



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss L Crawford

**Respondent:** The Chief Constable of Cumbria Constabulary

**Heard at:** Manchester (in person/CVP)      **On:** 18, 19, 20, 21, 22 and 25  
September 2023  
26 September 2023  
(in Chambers)

**Before:** Employment Judge K M Ross

## REPRESENTATION:

**Claimant:** Mr Crammond, Counsel

**Respondent:** Mr Arnold, Counsel

# JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's claim for direct disability discrimination, in that on 1 September 2020 DCC Webster took the decision to decline the claimant's attendance on the Initial Firearms Course ("IFC") which commenced on 7 September 2020, which decision was later communicated to the claimant in writing on 29 September 2020 and the claimant was not allowed on/to take the IFC ("the decision"), is direct disability discrimination pursuant to section 13 Equality Act 2010.
2. The claimant's claim that she was treated unfavourably because of something arising in consequence of disability pursuant to section 15 Equality Act 2010 (unfavourable treatment is the decision referred to in paragraph 1 above) is well-founded and succeeds.

3. The claimant's claim for indirect disability discrimination as identified at paragraphs 20-23 of the List of Issues document presented to the Tribunal is well-founded and succeeds.
4. The claimant's claim for failure to make reasonable adjustments as identified in paragraphs 27-31 of the List of Issues document before the Tribunal is well-founded and succeeds.
5. The claimant's claim for harassment related to disability as set out at paragraph 32 of the List of Issues document does not succeed in relation to allegations 32.1.1, 32.1.2, 32.1.3, 32.1.4, 32.1.5, 32.1.6, 32.1.7 and 32.1.8.
6. The claimant's allegation of disability related harassment as set out at paragraph 32.2 of the List of Issues document was withdrawn by the claimant at the end of the hearing prior to our decision and is thereby dismissed on withdrawal, her consent having been given to that course of action.
7. The allegation of disability related harassment as identified at paragraph 32.3 of the List of Issues document is well-founded and succeeds, namely the length of time it took to deal with the claimant's application to attend the IFC.
8. The claimant's allegation of disability related harassment relating to paragraph 32.4 of the List of Issues document, the decision (and all that the decision entailed as above) cannot succeed because the Tribunal has found that the claimant's claim in relation to the decision is an act of direct disability discrimination by reason of section 212(1) Equality Act 2010, a claimant cannot succeed in a claim of direct discrimination and a claim of harassment.
9. The claimant's claim for perceived disability discrimination as identified at paragraph 12 of the List of Issues document is no longer relevant to the Tribunal because the Tribunal has found that the claimant has succeeded in a claim of direct disability discrimination. However, if the Tribunal is wrong about its finding in relation to direct disability discrimination, the Tribunal finds that the claimant was treated less favourably by the respondent by the "decision" by reason of perceived disability discrimination.

## REASONS

### Introduction

1. The claimant is a Police Constable. Her employer is the respondent. She continues to work for the respondent. The claimant wishes to progress her career by becoming an Armed Firearms Officer. To do so she has to attend an Initial Firearms Course. The claimant has a diagnosis of dyslexia and autism. These are non-disclosable conditions, but the claimant chose to disclose them to the respondent. Deputy Chief Constable Webster (as he then was) took a decision to decline the claimant's attendance on the Initial Firearms Course, meaning that she could not attend the course or progress to become an Armed Firearms Officer.

2. The claimant sought an informal reconsideration of the decision, which was unsuccessful, and a grievance, which was also unsuccessful. She brought a claim to this Tribunal.

### **Witnesses and Evidence**

3. For the claimant we heard from the claimant herself; former Inspector Lory; Kevin Nicholson from the College of Policing; and from Dr Wheatcroft, Clinical Psychologist.

4. For the respondent we heard from Deputy Chief Constable Webster, Inspector Telford (now retired but working in another role for the Constabulary); Sergeant Royle (still employed by the respondent); and from Ms Russell from the Respondent's Occupational Health Department.

5. It was agreed at the outset of the hearing that we would refer to all the witnesses by their civilian titles (i.e. Ms/Miss/Mr) rather than their police titles. Accordingly, that is how they are referred to in this Judgment. No disrespect is intended to any witness by this.

6. Both parties were ably represented by counsel, and we had the benefit at the end of the case of very detailed submissions from each of the representatives, who were both extremely helpful to the Panel – Mr Crammond for the claimant and Mr Arnold for the respondent.

7. The initial part of the case was heard in person at Manchester on Monday 18 to Thursday 21 September. The remainder of the case was conducted remotely by CVP, the initial reason being that the Tribunal was closed on Friday 22 and Monday 25 September 2023 due to industrial action by security staff, meaning the Tribunal building was closed.

8. We had the benefit of witness statements for each of the witnesses, both in paper copy and electronically. We had both a paper and electronic copy of a bundle of documents in four parts of over 1,000 pages, although the bundle was sometimes difficult to follow and there is extensive duplication within it.

### **The Issues**

9. Helpfully, with both sides being ably professionally represented, a List of Issues had been agreed between the parties. There was some slight refinement to the List of Issues and it is set out below. For ease of reference, we have retained the numbering of the list of issues as they appear at p120-7 in the bundle with the slight amendments agreed with the parties.

### **List of Issues**

10. The issues to be determined are as follows:

#### Limitation

1. *ACAS Early Conciliation – R223081/20/71*
2. Day A was 25 November 2020. Day B was 8 January 2021. The ET1 claim form was filed on 5 February 2021.
3. The respondent avers that any complaint occurring before 26 August 2020 is prima facie/arguable outside the primary limitation period (but the claimant does not accept that the same are out of time at all), and subject to arguments as to conduct extending over a period of time and just and equitable. It is accepted that the decision taken on 1 September 2020 by Deputy Chief Constable (**DCC**) Mark Webster to decline the claimant's attendance on the Initial Firearms Course is within time.
4. Whether there was conduct extending over a period so as to be treated as done at the end of that period, the end of that period being within the primary limitation period?
5. If not, whether there was such other period of time as the Tribunal thinks just and equitable within which to bring the complaints?
6. By section 123 of the Equality Act 2010, a failure to do something is to be treated as occurring when the period in question decided on it. In the absence of evidence to the contrary, a person is taken to decide on a failure to do something when he does an act inconsistent with doing it or if he does no inconsistent act, on the expiry of the period in which he might reasonably have been expected to do it.

#### Disability

##### *Dyslexia*

7. It is accepted that the claimant was disabled within the meaning of the Equality Act 2010 at the material time (June 2019 – September 2020) by way of her mental/physical impairment, dyslexia, in that it had a substantial and long-term adverse effect on the claimant's ability to carry out a normal day-to-day activity.

##### *Autistic Spectrum Disorder (ASD)*

8. It is accepted by the respondent that the claimant was disabled within the meaning of the Equality Act 2010 at the material time (June 2019 – September 2020) by way of her mental/physical impairment, ASD.

##### *Knowledge of Disability*

9. As to knowledge of the claimant's ASD, and with regard to:
  - 9.1 Direct disability discrimination:

9.1.1 The respondent accepts that DCC Webster had knowledge of the traits found in his written rationale of 29 September 2020;

9.1.2 Whether DCC Webster knew that the same and/or any other adverse effects suffered by the claimant had a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities?

9.2 Discrimination arising from disability:

9.2.1 Whether the respondent had knowledge, or could reasonably have been expected to know, of any substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities?

9.3 Indirect disability discrimination:

9.3.1 No knowledge is required.

9.4 Failure to make reasonable adjustments:

9.4.1 Whether the respondent knew at the material time that the claimant had a disability (her ASD) and she was likely to be placed at the substantial disadvantage below?

9.5 Harassment related to disability:

9.5.1 No knowledge is necessary for the effect of the unwanted conduct. Otherwise, as above as to knowledge.

Direct Disability Discrimination (s.13)

10. On 1 September 2020, DCC Webster took the decision to decline the claimant's attendance on the Initial Firearms Course, which commenced on 7 September 2020, which decision was later communicated to the claimant in writing on 29 September 2020, and the claimant was not allowed to attend on/take the IFC (**the Decision**), alleged to be less favourable treatment.

11. Whether the claimant was treated less favourably by the respondent because of her disability than a hypothetical (**Malcolm**) comparator would have been treated in circumstances with no material difference, by the Decision? (Deposit paid)

Direct perceived disability discrimination

12. Whether the claimant was treated less favourably by the respondent because of a perceived disability than a hypothetical (**Malcolm**) comparator would have been treated in circumstances with no material difference, by the Decision? (Deposit ordered)

Discrimination arising from disability (s.15)

*Unfavourable treatment*

13. Whether the claimant was treated unfavourably by the Decision (and what that decision entailed, as above)?

*Because of something arising in consequence of disability*

14. Subject to proof of disability, the respondent (and the claimant) accepts that the generic traits and/or its effects contained within the claimant's personal profile arose in consequence of her disability.
15. Further or alternatively, did the perceived risk that the respondent alleges the claimant presented by undertaking the IFC and/or becoming an IFO arise in consequence of her disability?

