c and d were not objected to on the basis that the respondent had produced the evidence to meet those matters. In respect of b, c and d, the claim was amended to include those matters as the specific PCPs on which the allegation of a failure to make reasonable adjustments were brought.

18. In respect of the first matter, Mr Cook submitted that introducing the changes was a substantial amendment, and when considering the balance of prejudice it should be refused. In short, Mr Cook submitted that this was a significant departure from the PCP recorded by EJ Leith at the Preliminary Hearing on 22 February 2023, ad would introduce a need for a different line of enquiry. Mr Cook submitted that the first mention of this as a potential PCP was in the claimant's witness statement that was exchange don or around 11 August 2023. And the amendment was only pursued on day 2 of the final hearing, after it had been suggested by the tribunal that the PCP as it had been pleaded and brought was not entirely adequate. Mr Cook submitted that if the amendment was to be allowed then the respondent has

not had adequate opportunity to adduce evidence on this matter. Mr Cook also raised that such an allegation would be some way out of time, and therefore time limit were an issue for which the claimant has produced no evidence on. Mr Kirtley in response made no specific submissions in respect of the amendment issue.

19. Applying the appropriate balance of hardship and injustice test, and considering the balance of prejudice to the parties, the tribunal has decided not to allow the PCP as pleaded to be amended to include a specific PCP of not providing structured and written materials to support learning (however, this does not affect b, c or d, see above). The balance of prejudice is clearly against allowing the amendment. The claimant has been represented throughout. It is only on day 2 of this hearing where the specifics of the PCP became known. And the respondent is at clear prejudice in not having had the opportunity to meet this particular specific PCP should it be allowed.

LAW

Discrimination arising from disability

20. Protection against discrimination arising from disability is contained at section 15 of the Equality Act 2010.

> (1) A person (A) discriminates against a disabled person (B) if—
>
> > (a) A treats B unfavourably because of something arising in consequence of B's disability, and
> >
> > (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

A failure in the duty to make reasonable adjustments

21. The relevant statutory provisions, in respect of a failure to make reasonable adjustments complaint are as follows:

> **20. Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. ...
>
> **21. Failure to comply with duty**
>
> (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
>
> (2) A discriminates against a disabled person if A fails to comply with that

duty in relation to that person.

Burden of proof under the Equality Act 2010

22. We reminded ourselves of the burden of proof in discrimination cases, with reference to section 136 of the Equality Act 2010:

> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

23. Lord Justice Mummery (with which Laws and Maurice Kay LJJ agreed) in **Madarassy v Nomura International plc [2007] ICR 867**, at paragraphs 56-58, provided a summary of the principles that apply when considering the burden of proof in Equality Act Claims:

> "56. The court in *Igen v Wong…* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination**. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.**
>
> 57. "Could… conclude" in section 63A (2) must mean that **"a reasonable tribunal could properly conclude" from all the evidence before it.** This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; **for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by section 5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment**.
>
> 58. The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim." (emphasis added)

24. Mummery LJ also explained further how evidence adduced by the employer might be relevant, noting that it could even relate to the reason for any less favourable treatment (paras. 71-72):

> "71. Section 63A (2) does not expressly or impliedly prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the complainant's evidence of discrimination. **The respondent may adduce evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or the situations with which comparisons are made are not truly like the complainant or the situation of the complainant; or that, even if there has been less favourable treatment of the complainant, it was not on the ground of her sex or pregnancy.**
>
> 72. Such evidence from the respondent could, if accepted by the tribunal, be relevant as showing that, contrary to the complainant's allegations of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination on the proscribed ground…."

25. Lord Justice Mummery also pointed out that it will often be appropriate for the tribunal to go straight to the second stage. An example is where the employer is asserting that whether the burden at the first stage has been discharged or not, he has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by that approach since it is effectively assumed in his favour that the burden at the first stage has been discharged.

26. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant succeeds in doing this, then the onus will be on the respondent to prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations.

Relevant case law

27. Mr Cook helpfully presented the tribunal in his written submissions an outline of relevant case law that the tribunal ought to consider. Mr Kirtley agreed that the principles as presented were the relevant matters that the tribunal ought to apply. We do not repeat all of the case law contained in Mr Cook's written document, but have limited this section to those legal principles that assisted the tribunal in reaching the decision it has.

28. In respect of knowledge of disability, the tribunal was reminded of the principle in **Gallop v Newport City Council** [2014] IRLR 211 CA, and in particular that at para 36, Rimer LJ expressed that actual or constructive knowledge of disability requires actual or constructive knowledge of each element of the statutory test.

> "I come to the central question, namely whether the ET misdirected itself in law in arriving at its conclusion that Newport had neither actual nor constructive knowledge of Mr Gallop's disability. As to that, Ms Monaghan and Ms Grennan were agreed as to the law, namely that (i) before an employer can be answerable for disability discrimination against an

employee, the employer must have actual or constructive knowledge that the employee was a disabled person; and (ii) that for that purpose the required knowledge, whether actual or constructive, is of the facts constituting the employee's disability as identified in s.1(1) of the DDA. Those facts can be regarded as having three elements to them, namely (a) a physical or mental impairment, which has (b) a substantial and long-term adverse effect on (c) his ability to carry out normal day-to-day duties; and whether those elements are satisfied in any case depends also on the clarification as to their sense provided by Schedule 1."