*Proportionate means of achieving a legitimate aim*

16. Whether the respondent had the following aims in taking the Decision:
- 15.1 Preventing the operational risks identified by DCC Webster in his rationale of 29 September 2020;
  - 15.2 Reducing the operational risk to members of the public, other officers, the officer concerned, suspects and/or the Constabulary in relation to the application of lethal force by a firearm presented by the claimant.
  - 15.3 The safety and/or protection of members of the public, other officers, the claimant and/or suspects;
  - 15.4 Compliance with both a common law duty of care to members of the public, other officers, the claimant and/or suspects;
  - 15.5 Protection of the reputation of that police officer and/or the Constabulary; and/or
  - 15.6 The provision and/or operation of a more efficient and/or effective police service provided to the public.
17. If so, the claimant accepts that they were legitimate.
18. If so, whether the measure taken, denial of the Initial Firearms Course, was achieved proportionally? In particular:

- 17.1 Did the measure correspond to a real need on the part of the organisation, having regard to the particular considerations which were weighing upon the respondent's mind in the present case but in any event?
  - 17.2 Was the measure appropriate with a view to achieving the objectives (aims) pursued; and
  - 17.3 Was the measure reasonably necessary to that end?
  - 17.4 Further, whether the measure prevented the claimant from pursuing other careers within the Constabulary?
19. Without prejudice to the need for the respondent to prove justification generally, the claimant avers that the following were less discriminatory means of achieving the alleged aims:
- 18.1 obtaining an updated work profile from Dr Wheatcroft;
  - 18.2 obtaining an outside assessment as recommended by the College of Policing;
  - 18.3 allowing the claimant on the IFC with closer supervision; and/or
  - 18.4 allowing the claimant to attend the IFC and use her attendance as a "functional assessment".

Indirect Disability Discrimination (s.19)

*Provision, criterion or practice (PCP)*

20. Whether the respondent has a provision, criterion or practice (PCP) of not accepting officers who apply to attend the IFC who are assessed as "being higher risk" to the health and safety of the public and/or colleagues and/or there is evidence which might suggest the officer is unsuited to the role.
21. It is accepted that the respondent has a practice (and therefore a PCP) of declining attendance on the IFC to police officers who are unsuitable for the role of the AFO because they present the risks identified in the legitimate aims paragraph 15 herein. (**Accepted PCP**)
22. Was the PCP applied or would be applied to those who do not share the disability of the claimant, as well as the claimant?
23. It is accepted by the respondent that the Accepted PCP was applied or would be applied to those officers who do not share the disability of the claimant, as well as the claimant.

*Particular disadvantage*

24. Whether the claimant's alleged PCP and/or Accepted PCP put the claimant, and would put officers with whom the claimant shared her disability, at a particular disadvantage compared to non-disabled officers? Namely, as disabled officers (including the claimant) are more likely to be viewed as higher risk to the health and safety of the public and/or colleagues and/or have evidence of unsuitability for the role of AFO and, as such, not be accepted onto the IFC. The claimant contends that this is presumably because they are more likely to have a condition which may present high-risk and unsuitability to take the IFC and/or because disabled persons (including the claimant) are more likely to have the rejection of their IFC application/being refused to attend/take the IFC and/or their application to become an AFO?
25. It is accepted by the respondent that the Accepted PCP put the claimant, and would put officers with whom the claimant shared her disability, at a particular disadvantage compared to non-disabled officers, namely the rejection of their application to become an AFO.

*Proportional means of achieving a legitimate aim*

26. Paragraphs 15-17 herein are repeated, with any necessary changes.

Failure to make reasonable adjustments (ss.20-21)

*PCP*

27. Paragraphs 20-22 herein are repeated, with any necessary changes.

*Substantial disadvantage*

28. Paragraphs 23-24 herein are repeated, with any necessary changes.

*Reasonable steps*

29. Did the respondent fail to take such steps as is reasonable to have to take to avoid the disadvantage?
30. The respondent contends that there were no reasonable steps that could be taken to remove the substantial disadvantage, other than to decline the claimant's attendance on the IFC, for the reasons given above.
31. Without prejudice to the above, whether the claimant's contended steps are reasonable) whether taken individually and/or in combination):
  - 30.1 Allowing the claimant to attend the IFC, with greater supervision; and/or
  - 30.2 Allowing the claimant to attend the IFC as a way of a "functional assessment" and then further assess the situation?



Harassment related to disability (s.26)

32. Whether the respondent engaged in the following unwanted conduct and/or it related to the claimant's disability and/or the respondent's perception of disability:
- 31.1 The disclosure of her personal profile (to various sources, which was not authorised by the claimant), namely:
- 31.1.1 Inspector Telford on 14 August 2019;
- 31.1.2 Deputy Chief Constable Webster & Sergeant Royale around the date of the memorandum on 22 July 2020;
- 31.1.3 Kevin Nicolson (College of Policing) on 13 August 2020;
- 31.1.4 Chief Constable Chesterman on 2 September 2020;
- 31.1.5 The claimant's supervisors on 5 June 2020;
- 31.1.6 Superintendent Bird on 14 December 2020;
- 31.1.7 FMA Walsh on 13 October 2020;
- 31.1.8 Ian Stainton and Nick Symonds (both from the University of Cumbria) on 8 June 2020.
- 31.2 The alleged editing of the personal profile on 14 August 2019 by Caroline Russell of Occupational Health providing a copy to Inspector Telford consisting of 2 pages of the profile, instead of the original 3 pages (F & BPS 16 May 2022); NOTE – this allegation was withdrawn at hearing.
- 31.3 The length of time it took to deal with the claimant's application to attend the IFC. (Application completed/submitted 11 June 2019 – decision received 12 September 2020 and the claimant was told on 2 September 2020 – over a year to deal with her application); and/or
- 31.4 The Decision (and all that the Decision entailed, as above). If so, whether that proven conduct had the:
- 31.4.1 purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; or
- 31.4.2 effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, taking into account:

- 31.4.2.1 the claimant's perception;
- 31.4.2.2 the other circumstances of the case; and
- 31.4.2.3 whether it is reasonable for the conduct to have that effect.

### Chagger

- 33. Absent any proven discrimination, whether the claimant would have passed the IFC and/or what are the chances/prospects that the claimant would have done so and continued on to become an Authorised Firearms Officer?

### Remedy

- 34. To what remedy is the claimant entitled?

## **The Law**

11. We had the benefit of a detailed legal principles document submitted by Mr Arnold. Mr Crammond agreed that this summarised the relevant legal principles, and these are the principles we have applied in this case having regard to the cases referred to in that document and additionally by the claimant's counsel. A copy of the submitted legal principles document is attached to this Judgment for ease of reference.

## **The Facts**

12. We find the following facts.

13. The claimant is a police constable. Her employer is the respondent. She joined the force in January 2015 as a special constable, whilst still at University. She attended University between 2013 and 2016 and has a first class degree in policing. She applied and was successful in her application as a police constable commencing in that role on 7 November 2016.

14. The claimant is also a talented karate player representing England at international competitions.

15. The claimant was diagnosed with dyslexia whilst at university in December 2013. A psychologist report dated 9 December 2013, page 172 to 183, confirms the diagnosis of dyslexia.

16. We find the claimant was also diagnosed with autistic spectrum disorder (ASD). We find that the psychologist who had diagnosed the claimant's dyslexia indicated that the claimant may have another condition. We find that originally the claimant was not diagnosed with autism following an assessment but a reassessment in September 2015 at the Cumbria adult autism assessment centre diagnosed the claimant with ASD. See letter of Mel Fergus dated 25 September

2015 (p190). We rely on the claimant's evidence to find that in the past clinicians have referred to high functioning individuals with autism or Asperger's syndrome in relation to individuals with autism who manage effectively but now there is no such distinction in terms of the diagnosis itself and individuals are diagnosed with autistic spectrum disorder.

17. We find that the claimant, whilst working as a special constable and still at university, informed her special constable supervisor that she had recently been diagnosed with autistic spectrum disorder. We find the reason the claimant did this was because as an honest person believing in integrity she felt this was the right thing to do. She did not know at that time that ASD was a non-disclosable condition.

18. We find her supervisor referred the claimant to Occupational Health (pages 198- 200) on 25 February 2016 to consider whether any reasonable adjustments should be put in place given the diagnosis of autism.

19. A handwritten note on the referral states "please ask Lauren to bring all reports relating to diagnosis to appointment". We find the claimant attended an appointment with Dr McGuinness, the Force medical adviser on 8 March 2016. We rely on the claimant's evidence to find that she took an envelope with information to the OH meeting which included two letters from Dr Wheatcroft page 194 and 193 both dated 16 February 2016, a personal profile of three pages and the letter confirming the ASD diagnosis page 190 from Mel Fergus. We accept her evidence and find she never disclosed the full detailed report which led to the autism diagnosis because it contained very personal information about her childhood and family and so was not relevant.

20. The claimant told us that she explained the personal profile held no direct relevance to the workplace and she did not want the force to retain a copy. We find the report of Dr Wheatcroft appears to have been prepared in support of the claimant's application to join as a police constable because it is dated February 2016 and refers to supporting her application. (P194)

21. However we accept the claimant's account that Dr McGuinness looked at the personal profile and agreed that it did not contain any work related information and that neither the personal profile nor any aspect of it would be referred to in his report because of its irrelevance.

22. The claimant says Dr McGuinness took the envelope to get a copy of the diagnostic letter as agreed in the discussion i.e. the letter at page 190. That is consistent with the date stamped on the document which says " Occupational health unit, 8 March 2016".

23. Dr McGuinness produced a report dated 8 March 2016 (pages 203-4) which concluded, "Lauren has previously been diagnosed to be suffering from autism and dyslexia. The conditions however do not appear to be having any significant adverse effects on her ability to undertake her usual role as a special constable and I feel that she is fit to can continue in her duties".

24. Dr McGuinness made no suggestions of reasonable adjustments in relation to autism. He did suggest that extra time in examinations as has been permitted at university due to dyslexia might be considered.

25. He made no reference to the report relating to autism other than to say in response to the claimant's supervisor that "I understand Lauren has already provided you with a comprehensive report from a clinical psychologist which details her specific difficulties". We find this is a reference to the 2013 dyslexia report which the claimant agrees she showed her supervisor.