29. This was further elaborated on by Choudhury P in **Gallacher v Abellio Scotrail Ltd** UKEATS/0027/19:

> "53. The submission is that all of this detail, as to the Claimant's symptoms, the medication she was on and the various measures that would be taken to facilitate her return to work, including the referral to occupational health, was sufficient to give rise to constructive knowledge. That was so even though the Claimant was not aware herself that she was disabled at the time. The Tribunal's error had, according to Mr Grant-Hutchison, a knock-on effect on the Tribunal's conclusion as to whether there was discrimination because of something arising in consequence of disability. In particular, he submits that had there been an occupational health referral, it might have led to the conclusion reached some time later by the Claimant's GP that her condition affected her interactions with colleagues.
>
> …
>
> 55. I agree with Mr Crammond that even if there were something in the constructive knowledge ground, the point would be academic for the reasons he gives. But in any event, it is my judgment that the constructive knowledge ground cannot succeed. I say that for the following reasons:
>
> a. The Tribunal reached a clear conclusion of fact that while some information was provided by the Claimant to Ms Taggart as to her conditions, there was none of the detail required as to substantial disadvantage, the effects on her day-to-day activities or the longevity of those effects so as to satisfy the requirements of Section 6 of the 2010 Act : see [216] and [217].
>
> b. The Tribunal also noted that the Claimant was herself inclined to under-report her symptoms at the time and did not consider herself to be under any disadvantage in light of the arrangements that had been put in place: see [219].
>
> c. The Tribunal was entitled, in the circumstances, to conclude that the OH referral would have been unlikely to change the state of knowledge so as to give rise to constructive knowledge being present on the part of the Respondent.
>
> For these reasons, Ground 2 of the appeal also fails and is dismissed (emphases added)."

30. In respect of discrimination arising from disability, the tribunal was reminded of the guidance given by Simler P (as she then was) at paragraph 31 in **Pnaiser v NHS England** [2016] IRLR 170:

"the proper approach can be summarised as follows:

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

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

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see **Nagarajan v London Regional Transport** [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any *prima facie* case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).

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

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

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

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment

arises in consequence of disability. She relied on paragraphs 26 to 34 of **Weerasinghe** as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

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

CLOSING SUBMISSIONS

31. A written document was presented on behalf of the claimant. And oral closing submissions were made on behalf of both the respondent and the claimant. These are not repeated here but have been considered in reaching this decision.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

To try to assist the parties, we have considered each of the relevant matters under separate headings below. First, making findings of fact, before then explaining our conclusions. However, the parties need to be aware that there is some overlap in respect of the issues and the relevant findings of fact. And therefore, this section needs to be read in its entirety to understand our decision.

Findings of fact: Knowledge of Disability and knowledge of substantial disadvantage

32. The claimant applied for a role as a Police Officer on 22 February 2020 (his application form is found at pp.121-132). Within that form he answers that he has

a disability. And then expresses that he has dyslexia and dyscalculia. The question that led to this response was one seeking information about any reasonable adjustments that should be made either to assist him with the job or to assist during the application process. The claimant provided no response to this specific question.

33. On 10 June 2020, the claimant underwent a PCSO medical assessment. This assessment included reviewing and considering information around declared medical conditions, alongside the management of them (pp.134-143). In that assessment, the claimant's dyslexia and dyscalculia was discussed. It was recorded that the claimant was recommended to have extra time for assessments. A 2008 report is also referenced and discussed at this assessment. And it is recorded following this discussion that the claimant 'reported that no adjustment are required this time' (p.135).

34. On 23 April 2021, the claimant attended at an Occupational Health appointment with a Ms Sandercok of Optima Health (see pp.151-152). The claimant accepted in oral evidence that at no point during this appointment did he raise anything concerning dyslexia and/or dyscalculia.

35. The claimant was offered a role with the British Transport Police ('BTP'), with a start date of 14 June 2021 (p.153).

36. The claimant completed a Student Registration Form on 14 June 2021 (pp623-627). At question 10 the question is posed 'Do you have any special educational needs?'. The claimant answers with 'I am dyslexic and also have dyscalculia and sometimes require time with reading, writing, or tasks involving arithmetic. However, I have strong verbal reasoning skills built due to academic and professional experience.'

37. The claimant has various progress checks throughout his study period.

38. It is in the third of the progress check meetings, on 08 July 2021 (p.245), that the claimant raises his condition of dyslexia (but not dyscalculia) following him failing Knowledge Check 2. As part of that discussion with the Mr Franklin, the following occurred:

    a. The claimant expressed he had dyslexia
    b. He explained that additional time and being able to write on question papers would assist him with respect his dyslexia
    c. Mr Franklin agreed to those adjustments.
    d. The claimant agreed to send to Mr Franklin a report from a Dr Schneider, an Educational Psychologist, that was produced in 2008 for the purposes of his study at Edinburgh University.

39. The claimant's witness statement, and the way his case was presented, places the report being received in advance of the adjustments being made. However, the tribunal does not accept that to be accurate given the contemporaneous evidence that we have before us.

40. On or around 12 July 2021 (the following Monday), the claimant presents the Dr Schneider report to Mr Franklin. The Schneider report is at pp.97-106. This included the following:

    a. At p.98, in the assessment summary, it is recorded that the claimant has weaknesses in short term memory and processing speed and also a difficulty in problem solving with visual spatial tasks. And that these areas will impact on the claimant's speed and accuracy in particular contexts.
    b. At p.99, applying the Wechsler Adult Intelligence Scale III, the claimant was

scored at least of average, with exception to picture completion, digit symbol, arithmetic, digit span and symbol span.

c. At p.101, the claimant's working memory was in a very low range, however this related to numbers.
d. It is identified that the claimant had great difficulty with visual spatial problems.
e. The claimant has a working memory that is weak, and has difficulty moving information into his long-term memory.
f. At p.102, it is expressed that it can often be difficult to identify dyslexia conclusively in adults.
g. At p.103, that the claimant is likely to have impacted his ability to prioritise and organise ideas to paper.

41. The respondents adopt a policy whereby documents disclosed by an employee, especially those matters that include personal sensitive information, such as medical conditions, are not shared beyond the intended recipient and/or placed on a HR file without express consent from the employees (the tribunal accepts the evidence of Ms Redmond on this point, which was unchallenged by the claimant).

42. The claimant did not give consent for this report to be shared beyond Mr Franklin and Mr Mackay. We make this finding for the following reasons. The claimant did not give evidence in his main statement for this hearing that he had provided consent. Although there is reference in para 21 of the claimant's Witness Impact Statement for the purposes of establishing disability (p.466), reference to consent was equivocal at best. On that basis we do not accept that the claimant gave such permission.

43. Neither Mr Franklin or Mr Mackay sought permission from the claimant to share the Dr Schneider's report. The tribunal had no evidence on this, however, did consider the progress meeting notes, at which there was no record of such consent being sought.

44. The claimant met with Mr Franklin on 22 July 2021, and it's recorded that the claimant's scores had improved after the agreed adjustments had been implemented (p.246).

45. Around 08 August 2021, the claimant met with PC Margaret Ballentyne on three occasions. PC Ballentyne was due to be the claimant's tutor during his tutor phase at Carlisle. During these meetings, the claimant informed PC Ballentyne that he had dyslexia and dyscalculia. However, we reject the claimant's evidence that he then explained to PC Ballentyne that he had been struggling with the visual spacing tasks of PST training such as handcuffing. We do not accept that this is accurate given the approach taken by the claimant throughout his time with the respondent in respect of his impairments. On the other occasions that the claimant raises his dyslexia and/or dyscalculia with the respondent he provides little detail as to the affects it was having on him and his ability to complete work tasks. There is no record of any similar discussion or the raising of any struggles in any of his student progress meetings. This is despite him now saying that he explained to Ms Ballentyne that he was struggling with visual spacing tasks during PST training. And specifically no such thing is raised on 08 July 2021 when the claimant had raised his dyslexia and a need for extra time and to be allowed to write on exam papers. There is nothing raised of any similar struggles with Occupational Health on 10 June 2020 when dyslexia and dyscalculia was discussed. There is no raising of such struggles when the claimant raised his dyslexia with Mr Mottershead around 29 November 2021. There is no raising of such struggles in any of the progress meetings with Mr Mottershead and/or Mr Ashbridge. And there is no raising of such struggles with Mr Ashbridge in the meetings of 18 and 22 February 2022, when the claimant was raising with Mr Ashbridge that he had a diagnosis of dyslexia. And this is consistent with the claimant's oral evidence in this case, where

he said on several occasions that he did not raise any issues around his dyslexia as he did not know how it would affect him in his role. Given all of this, the tribunal finds that on balance he more likely than not explained to PC Ballentyne that he had a diagnosis of dyslexia and dyscalculia but did not go onto explain any specific struggles that this was causing him during the training period. And this is given that that was his evident approach to his impairments in the documents throughout his training period with the respondent.

46. A Student Officer Report for the claimant was completed on 02 November 2021 (pp.247-248). This records the claimant's scores in the various Knowledge Checks. Overall, aside from Knowledge Check 2, the claimant scored relatively highly. There is no reference to dyslexia, dyscalculia, or associated difficulties, within this document.

47. As part of the Student Officer Report, assessment was made of the claimant's completion of 'Personal Safety Training'. It was recorded that the claimant had completed 'all PST training successfully and to a good standard'.

48. Initially the claimant was selected to commence his training at Leeds (p.321). However, this was later changed to Carlisle (p.322).

49. At some point before the claimant's tutoring period commenced, the tutoring responsibility transferred from PC Ballentyne to Mr Mottershead. At no point during this transfer of responsibility did PC Ballentyne inform Mr Mottershead of the conversation she had had previously with the claimant around the claimant's dyslexia and dyscalculia. The tribunal accepted Mr Mottersheads evidence on this, and the claimant accepted that he did not know and had no way of knowing whether Mr Mottershead had had such a conversation.