26. There is no dispute that the claimant consented to the disclosure of her report from Dr McGuinness – see her email 28 July 2016 to occupational health at page 211.

27. As part of the claimant's application to become a police constable she was contacted on 16 August 2016 by occupational health after the receipt of her medical form see page 213. The claimant was asked for information regarding autistic spectrum disorder and dyslexia. (Also p220)

28. On 26 September 2016 the claimant was assessed by a Force medical adviser Dr Duxbury in relation to her health and the police pension scheme pages 215 -218. It states, "please see attached report from Dr P McGuinness 8/3/16, letter from Dr D Wheatcroft 16/2/ 16 and three pages of suggested adjustments". Also on 26 September 2016 the claimant completed a medical history questionnaire for a potential recruit with a medical completed by Dr Turner page 224-230. A handwritten note in the margin at page 229 records "agreed to copy of the McGuinness report and letter Dr Wheatcroft and adjustments letter to go to HR".

29. There is no positive consent signed by the claimant agreeing to the disclosure of those documents. We find based on the claimant's evidence that she had previously agreed to the disclosure of her report from Dr McGuinness.

30. We rely on the evidence of Ms Russell at paragraphs 9, 10 of her statement that the report from Dr McGuinness ,the letter from Dr Wheatcroft of 16 February 2016 and three pages of suggested adjustments (the personal profile) was sent from occupational health to HR and that the respondent believed this was with the claimant's consent. See P718. However we find there is some ambiguity about precisely to what the claimant was consenting. The claimant says she understood these were the reasonable adjustments relating to her dyslexia.

31. There is also ambiguity about how the claimant's personal profile came to be edited and by whom. The claimant was entirely unaware of that at the time. The matter any came to light during the subject access request and Ms Russell was unable to shed any light on the matter. See paragraph 13 of a statement.

32. The claimant was successful in being appointed a police constable on 7 November 2016.

33. It is not disputed that save for reasonable adjustments for extended time in exams due to dyslexia the claimant had no reasonable adjustments in place as a police constable.

34. She coped successfully in that role. On 2 June 2019 the claimant completed an application to be an authorised firearms officer “AFO” page 800 to 807.

35. There was no job role profile for an AFO within the extensive documents before us although we accept the evidence of the respondents witnesses that there is such a document.

36. We rely on the evidence of Mr Nicholson from the College of Policing that there are a detailed standards applicable to the training of officers to become an AFO.

37. The Tribunal finds that each Force, in accordance with the College of Policing guidelines, has their own process of selection and training armed firearms officers. We rely on the evidence of Mr Royle that all Northwest Forces (except Lancashire) work together to train their armed firearms officers.

38. We rely on the evidence of Mr Nicholson and Mr Royle that the process to become an authorised firearms officer was as follows.

39. Firstly a candidate completes a detailed written form a firearms assessment portfolio which is then submitted to the first line manager and second line manager and area commander for consideration and endorsement with any comments regarding the offices suitability to become AFO attached. Page 800 to 805.

40. The confidential screening by the police standards department then checks to ensure there are no current or historical issues relating to the officer which could conflict with the role: for example a history of excessive use of force. There is then a medical self screening questionnaire by the candidate’s GP (a national requirement) which is submitted to the occupational health unit.

41. There is a job-related fitness test and also an advanced driving assessment conducted by the driving training department to identify if the candidate had the potential to pass the advanced driving course. There is also a one day course to assess suitability to attend the full IFC. This includes a memory test a written exam observation test and five practical judgement scenarios. The officer then has to complete a short live fire shooting session during which the weapon handling dexterity accuracy and accountability are assessed.

42. The claimant successfully passed all these parts of the process. She had also attended and passed a course training her in the use of taser.

43. The next stage after this was to attend and be assessed on the IFC.

44. The part of the process which caused the claimant’s application to be paused was the screening by OH.

45. Dr Ezan a Force medical adviser stated on 7 August 2019 when the claimant attended for an assessment for AFO duties that she had no medical condition that should bar her from AFO duties. He noted she had a diagnosis of dyslexia and autism. He stated these were not medical conditions but are classified as neuro diverse conditions. He stated “as there is no specific medical condition the decision comes down to the risk the organisation is prepared to accept in the knowledge of all the facts around her dyslexia and autism conditions. These are detailed in her reports”. He went on to say “she is keen to come and discuss with you her autism and dyslexia reports from 2016 and 2013. Dyslexia and autism are long-standing conditions so I would not expect significant changes to the reports that were commissioned”. The Dr stated, “her medical has been put on hold pending your decision.” (P279)

46. Accordingly, we find the claimant could not proceed to attend the September 2019 course. We find Mr Telford prepared a report which he sent to Mr Webster on 23 January 2020 page 895 and paragraph 12 of his witness statement. That report set out three options. Option one was to reject the claimant. Option two was to allow the claimant to progress to the course. Option three, which was the one followed, was to obtain further information.

47. We find there was a meeting between Mr Webster and Mr Telford on 23 January 2020 where it was agreed option three would be pursued.

48. Accordingly, Mr Telford sought further information from Dr Wheatcroft page 586 and information from the College of Policing page 578 and response at 577-8. He also contacted the claimant’s current and former supervisors page 918. He obtained an unsolicited very positive email about the claimant using a Taser.p590.

49. We find Mr Telford compiled all the responses and sent it to Mr Webster on 22 July 2020 see page 502 and attachments.

50. We find Mr Telford retired from his role as an Inspector in July 2020 and his responsibility for this matter was taken over by Mr Royle. We find Mr Webster was presented with all the information.

51. Mr Webster did not make a decision but asked for further information to be obtained from the College of Policing. Mr Royle obtained this information see page 975-4. We find the recommendation of Kevin Nicholson from the College of Policing was either to obtain a further assessment from a third party or to permit the claimant to attend the course.

52. Therefore we find at this stage Mr Telford, Mr Royle and Mr Nicholson all recommended that the claimant progress to the next stage namely the firearms course.

53. We find all three men extremely experienced in this area of work. They gave detailed information in their statements of their expertise in this area.

54. On 1 September Mr Webster made the decision not to permit the claimant on the course p1004. The following day 2 September 2022, he said he spoke to Simon Chesterman, Chief Constable of the Civil Nuclear Constabulary, whom he said endorsed his view. Mr Chesterman did not attend as a witness in these proceedings. (Pages 1000-1003)

55. There was a factual dispute as to whether Mr Webster spoke to Mr Chesterman before or after he made the decision but we find this is not directly relevant to the issues we have to decide.

56. We find Mr Webster did not offer to meet with the claimant until after he had made his decision. We find the offer to meet her was to explain his rationale of refusing to permit her to attend the course.

57. We find he did not have a copy of her application to become AFO before he made the decision.

58. Claimant asked for written rationale page 1011. Mr Webster provided it on 29 September p1038. The claimant responded with further information 1095 and the rejection was reiterated p1094.

59. The claimant presented a grievance (page 1086) but the outcome was that that there was no power to reconsider the decision of the Deputy Chief Constable. P1333-40)

### **The Issues**

60. The claimant's claims are for direct disability discrimination (section 13); direct perceived disability discrimination (section 13); discrimination arising from disability (section 15); indirect disability discrimination (section 19); a failure to make reasonable adjustments (sections 20-21); and harassment related to disability.

61. We turn to the agreed List of Issues document.

#### Limitation

62. This was the first issue in the List of Issues document, but the Tribunal decided it would be proportionate to deal with the claimant's other issues first and if the time limits issue remained relevant to consider it at the end once we had determined the other issues.

63. We therefore turn to consider the next issue.

#### Disability

64. The respondent agreed that the claimant was a disabled person within the meaning of section 6 Equality Act 2010 at the material time (June 2019 to December 2020) by reason of her impairment of dyslexia. The respondent also agreed that the claimant at the material time was disabled by reason of Autistic Spectrum Disorder ("ASD").

65. The issue of knowledge was disputed. The respondent accepted that DCC Webster had knowledge of the traits found in his written rationale of 29 September 2020 but did not concede that DCC Webster knew that the claimant was disabled within the meaning of section 6 Equality Act 2010 at the relevant time.

66. We find that Mr Webster was sent a very detailed report by Mr Telford on 22 July 2020 (see page 502 with attachments). Those attachments included the Force Medical Officer's report from Dr Ezan in 2019 (page 504); Dr Wheatcroft's letter of 16 February 2016 "to whom it may concern", with the "personal profile" (pages 505 and 506 to 508); the letter from Mel Fergus from Cumbria Autism Service confirming the claimant had a diagnosis of ASD dated 25 September 2015 (page 509); an extensive collection of positive responses from the claimant's line manager and tutors (pages 521-562); an email exchange with Kevin Nicholson from the College of Policing (pages 577-580); a further email from Dr Wheatcroft to Mr Telford dated 22 July 2020 containing a recommendation that the claimant attend the armed firearms course; and an unsolicited positive email at page 590 referring to bodycam footage and explaining: "Lauren Crawford tasered an aggressive male tonight. Having watched the bodycam I was very impressed. It was textbook and she handled it brilliantly".

67. We find that in fact Mr Webster was first made aware of the special profile document in January 2020 (page 895) – paragraph 12 of Mr Telford's witness statement.

68. Within this pack of information Dr Ezan specifically stated at page 504:

"PC Crawford has no specific medical condition that should bar her from AFO duties. She however has a diagnosis of dyslexia and autism which are not medical conditions but are classed as neurodiverse conditions."