50. In advance of acting as tutor for the claimant, Mr Mottershead received the claimant's training report (pp.247 and 248). However, he was not sent the notes form progress check meetings (pp.245-246). The tribunal accepted the evidence of Mr Mottershead on this matter, which was consistent with the evidence of others, including Ms Redmond who gave unchallenged evidence that as these were general course notes they would not be issued to those at Carlisle.

51. Around 4 weeks into the tutor phase at Carlisle (around 29 November 2021), the claimant met with Mr Mottershead. Mr Mottershead at this point did not know that the claimant had either dyslexia or dyscalculia. At this meeting, the claimant informed Mr Mottershead that he had dyslexia. This was whilst the claimant was working on the Niche system, after the claimant had asked a question concerning where to find a statement, and Mr Mottershead had responded to explain that he had shown him on numerous occasions. There is an inconsistency in the evidence that the claimant put in his witness statement for today (at para 50), where the claimant says that Mr Mottershead told him that he was aware the claimant was dyslexic, and that that he gave in his disability impact statement (para 28 on p.469), where the claimant explained that he made Mr Mottershead aware of his disabilities at this meeting. Given the disability impact statement was made closer to the time, and given that that is consistent with Mr Mottershead's evidence, we conclude that on balance Mr Mottershead likely did not know that the claimant had dyslexia at this point and it was the claimant who informed him at this point.

52. Mr Mottershead on receiving this information, asked the claimant whether any support or adaptions would be needed. This included asking whether yellow paper and/or cue cards would help him. Mr Mottershead also offered to assist the claimant in producing cue cards should those have been considered a needed adjustment. Mr Mottershead invited the claimant to let him know if there was any support or adjustments that would help him. The claimant accepted that this conversation as recorded at para 8 of Mr Mottershead's witness statement took

place.

53. The claimant did not inform Mr Mottershead of the need for any adjustment or adaptation, or how his disabilities were affecting him at work either at this meeting or at any point afterwards. The claimant's oral evidence was that Mr Mottershead only offered what he considered to be basic adjustments for dyslexia and that he considered that Mr Mottershead would not have understood the specifics of his disability if he explained it to him. And as he considered that Mr Mottershead would not understand his disability then he did not engage in that discussion. In short, the claimant did not explain to Mr Mottershead any affects that he says dyslexia or dyscalculia were having on him, nor did he explain how they were affecting him in either the workplace or outside of the workplace.

54. On 05 December 2021, the claimant emailed Mr Ashbridge (see p.345). In this email, the claimant explains that he feels supported by Mr Mottershead and the team to get through the units for IPS. There is no reference to any difficulties with the role or any impacts on his ability to do the role because of dyslexia or dyscalculia.

55. The claimant met with Mr Ashbridge and Mr Mottershead on 06 December 2021 (notes of meeting are at pp.181 and 182). The claimant was deemed to be making good progress towards Independent Patrol Status ('IPS'). However, there were still units that required further work before they could be signed off. These were recorded as being due to a lack of opportunity, rather than performance.

56. At this meeting there was a general discussion around support that the claimant needed. The claimant was afforded the opportunity to raise any concerns he had with his training and progress. The claimant raised an issue of lack of training on Niche at Springhouse (this is not in dispute between the parties and recorded at para 15 of Mr Mottershead's witness statement). The claimant did not raise in this meeting any concerns about how his impairments were impacting on him, or how they were affecting his progress and/or performance (the claimant accepted the accuracy of the notes under cross examination).

57. It was agreed between those at the meeting of 06 December 2021 that the tutoring (referred to as in-company) period would be extended until 22 January 2022. It was recorded that any review would need to take place before 22 January 2022. This extension was to allow more time to enable further opportunity for the claimant to be involved in incidents that would satisfy the incomplete units needed for IPS. It was agreed that 4 x 45-minute training sessions would be arranged for the claimant with the Digital Policing Team in respect of the NICHE system.

58. On 19 January 2022, the claimant met with Mr Ashbridge and Mr Mottershead (pp.183-187). In this meeting there was discussion about the claimant's performance in respect of an interview carried out on 04 January 2022. The claimant accepted in his oral evidence that Mr Mottershead at this meeting provided him with feedback on the incident, and therefore we find he was given such feedback. The claimant was given constructive feedback. The only other issues raised at this meeting concerned those situations where there was a lack of opportunity to complete a unit. Mr Ashbridge explained that there was still work to do in respect of interviewing of suspects. The claimant was given the opportunity to explain why the interview was not successful, and he explained that this was because he did not have enough time to prepare for the interview (see p.184). And the meeting ended with all in the meeting having agreed that the outstanding PAC elements were achievable. At no point did the claimant raise anything in respect of how his dyslexia and dyscalculia were affecting him, or anything that would suggest that he was being put at a substantial disadvantage because of his impairments.