He went on to say:

"Essentially, as there is no specific medical condition, the decision comes down to the risk the organisation is prepared to accept in the knowledge of all facts around her dyslexia and autism conditions."

He went on to say:

"Dyslexia and autism are longstanding conditions so I would not expect significant changes to the reports that were commissioned."

He also stated:

"It is my opinion that both will be considered as being applicable under the Equality Act."

69. The memo from Inspector Telford clearly outlined the issue at page 504, explaining the claimant had passed all elements to be assessed for the role of Authorised Firearms Officer with the exception of AFO medical, where it was noted she is dyslexic and has Autistic Spectrum Disorder. He drew attention to Dr Ezan's



report and identified that both dyslexia and autism “may be subject to the factor of equality in employment”.

70. Mr Webster also had the letter of diagnosis saying that the claimant had ASD and Dr Wheatcroft’s letter also referring to the diagnosis. He also had the “personal profile”. Mr Webster relied extensively on information from the profile document which he used in his written rationale as the reason why the claimant was refused attendance on the course. In cross examination Mr Webster said he was aware of individuals with autism, and he did not dispute it was a lifelong condition. It was his evidence that given the claimant had referred to difficulties in social settings that this must affect social situations at work as well as home life.

71. Mr Webster sought to convince the Tribunal that he had simply relied on the traits set out in the personal profile (see page 1038) where he quoted extensively from that document and did not know the claimant was disabled within the meaning of the Equality Act.

72. The Tribunal finds this is disingenuous. In the letter dated 29 September 2020 where he wrote to the claimant with his rationale for refusing her attendance on the course he quoted the words from the special profile: “I have a diagnosis of ASD. This means I genuinely have difficulty with the following areas”, and he listed various traits under bullet points, including “understanding verbal and non-verbal language, making sense of other people’s emotions, feelings and behaviours”.

73. The Tribunal finds that nobody who worked directly with the claimant had made Mr Webster of any personal traits or qualities of the claimant which caused them concern about her suitability to be an AFO.

74. Instead, that information came to light in the context of a diagnosis of Autistic Spectrum Disorder and a document which the claimant compiled soon after her diagnosis whilst still at University. As Mr Webster specifically states in his letter, those traits are suggested to flow from the claimant's disability of ASD. We find by reason of the personal profile document which Mr Webster relied on extensively, which was created only in the context of the claimant's diagnosis of ASD and refers expressly to that diagnosis, and in the context of Dr Egan (the Force Medical Officer) indicating that the Equality Act was likely to apply, reiterated by Mr Telford, there can be no doubt that Mr Webster was aware, or ought to have been aware, that the claimant was a disabled person at the relevant time.

75. Accordingly, the Tribunal finds that the respondent had knowledge of disability at the relevant time.

76. We turn to the next issue – direct disability discrimination (section 13 Equality Act 2010). The issue is as follows:

“On 1 September 2020 DCC Webster took the decision to decline the claimant's attendance on the Initial Firearms Course which commenced on 7 September 2020, which decision was later communicated to the claimant in

writing on 29 September 2020, and the claimant was not allowed on/take the IFC course (the decision), alleged to be less favourable treatment.

Whether the claimant was treated less favourably by the respondent because of her disability than a hypothetical (Malcolm) comparator would have been in circumstances with no material difference, by the decision.”

77. The Tribunal reminded itself of the law. We reminded ourselves of the burden of proof at section 136 Equality Act 2010 and the well-known principles in deciding discrimination cases as set out in **Igen v Wong**. We reminded ourselves that discrimination may well be unconscious (**Nagarajan v London Regional Transport [1999] IRLR 572**). We reminded ourselves that it is not sufficient for there to be a difference in protected characteristic and a difference in treatment for the burden of proof to pass. There must be a “something more” to shift the burden.

78. We also reminded ourselves of the importance of identifying an actual or hypothetical comparator in not materially different circumstances (section 23 Equality Act 2010) and the particular provision in disability discrimination cases at section 23(2)(a) Equality Act 2010, which states in a disability discrimination case the circumstances “include a person’s abilities”.

79. We also had regard to the Equality and Human Rights Commission Code of Practice on Employment (paragraph 3.29), which states:

“An appropriate comparator will be a person who does not have the disabled person’s impairment but who has the same abilities or skills as the disabled person (regardless of whether those abilities or skills arise from the disability itself).”

80. The Tribunal then considered how to construct an appropriate hypothetical comparator. The Tribunal finds that the appropriate hypothetical comparator is a Police Constable like the real claimant who had passed all the steps required to attend the Armed Firearms Course. In other words, like the claimant, the hypothetical PC had completed an appropriate Armed Fire Assessment Portfolio Form which had been approved by first and second managers and Area Commander. The hypothetical comparator, like the claimant, had no problems with the confidential screening by the Police Standards Department and no problem with a medical screening questionnaire completed by the candidate’s GP. The hypothetical candidate (like the real candidate) had passed the job-related fitness test, the advanced driving assessment, the one day suitability course and the course training the candidate in the use of taser. This is a candidate in the same material circumstances as the claimant, and this hypothetical person has now reached the OH assessment, which is where the claimant’s application was “paused”.

81. The Tribunal finds that the hypothetical comparator had the same abilities and skills as the real claimant including those identified in the personal profile. However, the hypothetical comparator did not have a diagnosis of autism or dyslexia.

82. Having constructed the hypothetical comparator, the Tribunal then goes on to consider whether the claimant was treated less favourably by the respondent. The less favourable treatment was the decision to refuse the claimant's attendance on the Initial Firearms Course. Pausing there, the Tribunal has no doubt that this decision did amount to less favourable treatment. It was disputed by the respondent that it did. The claimant is a highly talented, highly motivated individual who wished to progress her chosen career in this direction i.e. as an Armed Firearms Officer. She was a young woman at the start of her career. She was specifically told by Inspector Lory that he declined to put her forward for other roles which she might have been interested in as she was waiting for a place on the Firearms Course (see paragraph 6 of his statement). Accordingly, we find not to be permitted to progress to her chosen career specialism is clearly a matter of less favourable treatment, and it is particularly so because her inspector was not putting her forward for any other role until this issue had been determined.

83. Turning back to the test, we ask ourselves whether the hypothetical comparator would have been treated differently. We find the hypothetical comparator would have been permitted to attend the IFC. Our reasoning is as follows.

84. If the hypothetical comparator had all the same qualities as the claimant but no diagnosis of autism or dyslexia, she would not have been "flagged" by Dr Ezan. Her own GP had recommended her for the AFO and no issues had come back from any other source suggesting unsuitability. Her first and second commanders and her inspector had all approved her form. There were no issues in the Police Standards arena and her confidential screening had come back clear. The only thing that flagged the claimant to Mr Webster was her diagnosis of autism and dyslexia in conjunction with the personal profile document which had been erroneously retained on her Occupational Health file. A hypothetical comparator without that the diagnosis of the disability of autism or dyslexia would not have been picked up.

85. The Tribunal relies on the evidence provided to the Judge and provided to Mr Moules when we asked questions about a hypothetical individual without a diagnosis of autism. Mr Webster said that he believed that characteristics suggested by the personal profile would have been picked up by the confidential screening process whereby the Standards Department were asked for feedback. However, our hypothetical comparator is in the same material circumstances as the claimant, and the claimant was not flagged at that stage, neither was she flagged by the Standards Department, neither was she flagged by her superior officers who completed her profile and were very positive about her.

86. Accordingly, the Tribunal finds that the claimant was treated less favourably than a hypothetical comparator.

87. The next issue is: what was the issue for the treatment, or the "reason why"? Was it because of the protected characteristic of disability? The Tribunal finds that the answer to this question must be yes.

88. Mr Webster sought to distance the traits which he relied on in his letter rejecting the claimant from progressing onto the AFO course, from her diagnosis of autism or dyslexia. However, that profile document only exists because of the claimant's diagnosis of autism. The profile document was put together by the claimant as a young woman, whilst still at university looking back at her experience at university and in sixth form as a result of her diagnosis of autism towards the end of her time at University. It therefore cannot be right to say that those personality traits are somehow separate from her diagnosis of ASD.

89. We return to Dr Ezan's letter. Dr Ezan paused the claimant's OH screening. There was no medical reason for that. As he properly identified, the claimant did not have a medical condition. Instead, she had a diagnosis of autism and dyslexia – neurological conditions. Those neurological conditions are admitted to be a disability within the meaning of the Equality Act 2010 and we have found that Mr Webster had knowledge of them.

90. Accordingly, we are satisfied that the reason for the claimant being treated less favourably than the hypothetical Police Constable in the same material circumstances with the same limitations on ability is made out: the claimant has been treated less favourably than the hypothetical comparator and the reason for the difference in treatment is the claimant's diagnosis of autism.

91. If we are wrong in our analysis and a more appropriate way to approach this case in terms of looking at the claim for direct disability discrimination is to consider whether the claimant can adduce evidence which could suggest that she was less favourably treated than a hypothetical comparator because of disability, we rely on the following reasoning.

92. We are satisfied that the claimant has adduced facts which could suggest that the reason for her less favourable treatment in not being permitted to progress to the firearms course was her disability. We rely on the same hypothetical comparator. We rely on the comment of Mr Telford (page 577 of the bundle). Mr Telford, when cross examined, indicated that that was (with hindsight) not an appropriate remark and was flippant. The remark is: "Half the AFOs I meet are autistic at that rate...". We find the meaning of this remark is evidence suggest that individuals with character traits similar to the claimant without a diagnosis of autism are serving as Amed Firearms Officers.