59. The claimant was placed on an action plan with respect interviewing of suspects. The tutor stage was extended until 25 February 2022. The action plan provided was set out with what improvements were necessary. It stated specifically what the action plan was intended to achieve. It was measurable, and it explained to the claimant how his performance would be measured. The objective was identified as being achievable. The relevance of the task was explained. And the claimant was provided with a timescale of the plan running until it was achieved (the action plan is at p.186). This is a SMART action plan.

60. The claimant met with Mr Ashbridge on both 18 and 22 February 2022 (the notes of which are at pp188-193). The claimant was held to have successfully completed the action plan, and it was observed that there had been a huge improvement in this respect. Issues were raised in respect of Deadlines, PNB Reviews, Intelligence Reports, Preston deployments, NICHE Training, Property, Stop and Search and the assault on the claimant. The claimant during discussions of these issues did not raise that he was being impacted upon by his disabilities, nor that his disability was putting him at a substantial disadvantage that was affecting his performance.

61. Following discussion of the issues above, Mr Ashbridge asked the claimant whether he has all the support he needed in the workplace. The claimant responded by informing Mr Ashbridge that he had been diagnosed with dyslexia, and that this mainly affected his spatial awareness, such as hand/eye coordination. The claimant informed Mr Ashbridge that his dyslexia had not been internally diagnosed so he was unsure what the respondent could do for him. At no point did the claimant make any reference to his disabilities affecting the speed and manner of his learning. Nor did he give any indication of any adjustments that would assist him. This was the first time Mr Ashbridge had been made aware of the claimant's impairments.

62. The claimant and Mr Ashbridge agreed that an Occupational Health referral would be made. This was to help the respondent understand the effects of the impairments on the claimant and what support and/or adjustments could be made to help him in his role.

63. Om 22 February 2022, the claimant sent Mr Ashbridge a letter of resignation. The claimant explains in that document that he was resigning as he had concerns about the fairness of the current process but placed the reason for his resignation as being work-related stress. At no point in this document did the claimant raises any matter concerning any treatment of him due to dyslexia or dyscalculia, not the management of the impacts that such were having on his ability to undertake his work.

64. The claimant sought to rescind his letter of resignation. This was a telephone conversation with Mr Ashbridge (this is recorded in an email form Mr James Mitchell at p.455). The decision on this ultimately sat with Mr Rams. No conversation took pace between Mr Rams and the claimant. The only knowledge Mr Rams had of the claimant's impairment is that as recorded in the meetings of 18 and 22 Febraury 2022, which he reviewed as part of his decision making.

<u>Conclusions on knowledge and substantial disadvantage</u>

65. It is trite law that knowledge of an impairment does not equate to knowledge of a disability (at least where the impairment concerned is not a deemed disability, of which dyslexia and dyscalculia is not). In essence what the tribunal is tasked with is determining whether the respondent had actual or constructive knowledge that the claimant had an impairment that was having a long-term substantial adverse affect on his normal day to day activities (as per **Gallop**).

66. The claimant had ample opportunity to raise issues around him having dyslexia and dyscalculia and/or the effects they were having on him and/or the disadvantages that was putting him at in the workplace. This included the following opportunities:

    a. On his application form. Where he named the specific impairments but not did not provide an indication of any effects that had on him nor any adjustments that could be made to assist him.
    b. At the PCSO medical assessment on 10 June 2020. Where the claimant's impairments were discussed, but the claimant informed the assessor that he did not require any adjustments.
    c. At the Occupational Health referral on 23 April 2021, where the claimant did not raise anything relating to his impairments.
    d. On the student registration form, where the claimant explained that he 'sometimes requires time with reading, writing, or tasks involving arithmetic', but with no further detail.
    e. At a student progress meeting on 08 July 2021, where the claimant explained that he would benefit form extra time in assessments and if he was allowed to write on the question papers.
    f. The meeting around 08 August 2021 with PC Ballentyne, where the claimant does raise his impairments. However, the claimant did not explain anything further.
    g. That when informing Mr Mottershead of the impairments in a meeting in November 2021, when Mr Mottershead asked directly about what the respondent could do to help him, the claimant decided to not engage in the conversation and provided no detail of how his impairments were affecting him nor any adjustments that would assist him.
    h. On 05 December 2021, when emailing on matters to Mr Ashbridge, which included on the support he was receiving, he again chooses not to raise anything concerning the affects of his impairment and the need for additional support, but instead explained that he 'felt supported'.
    i. At a meeting with Mr Ashbridge and Mr Mottershead on 06 December 2021, when discussing additional support that the claimant needed, he did not raise anything about his impairments, only raising concerns about NICHE training not having been provided.
    j. At a meeting on 19 January 2022, the claimant met with Mr Ashbridge and Mr Mottershead, and when the claimant's performance in respect of an interview was discussed, the claimant at no point raised anything in respect of his impairments.
    k. In the meetings of 18 and 22 February 2022, when the issue of dyslexia was discussed with Mr Ashbridge, the claimant again only provided very bare details, explaining simply that his symptoms "*mainly surrounds spatial awareness i.e. hand/eye coordination".* Mr Ashbridge committed to making an Occupational Health referral to try to understand what support could be provided. However, the claimant resigned before this process was completed.

67. At its height, the claimant is relying on a note from the student progress meeting on 08 July 2021, and the Dr Schneider report that was presented to Mr Franklin on or around 12 July 2021.

68. With respect the student progress meeting, this does not provide sufficient information from which the respondent could be said to have actual or constructive knowledge.

69. And, when one considers the Dr Schneider report carefully, this does not either. The report was created following an assessment on 31 October 2008. And was created for the purposes of education. As per our findings of fact above, the report primarily concluded that the claimant was within the average range in terms of

WAIS-III tests, save for picture completion, digit symbol, arithmetic, digit span and symbol spa (which appear for the most related to numbers). And this is not withstanding that the claimant had not given permission of this report to be shared, as found above.

70. This tribunal concludes that the above, and the information available to the respondent, did not give it actual or constructive knowledge of the claimant's disabilities, nor did it give actual or constructive knowledge of the substantial disadvantages on which the claimant brings his reasonable adjustment complaints.

71. Although the claimant informed the respondent of his impairments (which alone is not enough), he presented himself as not having his normal day to day activities affected by it and that it was not placing him at any disadvantage. Rather, he gave the impression that it was not affecting his normal day to day activities or placing him at a disadvantage and that no support or adjustments were required.

Discrimination arising from disability allegations

Additional findings relevant to first unfavourable treatment allegation: on 19 January 2022, issuing the Claimant with an action plan in respect of his work

72. After failing to pass Knowledge Check 2, the claimant was placed on a Development Plan (see p.245). The action plan itself is at p.161. This is a SMART development plan. The Development Plan was successfully implemented, and the claimant passed Knowledge Check 2.

73. At the meeting on the 19 January 2022, as part of the discussion around the action plan, Mr Ashbridge provided the claimant with a copy of an interview template that was contained on the Police Visual Handbook and confirmed that the claimant had access to the Handbook (see p.186).

74. The action plan was successful, this being confirmed at the meeting on either 18 or 22 February 2022.

Conclusions on first unfavourable treatment allegation

75. The first unfavourable on which the claimant brings his discrimination arising from disability claim is that on 19 January 2022, the respondent issued the claimant with an action plan in respect of his work. The tribunal concludes that this is not unfavourable treatment of the claimant.

76. First, the claimant had experience of a SMART action plan, which assisted him to successfully pass Knowledge Check 2, after he did not initially pass it. The claimant raises no such concerns of using a SMART action plan (whether you call it an action plan or a development plan, they are the same thing) being put in place at this time. That is because he must have known it was there to assist him. And it did assist him. The claimant from this experience must have known that the action plan put in place on 19 January 2022 was also a tool that had been put in place to assist him.

77. Secondly, part of the claimant's reasonable adjustment claim was that the respondent had a practice of not providing constructive feedback, with SMART objectives broken down into relevant parts. In other words, he was complaining that not having such SMART action plans/objectives in place was causing him a substantial disadvantage. So, to then present a case that when one was put in place it was subjecting him to an unfavourable treatment is difficult to accept.

78. Thirdly, the claimant followed the action plan, which ultimately led to a successful

interview being undertaken, with that unit then being marked as having been completed. In other words, it benefitted and assisted the claimant (in much the same way as the development plan put in place in respect of Knowledge Check 2).

79. And fourthly, this action plan was put in place in circumstances where it had been identified that the claimant had fell below the desired standard in interviewing, such that he was in breach of PACE. The SMART action plan is broken down into specific objectives and requirements. And explains specifically what the claimant must do.

80. In these circumstances, not only does this tribunal conclude that the claimant did not consider this to unfavourable treatment (especially given the way he brings his reasonable adjustment claim and the way it assisted him, as intended), but it would not be reasonable to view it as such even if he had convinced the tribunal that he did.

<u>Additional findings relevant to second unfavourable treatment allegation: on 22 February 2022, placing the Claimant on an Unsatisfactory Probationary Officer Process?</u>

81. At the meeting across 18 and 22 February 2022, between the claimant and Mr Ashbridge, a number of matters were discussed in detail with the claimant afforded the opportunity to respond. These included:

    a. The claimant has successfully completed the action plan (noted above)
    b. There were occasions when the claimant was not meeting deadlines
    c. That there were some issues with the claimant's ePNB.
    d. That the claimant was not completing intelligence reports
    e. That Preston deployments arranged to help the claimant on 08 and 09 February 2022 had not been completed, and no reasn had been provided as to why they were not completed.
    f. That the claimant has completed some MS Teams training on NICHE and was due to attend classroom-based training on 23 and February 2022.
    g. That there were issues with the way the claimant recorded items seized, and he failed ot secure the transit store. This being a breach of policy, and being recorded as a near-miss.
    h. That the claimant still had learning to complete around Stop and Search, this being a view formed by Mr Ashbridge after viewing the claimant's footage of his first live search.
    i. That there were issues around how the claimant dealt with an abusive and threatening male, including failing to wear his body camera in breach of policy.