93. The medical questionnaire which the claimant completed to become an AFO is at page 261. The real claimant chose to disclose her autism. Dr Ezan paused her application because of the disclosure of her conditions of ASD and dyslexia: "Essentially, as there is no specific medical condition, the decision comes down to the risk the organisation is prepared to accept in the knowledge of all facts around her dyslexia and autism conditions."

94. The Tribunal is satisfied that this evidence is sufficiently suggestive of the claimant being treated less favourably because of ASD to shift the burden of proof.

95. We therefore turn to consider whether the respondent has a non-discriminatory explanation as to why the claimant was treated less favourably than the hypothetical comparator. The hypothetical comparator has not been “flagged” by the respondent. It is only the claimant who has been preventing from attending the course.

96. There is no non discriminatory explanation.

97. The explanation given by Mr Webster for refusing the claimant’s progression to the AFC flows directly from his assessment based on traits contained in a document created entirely for and in the context of ASD namely the personal profile.

98. So far as the reason of risk is relied upon by the respondent as the reason for refusing the claimant to attend the course, it is clear from the way Mr Webster’s letter of refusal is phrased that that perception of risk is entirely connected with her personal profile and her diagnosis of autism.

99. The claimant has therefore been treated less favourably than a hypothetical comparator because of her disability and accordingly the claim succeeds.

100. At this point we pause. We have constructed a typical “Malcolm” style comparator. The claimant’s representative sought to persuade us that a hypothetical comparator could in the alternative be a police officer applying to become an AFO who does not suffer from or have the traits set out in the personal profile and counsel suggested that to include such traits within the hypothetical comparator would to be include within the comparator the claimant’s disability itself. We are not satisfied that that is the appropriate comparator, and we rely on the guidance at 3.29 of the EHRC which we have given above in support of our reasoning here.

101. The next issue was perceived disability. The Tribunal considers it is not necessary for us to address this issue because we have already found that the claimant was less favourably treated by reason of direct disability discrimination, but in case we are wrong about that we rely on our same reasoning to make a finding of direct perceived disability discrimination.

#### Discrimination Arising from Disability

102. We turn to the next claim, which is discrimination arising from disability (section 15 Equality Act 2010): Whether the claimant was treated unfavourably by the Decision (and what that Decision entailed, as above).

103. As we have already determined, the unfavourable treatment was the claimant being refused attendance on the IFC. This denied her access to the opportunity of becoming an AFO. Becoming an AFO was the chosen career path of this dedicated officer who informed us she had wanted to be a Police Officer from childhood and was highly motivated, and as the references obtained (see later) from her superior officers state, very highly regarded.

104. The Tribunal then turns to the next question: was the claimant treated less favourably because of “something” arising in consequence of disability. The Issues document states:

“Subject to proof of disability, the respondent (and the claimant) accepts that the generic traits and/or its effects contained within the claimant's personal profile arose in consequence of her disability. Further or alternatively, did the perceived risk that the respondent alleges the claimant presented by undertaking the IFC course and/or becoming an IFO arise in consequence of her disability?”.

105. There is no dispute between the parties that the answer to both of those questions is yes.

106. We therefore turn to the next issue, which is: was the treatment a proportionate means of achieving a legitimate aim, the defence to a section 15 claim. The Issues document identifies:

“Whether the respondent had the following aims in taking the Decision:

- 16.1 Preventing the operational risks identified by DCC Webster in his rationale of 29 September 2020;
- 16.2 Reducing the operational risk to members of the public, other officers, the officer concerned, suspects and/or the Constabulary in relation to the application of lethal force by a firearm presented by the claimant;
- 16.3 The safety and/or protection of members of the public, other officers, the claimant and/or suspects;
- 16.4 Compliance with both a common law duty of care to members of the public, other officers, the claimant and/or suspects;
- 16.5 Protection of the reputation of that Police Officer and/or the Constabulary; and/or
- 16.6 The provision and/or operation of a more efficient and/or effective Police Service provided to the public.”

107. The claimant does not dispute that the aims identified at 16.1 to 16.6 were legitimate aims. The Tribunal finds that those were legitimate aims. However, it is the claimant's case that the respondent was not pursuing the aims listed at paragraph 16 of the List of Issues – it is the claimant's case that at best Mr Webster seemed to be refusing the claimant's attendance on the IFC as he did not want her as an AFO. The claimant relies on the fact that the stated aims are not aims which the respondent was pursuing in declining her attendance on the IFC in the first place.

108. For the respondent it is said that Mr Webster was relying on those legitimate aims and the measure taken to achieve them (namely denial of the Initial Firearms Course to the claimant) was achieved proportionately.

109. The Tribunal when considering this question also had regard to the next issue:

“If so, whether the measure taken, denial of the Initial Firearms Course, was achieved proportionately. In particular:

- 18.1 Did the measure correspond to a real need on the part of the organisation, having regard to the particular considerations which were weighing upon the respondent’s mind in the present case; but in any event,
- 18.2 Was the measure appropriate with a view to achieving the objectives (aims) pursued; and
- 18.3 Was the measure reasonably necessary to that end?
- 18.4 Whether the measure prevented the claimant from pursuing other careers within the Constabulary.”

The List of Issues goes on to state:

“Without prejudice to the need for the respondent to prove justification generally, the claimant avers that the following were less discriminatory means of achieving the alleged aims:

- (1) Obtaining an updated work profile from Dr Wheatcroft;
- (2) Obtaining an outside assessment as recommended by the College of Policing;
- (3) Allowing the claimant on the IFC with closer supervision; and/or
- (4) Allowing the claimant to attend the IFC and to use her attendance as a ‘functional assessment’.”

110. The Tribunal reminded itself of the case law and also the burden of proof. The burden of proof in relation to justification is upon the respondent: section 15(1)(b) Equality Act 2010). To be proportionate, the treatment must be an appropriate means of achieving a legitimate aim and also reasonably necessary in order to do so. (**See Homer v Chief Constable of West Yorkshire [2012] UKSC 15**). We reminded ourselves too of the guidance in **City of York Council v Grosset [2018] IRLR 746**.

111. We reminded ourselves that the test of objective justification to a claim of indirect discrimination under section 19 of the Equality Act 2010 (which is worded identically) is not the same because the context for each justification defence is different. We reminded ourselves of the EHRC Code of Practice at paragraph 4.31 that the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective. We reminded ourselves that we must undertake a critical evaluation on the question of objective justification weighing

the needs of the employer against the discriminatory impact on the employee. We must carry out our own assessment as opposed to simply asking whether the employer acted reasonably.

112. We reminded ourselves that the decision by Mr Webster was to deny the claimant the opportunity to attend the Initial Firearms Course despite overwhelming evidence that he should take that course of action. We find that it was the recommendation of very experienced Firearms Officer Instructors that he should permit the claimant to progress to the IFC.

113. The Tribunal notes that the course is challenging and relies on the evidence placed before it that there was only a 60% pass rate of the IFC nationally, at first attempt.

114. Although Mr Webster repeatedly stated that suitability was assessed before an individual was allowed to progress onto the Firearms Course, we find with all due respect to his opinion that the evidence before us suggested that analysis is not entirely accurate, and the true picture is more subtle. Mr Telford had originally sought guidance from Kevin Nicholson at the College of Policing. He stated in his initial response (page 578):

“Without understanding the detail of how her autism manifests itself I think the proposed IFC course seems appropriate. If she has a good record as a Police Officer and also passes selection and the course I can’t see why she wouldn’t be suitable. You may feel that she is a bit socially awkward but if that hasn’t affected her operating in a team environment up to now, I’m not sure why it would as an AFO.”

115. Later on, when Mr Webster had asked Mr Telford to go back again to the College of Policing in the search for some “game changing” evidence or a “precedent” Mr Nicholson responded:

“You could also consider putting her on the next course with a greater level of supervision when using live weapons (i.e. range practices). This would have to be agreeable to the student and very carefully considered in order to avoid stigma and disruption to other students. The tactical elements of the course are “dry” and therefore have reduced associated risk but would allow you to assess suitability.”

116. Mr Royle in cross examination said his view had not changed – that allowing the claimant to participate in the IFC course would enable the assessors to see if there was evidence or otherwise to support whether the claimant should be an AFO.

117. Although Mr Webster repeatedly stated that the purpose of the course was only to train, it was clear from the detailed evidence from Mr Telford and Mr Royle who had extensive recent experience of running the detailed and challenging course which is lengthy and broken down into modules, that it does indeed include assessments in relation to suitability. It takes place over many weeks. It is not simply a practical course assessing whether or not an officer can shoot and training



them to shoot properly. There are modules where the candidate's decision making abilities under pressure are assessed.

118. The Tribunal notes that although Mr Webster was indeed the person charged with making the decision and had many years of firearms experience, Mr Telford and Mr Royle were the individuals at the "sharp end" who had the experience recently of delivering these complex courses and thus assessing the suitability of officers to become an AFO. Mr Nicholson was at the College of Policing, also with extensive experience, working for the body responsible for setting out the guidelines for the firearms course.

119. The Tribunal finds that in reality once a police officer had passed all the extensive conditions to attend the firearms course, their suitability to become an AFO was being further assessed on the course. The pass rate reflects that.

120. The Tribunal has also taken into account that Mr Webster never saw the claimant's application form and never met with her prior to his decision. He relied extensively on a document which was clearly out of date and no longer directly relevant. The personal profile document is entirely at odds with the picture painted of the claimant by her application, her superiors and the fact she had worked successfully for four years at that time as a police constable without any adjustments in place relating to ASD.

121. The officers who had worked with the claimant and knew her were overwhelming positive about allowing her to proceed to the course. In some ways the Tribunal found Mr Webster's approach puzzling. The Tribunal entirely accepts he was charged with making a difficult decision. The Tribunal entirely accepts that it was "on his head" if there was an incident and either a member of the public or a member of the Police Force was shot and there was an inquiry or a coroner's inquest when the information in relation to the claimant's diagnosis of autism would inevitably be revealed.

122. However, the Tribunal finds that Mr Webster had taken the information he had in relation to the claimant's personal profile out of context. The Tribunal entirely accepts the claimant's evidence that the personal profile together with the letter from Dr Wheatcroft were put together in early 2016 whilst the claimant had newly been diagnosed (September 2015) and whilst she was still (in her words) "a young girl rather than a mature woman" and was still a university student.

123. The Tribunal finds it noteworthy that the report from occupational health physician Dr McGuinness prepared in March 2016 does not refer to Dr Wheatcroft's letter or to the reasonable adjustments set out in that letter. Instead the reasonable adjustments and the report referred to in Dr McGuinness' report are within the dyslexia report from the psychologist. It is those adjustments to which the Tribunal finds he is referring. Therefore, what Mr Webster had was a generalised document with the claimant thinking of herself as she did at that time, which was not an accurate description of the claimant at the time of her application to be an AFO.

124. The reality of the situation was that by the time the claimant applied to be an AFO she had worked as a PC with no reasonable adjustments (save for exams in relation to her dyslexia) for several years. The reports from her superior officers are overwhelmingly positive. Her GP does not identify any reason why she should not proceed to the course. Dr Wheatcroft recommends she should proceed to the course, as do Mr Telford, Mr Royle and Mr Nicholson.

125. It is in the context of that position that the Tribunal steps back to consider whether denying the claimant the opportunity to attend the IFC was a proportionate means of achieving a legitimate aim. The Tribunal finds that it was not. The Tribunal has asked itself if something less discriminatory could have been done instead. The answer to that question is yes. Mr Telford, Mr Nicholson, Mr Royle and Dr Wheatcroft all suggest the claimant be permitted to be assessed on the course. Those legitimate aims set out at 16.2 to 16.6 could have been addressed in the context of that course, the claimant's suitability being assessed either in the usual way (because we were informed that for a large part of the course the candidates were assessed on a one-to-one basis) but potentially with the further supervision sensitively done as suggested by Mr Nicholson.

126. In reaching this finding the Tribunal also took into account that the claimant was taser trained and that although the level of risk is not the same, individuals have been killed with the use of a taser and some of those risks are clearly pertinent and the claimant is adjudged to be suitable to carry a taser and indeed received unsolicited praise in relation to an incident where she had tasered an individual (Mr Webster stated in cross examination he never found it necessary to look at the footage of that incident).

127. One of Mr Webster's key concerns was that if something went wrong and the claimant there was an inquiry or coroner's inquest later, arising out of someone being shot (or not shot) by the claimant that the fact the claimant had the personal profile document which arose out of diagnosis of autism would be problematic. That is not a reason in itself to not permit the claimant to attend the course. The traits with which Mr Webster said he was concerned were contained in an out of date document, which was at odds with the assessment of her by her superiors in a work situation. Furthermore attendance at the course would have enabled her suitability to be assessed

128. Accordingly, the Tribunal is not satisfied that the respondent has shown that denial of permitting the claimant's attendance at the Initial Firearms Course was proportionate. In terms of the other less discriminatory measures which could have been done instead, we rely on item 19 on the List of Issues: allowing the claimant on the IFC with closer supervision and/or allowing the claimant to attend the IFC and to use her attendance as a functional assessment.

129. The other alternatives suggested by the claimant were obtaining an up-to-date work profile from Dr Wheatcroft. Mr Telford did seek to obtain up-to-date information from Dr Wheatcroft (see page 584) where he had recommended the claimant attend the course. An up-to-date work profile from him or another specialist psychologist may have assisted in providing an up to date accurate personal profile.

130. Obtaining an outside assessment as recommended by the College of Policing (page 187) may also have been a possibility although (as Mr Webster candidly admitted) he never looked into that possibility despite it being suggested. The only person to look into it was the claimant and she said that when she did so the suggested third party company indicated that they no longer carried out such an assessment so in those circumstances that was not, ultimately a realistic possibility.

131. For the reasons stated above, the Tribunal considers that allowing the claimant on the IFC with closer supervision and/or allowing the claimant to attend the IFC and use her attendance as a “functional assessment” were the measures which were a proportionate means of achieving a legitimate aim.

132. In conducting this balancing exercise the Tribunal has had regard to the very severe prejudice to the claimant in not permitting her to progress to the course because of something arising in consequence of her disability which the Tribunal reminds itself has come about firstly because the claimant (very honestly and to her credit) informed the respondent that she had been diagnosed with ASD (which she did not have to do), and secondly that the respondent relied on a profile document which was out of date by the time the claimant applied to become an AFO and which was a document which the claimant says she did not give them permission to retain.

133. The aims identified are clearly legitimate but the view of all the other professionals save for Mr Webster, the person tasked with making the decision, was to permit her to attend the course and to assess her in depth and carefully to assess her suitability there. Accordingly, this claim succeeds.

134. Finally, Mr Webster’s suggestion that the claimant disclosing her autism diagnosis was something that she should have done and failure to do so could have resulted in her being disciplined as gross misconduct seems very surprising to the Tribunal, and implausible particularly given the way the relevant medical form is phrased.

#### Indirect Disability Discrimination

135. The Tribunal turns to the next claim. The List of Issues identifies the provision, criterion or practice (“PCP”) as “Whether the respondent had a provision, criterion or practice (“PCP”) of not accepting officers who apply to attend the IFC course who are assessed as being higher risk to the health and safety of the public and/or colleagues and/or there is evidence which might suggest the officer is unsuited to the role”. This PCP is disputed. The second PCP (which is accepted) is: “The respondent has a practice (and therefore a PCP) of declining attendance on the IFC to Police Officers who are unsuitable for the role of AFO because of the risks identified in the legitimate aims set out previously”.

136. The Tribunal finds that both PCPs applied, although the first PCP might be more accurately worded “the respondent has a PCP of not accepting officers who apply to attend the IFC course who are assessed as being a risk to the health and safety of the public and/or colleagues and/or there is evidence which might suggest

the officer is not suited to the role”. The word “risk” was clearly identified in the clarification of the decision by Mr Webster on 9 October 2020 where he stated:

“It is my balanced decision that these positives do not override the wider risks in relation to suitability for the specific role.”

137. We find both PCPs were applied to those who do not share the disability with the claimant, and this was not disputed.

138. The next issue is the particular disadvantage. The List of Issues identifies the question as follows: “Whether the respondent’s alleged PCP and/or the accepted PCP put the claimant and would put officers with whom the claimant shared her disability at a particular disadvantage compared to non disabled officers?”. Namely, as disabled officers (including the claimant) are more likely to be viewed as higher risk to health and safety of the public and/or colleagues and/or have evidence of unsuitability for the role of AFO and as such are not to be accepted onto the IFC. The claimant contends that this presumably is because they are more likely to have a condition which may present high risk and unsuitability to take the IFC and/or because disabled persons (including the claimant) are more likely to have the rejection of their IFC application/being refused to attend/take the IFC and/or their application to become an AFO.

139. It is accepted by the respondent that the accepted PCP put the claimant and would put officers with whom the claimant shared her disability at a particular disadvantage compared to non disabled officers, namely the rejection of their application to become an AFO.

140. The Tribunal also finds the alternative PCP as causing both the group disadvantage and the individual disadvantage for the same reasons as the accepted PCP.

141. We turn to the next issue, “proportionate means of achieving a legitimate aim”. The respondent relied on the same legitimate aims and the same arguments in relation to proportionality at paragraph 18 of the List of Issues, and the claimant relied on the same less discriminatory measures at paragraph 19 of the List of Issues.

142. So far as justification is concerned, we reminded ourselves that the burden of proof is on the respondent (see **Starmer v British Airways [2005] IRLR 862**). We also reminded ourselves of the test in **Bilka-Kaufhaus GmbH v Weber von Hartz [1984] IRLR 317**. We must be satisfied that the measures must correspond to a real need appropriate with a view to achieving the objectives pursued and are necessary to that end. We reminded ourselves of the principle of proportionality. We reminded ourselves there must be an objective balance between the discriminatory effect of the measure and the needs of the undertaking. We reminded ourselves that in an indirect discrimination case we must remain focussed on how group disadvantage feeds into the justification test. The Tribunal relies on its reasoning in relation to the justification defence under the section 15 claim.

Failure to make reasonable adjustments

143. We turn to the next claim. The same PCP is relied upon in relation to this claim as in relation to the indirect discrimination claim, and the same facts are relied on in relation to substantial disadvantage as were relied upon for individual and group disadvantage in the indirect discrimination claim. Accordingly, the Tribunal relies on its reasoning above of the two PCPs and finds that the claimant was put at a substantial disadvantage.

144. The Tribunal is satisfied the respondent had knowledge of substantial disadvantage. The respondent was aware that the claimant was keen to progress to become an AFO and that her ability to do so was paused by Dr Ezan and ultimately refused by Mr Webster in the decision refusing her attendance on the course, in the context of her ASD diagnosis.

145. The last question is: “Did the respondent fail to take such steps as is reasonable to have to take to avoid the disadvantage?”. In the List of Issues document it is stated, “The respondent contends there were no reasonable steps that could be taken to remove the substantial disadvantage other than to decline the claimant’s attendance on the IFC for the reasons given above”. The List of Issues goes on to state:

“Without prejudice to the above, whether the claimant’s contended steps are reasonable (whether taken individually and/or in combination) (1) allowing the claimant to attend the IFC with greater supervision, and/or (2) allowing the claimant to attend the IFC as a way of functional assessment and then further assess the situation.”