82. Mr Ashbridge concluded that the claimant would not be signed off as IPS. And made a decision to refer the claimant for UPOP. At this meeting, it was explained to the claimant that the UPOP process was designed to support the probationer rather than to be punitive (see p.193)

83. Mr Ashbridge did not have the authority to place the claimant on UPOP. This was referred to Mr Mitchell, who did have that authority (see emails at p353 and p.355).

84. The UPOP process (see pp.107-120) is in effect a prolonged action plan. With any action plan mutually agreed between the parties. This is a supportive policy aimed at breaking down tasks into SMART objectives.

85. The claimant, in the circumstances, should have been placed on to UPOP. This is the claimant's own evidence when asked directly by Tribunal member Flynn.

86. The UPOP process commences through an informal meeting. Mr Mitchell was

planning on meeting with the claimant to hold this informal meeting. This informal meeting was to discuss what issues have been going on and to make a decision as to whether the matter should progress to the formal UPOP process, whether to rewind somewhat, or whether the issues can be manged though putting in place other actions. These options were all open to Mr Mitchell, as the decision maker. As part of this meeting, the claimant would be asked about whether there are any mitigating circumstances. However, the claimant resigned before this informal meeting could take place.

87. The UPOP process could extend the process for some 12 weeks before moving form stage to stage 2, and a further 12 weeks before moving from stage 2 to stage 3, which is panel focussed.

88. On 01 March 2022, the claimant sought advice from Mr Agate by email on 01 March 2022. And followed up with a phone call on or around that day. Mr Agate explained to the claimant that UPOP was a process designed to help probationary officers reach the required standard for IPS. And that it would be through SMART action plans, regular progress reviews and resolving problems that arise but before they became an issue. Mr Agate also explained that during this process the respondent would consider any adjustments that were deemed necessary (the claimant accepted that Mr Agate's statement in respect of the process was accurate).

Conclusions on second unfavourable treatment allegation

89. On the face of it, being referred to UPOP, which stands for 'Unsatisfactory Performance of Probationary Officers' could quite easily be conceived as being unfavourable treatment. As this can be perceived as being a punitive action for unsatisfactory performance. However, the details of the process are important when considering whether placing or referring a person to UPOP is an unfavourable treatment.

90. There were several failings identified in the claimant's performance and this was after his tutoring period had been extended twice (albeit not for performance reasons). With the claimant explaining to the tribunal that he was 'not disputing' that he should have gone onto UPOP. His concern, he explained was not that he was put on UPOP but that he was being put on it without first discussing his disability.

91. However, the claimant had agreed to an Occupational Health referral at the meeting at which he was informed that Mr Ashbridge was recommending that the UPOP process be applied to him. He was therefore aware that he would have had the opportunity to raise concerns about his dyslexia and/or dyscalculia.

92. Alongside this, the all the evidence points to the UPOP process being a supportive mechanism, which if proceeded with, is formed of SMART actions designed to help probationary officers each the standard of IPS. Given all the above, the referral to UPOP does not reach the level of being unfavourable treatment.

Additional findings relevant to third unfavourable treatment allegation: on 3 March 2022, Temporary Superintendent Rams refusing the Claimant's request to withdraw his resignation

93. On 28 February 2022, the claimant was told that redeployment to a station other than Carlisle was not possible. And that the claimant would have to undergo UPOP at Carlisle. This process would have to be completed first, and that IPS would have to be achieved in advance of any potential transfer. And that was the position the claimant was in. The claimant knew and understood this (see para 80 of the claimant's witness statement). The claimant also confirmed that he was aware that

a transfer was not possible under cross examination.

94. The claimant had no intention of returning to work at Carlisle. When the claimant was interviewed on 30 September 2022 by Dr M Cheeseman (the report is at pp.198-228), when discussing his resignation and the involvement of Mr Rams (Mr Rams's only involvement in this case concerned whether to allow the claimant to withdraw his resignation) the claimant explained to Dr Cheeseman that that 'he did not feel it was appropriate to return to Carlisle as he felt he was being set up to fail'. And when cross- examined the claimant explained that he 'was not prepared to go to Carlisle, as he had not been given assurances that he would be treated fairly'.

Conclusions on third unfavourable treatment allegation

95. When the claimant sought to have his resignation rescinded, the only option to him was to return to Carlisle. However, the claimant's evidence before this tribunal, which led us to our finding above, was that he was not prepared to return to Carlisle. In those circumstances, the refusal to rescind the resignation of the claimant is found not to be an unfavourable treatment. The claimant could not have viewed it as an unfavourable treatment given the stance he had taken in respect of returning to Carlisle, nor would it be reasonable to do so in those circumstances.

Failure in the duty to make reasonable adjustment allegations

PCP 1: a practice of not providing structured and written materials to support learning.

96. Amending the claim to allow such a PCP to be included in this claim was refused (see above).

PCP 2: A practice of not providing an opportunity for repeating processes during phase 2 (that being the tutoring/in-company period) of the learning.

97. The claimant was provided with the opportunity for repeated practice in relation to the NICHE system, stop and search, interviewing of suspects and in personal safety training.