146. The Tribunal reminds itself that Mr Webster stated in cross examination that the claimant presented “insurmountable risk” based on the information in her profile document. On that basis it is difficult to understand why, once Mr Telford had provided him with the initial report in January 2020, Mr Webster sent him away to make further enquiries by obtaining very detailed information from a host of the claimant’s supervisors, her university tutors, further information from the College of Policing and further information from Dr Wheatcroft. It does not seem consistent with his explanation at the Tribunal that he was acting fairly and genuinely having regard to the claimant’s strengths and genuinely looking for a way to balance the risks.

147. We also had regard to Mr Webster’s conversation with Simon Chesterman, the Chief Constable of the Civil Nuclear Constabulary. Mr Webster’s evidence was that he had this conversation with Mr Chesterman after he had made the decision. It is not disputed that he did not provide Mr Chesterman with any of the documents relating to the claimant. The only evidence of the conversation are the handwritten notes of Mr Webster. Mr Chesterman did not give evidence. In this context the Tribunal has attached limited weight to this evidence. An individual presented with no independent written information but only the posing of an issue by a colleague over the telephone, when that colleague has already made a decision will have the information through the lens of that colleague believing (as Mr Webster did then and

still does) that he had made the correct decision. It is a matter of common sense that the way a question is posed and the way the information is presented may predispose the answer. In the absence of any direct evidence from Mr Chesterman and noting that he did not have all the specific information pertinent to the claimant before him, the Tribunal has attached very limited weight to his view, as reported by Mr Webster.

148. We reminded ourselves that we must consider what steps could have been taken to reduce or remove the disadvantage to which the employee is placed. We also reminded ourselves of the EHRC Code of Practice on Employment paragraph 6.28 of the list of factors which might be taken into account when deciding if a step is a reasonable one to take.

149. Placing the claimant on the IFC was something the respondent was, as an organisation, intending to do until the decision of Mr Webster. The claimant was repeatedly sent emails which suggested she was likely to be on the next course and steps were being taken so that she could go onto the course, at short notice if possible.

150. The Tribunal relies on its reasoning above and the evidence of Mr Nicholson, Mr Telford and Mr Royle that the course would have enabled the respondent to assess the claimant's suitability in a careful and detailed way. We are satisfied that allowing the claimant to attend the IFC with greater supervision and/or allowing the claimant to attend the IFC as a way of a functional assessment was a reasonable step to avoid the particular disadvantage, namely the rejection of her application to become an AFO.

### Harassment

151. We turn to the final issue, which is the claimant's claim for harassment (section 26 Equality Act 2010). We turn to the List of Issues. The issue is: "Whether the respondent engaged in the following unwanted conduct and/or it related to the claimant's disability and/or the respondent's perception of disability:

32.1 The disclosure of her personal profile (to various sources) which was not authorised by the claimant, namely:

- (1) Inspector Telford on 14 August 2019;
- (2) Deputy Chief Constable Webster and Sergeant Royle around the date of the memorandum of 22 July 2020;
- (3) Kevin Nicholson (College of Policing) on 13 August 2020;
- (4) Chief Constable Chesterman on 2 September 2020;
- (5) The claimant's supervisors on 5 June 2020;
- (6) Superintendent Bird on 14 December 2020;

- (7) FMA Walsh on 13 October 2020;
- (8) Ian Stainton and Nick Symonds (both from the University of Cumbria) on 8 June 2020.

32.3 The length of time it took to deal with the claimant's application to attend the IFC (application completed/submitted 11 June 2019; decision received 1 September 2020, and the claimant was told on 2 September 2020 (over one year to deal with her application).

32.4 The Decision (and all the Decision entailed as above)."

152. The Issues document goes on to identify:

"If so, whether the proven conduct had the:

- (1) purpose of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her; or
- (2) the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her taking into account the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect."

153. We turn to the first allegation of unwanted conduct – the disclosure of the claimant's personal profile (to various sources) which was not authorised by the claimant, namely:

- (1) Inspector Telford on 14 August 2019.

154. We find that the claimant disclosed to her supervisor when she was a Special Constable that she had been diagnosed with Autistic Spectrum Disorder. We find her supervisor referred her to Occupational Health Department to consider whether any adjustments should be put in place given the diagnosis of autism. We rely on the claimant's evidence and Dr McGuinness' report to find that Dr McGuinness looked at the personal profile and Dr Wheatcroft's letters of March 2016, agreed that the profile did not contain any work-related information and that neither the personal profile nor any aspect of it would therefore be referred to in his report because it was not relevant. This is consistent with his report at pages 203-204. The claimant specifically agreed to the release of the report by Dr McGuinness (see page 211).

155. We find some confusion arose thereafter because the respondent did not obtain clear written authority from the claimant as to which specific reports could be disclosed. When the claimant had her Occupational Health medical "paused" by Dr Ezan in August 2019, he referred to "two reports" (page 279). We accept the claimant's evidence that she understood those "two reports" to be the dyslexia report of 2013 and the 2016 report of the Force Medical Officer McGuinness referencing both her autism and dyslexia. However it appears that the respondent had retained copies of both Dr Wheatcroft letters and the personal profile which is referred to in Dr Wheatcroft's letter of 16 February 2016 at page 194 in support of the claimant's

application to join the Cumbria Police as a Police Constable. The claimant did not realise that that the 2016 profile document, which she now considered to be obsolete, given her development over time and given she had not expressed specific permission to be kept, and given that she had not required any adjustments (except for in relation to examinations for dyslexia whilst with the Force), was a document which the respondent was considering in 2019 in the context of her AFO application.

156. The Tribunal notes there is a handwritten annotation on a medical with Dr Turner about consent of disclosure of the Dr Wheatcroft 2016 reports and profile but there is no evidence that was ever shown to the claimant.

157. In any event, there is no dispute that there is ambiguity in the way Mr Telford's letter to the claimant of 12 August is phrased; "it will help if you would please give written authority for the reports referred to from 2013 and 2016 to be released to me (via OHU if they haven't already got them – it is not clear from Dr Ezan's report). The claimant then responded in writing, "I am happy for the medical documents referenced in the medical report to be made available to you". On that basis Caroline Russell of Occupational Health assumed that the reference to the "2016 report" was the Dr Wheatcroft letters and the personal profile. She does not appear to have considered that it may relate to the Mel Fergus letter dated 25 September 2015 and date stamped received in Occupational Health on 8 March 2016, which confirmed the claimant's ASD diagnosis, p190 or that it could have referred to Dr McGuinness report of 2016 p203-4 ( as the claimant believed) which refers to both dyslexia and autism.

158. There is no dispute that Ms Russell disclosed to Inspector Telford on 14 August 2019, by walking across and giving him a physical copy of the documents, the 2013 dyslexia report and the letters dated February 2016 from Dr Wheatcroft (pages 193/194) and the unedited version of the claimant's personal profile (pages 195-7).

159. We turn to the first issue, which is whether the conduct was unwanted. There is no dispute that the claimant found that conduct to be unwanted. The next issue is whether it related to the claimant's disability. We find it did. The profile was disclosed because it related to the claimant's disability whilst the respondent was considering whether or not the claimant (by reason of her diagnosis of autism) should be permitted to go on the IFC.

160. We turn to the next issue – whether Caroline Russell had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We find that she had no such purpose. Ms Russell is an HR professional, and she was seeking to do her job and providing information to which she thought the claimant had consented.

161. We turn to consider whether the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We have taken into account the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.



162. The Tribunal has considerable sympathy with the claimant. She had a diagnosis of autism and she had chosen to share that. Unfortunately, the personal profile (which is in parts a generic document although sections of it are applicable to the claimant) had been retained by the respondent. However, the Tribunal finds that once the respondent's Occupational Health Department had obtained a copy of that document and retained it on the claimant's personnel file and mistakenly disclosed it to Inspector Telford honestly believing it was the relevant document referred to by Dr Ezan as the "2016 report", it was not reasonable in all the circumstances of the case for the claimant to feel that that had violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We find this information being retained and then disclosed was an unfortunate error.

163. The claimant has stated that Mr Telford was very supportive and had recommended her to attend the firearms course. He was trying to get to the bottom of all the information and to assist the claimant. In all these circumstances it was not reasonable for the conduct to have the disadvantageous effect.

164. We turn to the next allegation – the disclosure of the claimant's personal profile (to various sources which was not authorised by the claimant) to Deputy Chief Constable Webster and Sergeant Royle around the date of the memorandum on 22 July 2020. There is no dispute that in his report of 22 July 2020 Mr Telford disclosed to DCC Webster (copying in Sergeant Royle) the personal profile.

165. The Tribunal finds it is relevant that the claimant had become aware by 3 February 2020 when she had a meeting with Mr Telford that he had the personal profile. The Tribunal refers to an email from Mr Telford to the claimant on 28 January 2020 where he states:

"I will take this as your authority for me to approach Dr Wheatcroft direct as you suggest. The main areas I want to explore are statements in the document attached to his letter dated 16 February 2016. These describe some of the characteristics that might be seen in your personality that come from the ASD diagnosis. I need to deal with some of the specifics that DCC is most worried about affecting how someone might judge you after you've taken a course of action, for example if you were to shoot someone quite correctly but lawyers for the other side made something of a statement in it like 'I don't pick up on subtle hints'. They could use this to undermine what you've done if perhaps you've missed something important that anyone would have missed."

166. We find that the disclosure of the information was unwanted conduct and it clearly related to the claimant's disability. We find that Inspector Telford throughout this process was seeking to assist the claimant. He believed that she should attend the IFC and was making every effort to help her. He had no purpose in violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. It was the very opposite – he was trying to help.

167. In considering whether the conduct had the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, we take into account the claimant's perception and we are satisfied ,

given the effect of the personal profile on DCC Webster, that she does feel extremely upset about it, but when we look at the other circumstances of the case including the innocent way in which the profile came to hand, the fact that the respondent could not reasonably ignore it once it was seized of it and that by January 2020 the claimant should have been aware that the respondent had it, we are not satisfied that it had the disadvantageous effect.

168. We turn to the next allegation – the disclosure of the claimant's personal profile (to various sources which was not authorised by the claimant) namely to Kevin Nicholson (College of Policing) on 13 August 2020.

169. There is no dispute that Mr Telford shared information in relation to the traits from the personal profile with Kevin Nicholson (pages 978 and 979) but he did so on an anonymous basis and in an effort to assist the claimant. Although this is unwanted conduct related to disability, there is no purpose made out and so far as the disadvantageous effect on the claimant is concerned, when we look at all the circumstances of the case as is described above – the innocent way in which the information was obtained by the respondent and the efforts that Mr Telford was making to assist the claimant, together with the fact that she is not named to Kevin Nicholson – we find the disadvantageous effect is not made out.

170. We turn to the next allegation – the disclosure of the information to Chief Constable Chesterman on 2 September 2020.

171. We find that it is far from clear exactly what information was shared by Mr Webster with Mr Chesterman. It is not clear whether he shared detailed information about the traits from the profile document. In any event Mr Webster denied (so far as he could recall) naming the claimant. Although there was unwanted conduct related to disability because having found out that the information was shared with a person outside not only her line management structure but outside the Force entirely, accepting that it was done on an anonymous basis we are not satisfied it was reasonable for the conduct to have the disadvantageous effect.

172. We turn to the next allegation – the disclosure of the information to the claimant's supervisors on 5 June 2020.

173. We are not satisfied that this amounted to unwanted conduct, although it clearly related to disability. The claimant was consulted about Mr Telford contacting her supervisors. She must have been aware from the email we have referred to in January 2020 that the purpose of contacting her supervisors was to obtain positive information in the context of the perceived negative information contained in Dr Wheatcroft's letter and the personal profile. We rely on paragraph 14 of Mr Telford's statement (page 918). The claimant gave a list of the supervisors and tutors the respondent should contact, when asked to do so.

174. Accordingly, we are not satisfied that this relates to unwanted conduct, and even if we are wrong about that the purpose is not made out, and even if we are wrong about that in all the circumstances of the case neither is the disadvantageous effect.

175. We turn to the next allegation – the disclosure of the claimant's personal profile to Superintendent Bird on 14 December 2020.

176. Superintendent Bird was the grievance officer and tasked with dealing with the grievance at stage 2 (pages 1154-1191). The claimant's grievance was in relation to the decision made by Mr Webster. Mr Webster relied extensively on the personal profile document in reaching his decision. The grievance officer could not sensibly make a decision without the personal profile document. In these circumstances, although the claimant may consider disclosure of that information unwanted conduct related to disability, the Tribunal is satisfied that there is no purpose in violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. So far as the disadvantageous effect is concerned, when we consider all the circumstances, although that may have been the claimant's perception it was not reasonable for the conduct to have that effect because a grievance manager cannot sensibly decide a grievance without all the pertinent information, and the profile document was clearly relevant.

177. We turn to the next allegation (32.1.7) – disclosure of the information to FMA Walsh on 13 October 2020.

178. We find this is in relation to the claimant's subject access request. The claimant may have considered the disclosure of her personal profile to FMA Walsh to be unwanted conduct in relation to her disability. However, in the context of a subject access request a responsible person is required to look at the relevant documentation. FMA Walsh was such a person. Accordingly, although the claimant may have perceived her dignity to be violated, when we consider all the circumstances of the case and whether it was reasonable for the conduct to have that effect, it was absolutely not reasonable.

179. We turn to the disclosure of the claimant's personal profile to Ian Stainton and Nick Symonds (both from the University of Cumbria) on 8 June 2020.

180. We are not satisfied that this amounts to unwanted conduct. It is true that this information was sent to the tutors (or there was reference to it) and they are outside the respondent organisation, but the claimant had consented to this course of action and indeed suggested the names of the individuals to be contacted. In these circumstances it is doubtful whether it is even unwanted conduct. Even if it is, there was no purpose in the disadvantageous effect and that allegation must fail. So far as the effect is concerned, when we look at all the circumstances of the case it was not reasonable for the conduct to have that effect.

181. We turn to the next allegation, "The length of time it took to deal with the claimant's application to attend the IFC". We turn to the first question – was that unwanted conduct? The answer is yes. We turn to the next question – was the delay related to disability? We find the answer to that question is also yes because the enquiries that were being made which caused much of the delay were in relation to the claimant's diagnosis of Autistic Spectrum Disorder and the profile which she had produced also in relation to that diagnosis and how it impacted (if at all) on her

suitability to be an Armed Firearms Officer and to progress to the next stage to assess suitability at the IFC.

182. We turn to the next part of the test – whether the respondent had the purpose of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We are not satisfied there was any evidence of purpose.

183. We turn to consider the second part of the test – whether the conduct had the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

184. Firstly, we consider the claimant’s perception. As we have stated in this Judgment, the claimant is an intelligent impressive young woman whom we found to be a very good witness. She is clearly dedicated to her role as a Police Constable and wants to advance. She explained in her statement how upsetting and stressful and worrying the delay had been. She specifically identified she found the delay in the process to be humiliating. This cannot have been helped by the fact that given Mr Royle and Mr Telford were very positive about her prospects of being placed on the next course and genuinely believed she would, therefore indicated to the claimant that initially she would be on the course in September 2019 then February 2020 and then finally the third opportunity in September 2020. We have also had regard to the evidence we have referred to before of Superintendent Lory – that he did not progress the claimant on any other courses whilst this issue was outstanding.

185. It is true, as identified by the respondent, that as the course only ran at intervals of approximately six months some level of level of delay (once she had not been accepted on the original course) was inevitable. However, the Tribunal finds that there is a world of difference from being repeatedly told that you might be going on a course and being mentally ready to attend, potentially at short notice and then told you cannot attend, and it is to be delayed, to a candidate waiting to attend a course for which they have been accepted.

186. The Tribunal is also troubled by Mr Webster’s evidence that he was looking for a “gamechanger” and a “precedent”. Even when the evidence came back overwhelmingly to allow the claimant to progress to the next stage, he wanted further information from the College of Policing. If on the information he had once the matter was first referred to him, the risk was “insurmountable” it is very puzzling why the claimant was not told of that at the outset and she could have progressed her career elsewhere rather than allowing Mr Telford to do a huge amount of work obtaining information from the claimant’s supervisors and external sources, going back to the College of Policing and Dr Wheatcroft and in the process making many more people aware of the claimant’s diagnosis of autism.

187. In the specific circumstances of this case the Tribunal is satisfied it was reasonable for the conduct to have that effect. Accordingly, that allegation succeeds.

188. The last allegation relates to the Decision (and all that the Decision entailed) as above. The Tribunal is not quite sure of the meaning of the part in brackets but

so far as the Decision is concerned, that has already been found to be an allegation of direct discrimination and accordingly it cannot also be an allegation of harassment.

### Time Limits

189. Finally we turn back to the issue of time limits. It is accepted that the claims which relate directly to the decision of DCC Webster taken on 1 September 2020 to refuse the claimant's attendance on the course, on 1 September 2020 are within time.

190. We are satisfied that the claims which we have found are successful all directly relate to the decision taken on 1 September 2020.

191. For the avoidance of doubt, in relation to the successful harassment complaint which relates to the length of time it took to deal with the claimant's claimant (Issue 31.3), the Tribunal finds that is also within time.

192. The Tribunal relies on s123 Equality Act 2010 . In the absence of evidence to the contrary, a person is taken to decide on a failure to do something when he does an act inconsistent with doing it or if he does no inconsistent act, on the expiry of the period in which he might reasonably have been expected to do it. We find the period of delay in failing to progress the claimant onto the IFC ended on 1 September 2020, on the expiry of the period Mr Webster might reasonably have been expected to do it.

193. If we are wrong about that, we find there was a course of conduct over the period of time whilst the claimant was waiting to attend the IFC which ended on the date the decision as made to refuse her, on 1 September 2020.

194. Accordingly that claim is also within time.

195. At the outset of this case, a casual observer may have thought at a cursory glance at the bare bones of this claim without considering all the information and the detailed evidence from the parties, that based on stereotypical assumptions, an officer with a diagnosis of autism was not suitable to attend a firearms course. Our task was to find the facts, consider the evidence and apply the law to the facts. We have done so and find in these specific circumstances, for the reasons given above, that is not the case and the claimant's claims for disability discrimination as identified in the Judgment succeed.

**196. The case will proceed to an "in person" Remedy Hearing at 10am on 18 January 2024, a date agreed with the parties at Alexandra House 18-22 Parsonage Manchester, M3 2JA.**

197. The claimant should provide a statement relevant to remedy and a calculation of loss and/or request for a recommendation and send to the respondent within 28 days of the date this judgment is sent to the parties. The parties will liaise to agree a small file of documents relevant to remedy, the respondent to prepare it and send to the Tribunal at least 7 days before the remedy hearing.

198. Of course if the parties, who are both ably professionally represented, are able to agree remedy, they should inform the Tribunal so the listed Remedy Hearing can be vacated.

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Employment Judge K M Ross

Date: 20 October 2023

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

23 October 2023

FOR THE TRIBUNAL OFFICE

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