98. In respect of the NICHE system, Mr Mottershead's evidence at paragraph 40 and 41 of his witness statement describes the steps taken to ensure that the claimant had the opportunity to learn the NICHE system through repeating processes. This is supported by the claimant's own witness evidence at paragraph 53, where he describes that due to his weaknesses in short-term memory, the claimant 'had to continually ask PC Mottershead to talk [him] through the steps for the basic tasks'. In other words, theSE tasks were subject to repeated practice.

99. In respect of stop and search, when it became clear that there was a lack of opportunity to complete this skill at Carlisle, Mr Ashbridge arranged for the claimant to be deployed to Preston on 5 separate dates. This was to expose the claimant to potential stop and searches as part of the County Lines team. At the meeting on 19 January 2022, it was further explained that more will be planned after 09 February 2022 (the fifth of those dates arranged. Although the dates did change. See p.184 and p.190). The claimant does not dispute that these arrangements were made. And although the claimant only attended at one of these deployments (primarily due to operational reasons), this does not impact upon the question as to whether such a practice exists or not. Especially given that the claimant was not querying the authenticity of such arrangements. In other words, the respondent was putting in place the opportunity to repeat processes through these arrangements.

100. In respect interviewing of suspects, the claimant in his oral evidence

accepted that he was provided the opportunity to observe interviews (plural) with Mr Mottershead, during which he was encouraged to take more of an active role after the initial observations. And this is a finding we make.

101. The claimant interviewed a suspect on 04 January 2022, in which he was the lead interviewer (see p.184). This was to put into practice his learning with a view to passing that particular unit.

102. The claimant accepted in evidence that at the meeting on 19 January 2022, Mr Mottershead providing him with feedback as to what went wrong in the interview on 04 January 2022 (as recorded on p.184). This included the interview being in breach of PACE (again accepted by the claimant under cross examination). As part of the meeting on 04 January 2022, the claimant was informed that he was being put on an action plan with respect interviewing of suspects. Two further interviews were set up. These were assessed as having been completed successfully.

103. In short, the claimant was given the opportunity to learn through repeating interview processes, with increased engagement by the claimant followed by constructive feedback.

104. In the circumstances identified above, the tribunal concludes that the claimant himself was given the opportunity to learn through repeated processes. The claimant has failed to satisfy the tribunal of facts from which it could conclude that there was a PCP of not providing an opportunity for repeating processes during phase 2 (that being the tutoring/in-company period) of the learning.

<u>PCP 3: A practice of not providing constructive feedback, with SMART objectives broken down into relevant parts.</u>

105. Given our findings above, the tribunal is satisfied that no such PCP was applied by the respondent. The claimant was given constructive feedback and provided with SMART objectives as a matter of fact on two occasions. And further, as the tribunal has found above, the UPOP process itself is a prolonged period that the respondent makes use of, and is based on action plans containing SMART actions.

106. In respect of the second occasion, the claimant's own evidence under cross examination was that he was set an action plan on interviewing suspects, this including specific details that were broken down, and this was in the form of SMART objectives.

107. Given that we have concluded that the evidence supports that the respondent did provide the claimant with constructive feedback, and that SMART actions and SMART objectives were set by the respondent when required, this part of the claim must fail.

<u>PCP 4: A practice of not engaging with Occupational Health in advance of probationary input.</u>

108. Given our findings above, the tribunal is satisfied that there is no such practice. The claimant had been assessed prior to commencing the education part of his role at Spring House. The first of which was on 10 June 2020 (the report starts at p.134) and the second of which was on 23 April 2021, following a referral made on 30 March 2021 (see pp.151-152). And further, Mr Ashbridge agreed with the claimant to make a further occupational health referral at the meetings on 18 and 22 February 2022 (this is recorded in the tenth paragraph on p.192, and again as an action point for Mr Ashbridge at p.193).

109. As the tribunal has found that there is no PCP of not engaging with Occupational Health in advance of probationary input, this part of the claim must fail.

OVERALL CONCLUSIONS

110. The tribunal has found that the respondent did not have actual or constructive knowledge of the claimant's disability at the material times. On that basis, the claims in their entirety fail and are dismissed.

111. Even if the tribunal is wrong on that conclusion, the claims all fail in any event for the following reasons:

a. The tribunal was not satisfied that any of the three alleged unfavourable treatments on which the discrimination arising from disability allegations were brought reached the level of being unfavourable treatments/detriments. And therefore, this category of complaint would be dismissed on that ground.

b. The tribunal was not satisfied that the respondent had actual or constructive knowledge of the substantial disadvantage on which the claimant brings his allegation that the respondent failed in its duty to make reasonable adjustments. Nor was the tribunal satisfied that the respondent applied the PCPs on which this complaint was brought. So, in those circumstances, the claims would have failed in those respects.

112. The tribunal, adopting a proportionate approach to its decision making, does not consider it necessary to consider this matter any further.

113. For the avoidance of doubt, the claimant's claims in their entirety are not well-founded and are all dismissed, for the reasons outlined above.

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Employment Judge M Butler

Date: 08 November 2023

JUDGMENT SENT TO THE PARTIES ON

10 November 2023

FOR THE TRIBUNAL OFFICE