THE EMPLOYMENT TRIBUNALS

Claimant: Mrs NJ Dunn

Respondent: The Chief Constable of Northumbria Police

Heard at: Newcastle Hearing Centre

On: 6, 7 and 8 March 2024
with deliberations on 15 March 2024

Before: Employment Judge Morris
Members: Mrs A Tarn
Mr J Weatherston

Representation:
Claimant: In person
Respondent: Mr J Morgan of Counsel

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

1. The claimant's complaint that, contrary to section 21 of the Equality Act 2010, the respondent failed to comply with its duty under section 20 of that Act to make adjustments is not well-founded and is dismissed.

2. The claimant's complaint that the respondent indirectly discriminated against her in relation to the protected characteristic of disability contrary to section 39 of the Equality Act 2010, with reference to section 19 of that Act, is not well-founded and is dismissed.

REASONS

The hearing, representation and evidence

1. The claimant appeared in person and gave evidence. The respondent was represented by Mr J Morgan, of Counsel, who called the following employees or former employees of Northumbria Police to give evidence: namely, Ms K

Hetherington, formerly Chief Inspector in the Communications Department; Ms KE Wilson, at the time Acting Sergeant in the Telephone Investigation Unit; Ms CV Wallace, Senior People Partner with the People Services Department.

2. This was a remote hearing, which had not been objected to by the parties. It was conducted by way of the Cloud Video Platform as it was not practicable to convene a face-to-face hearing, no one had requested such a hearing and all the issues could be dealt with by video conference.

3. The evidence in chief of or on behalf of the parties was given by way of written witness statements, which had been exchanged between them. The Tribunal also had before it a bundle of agreed documents comprising some 256 pages to which was added during the course of the hearing a copy of the claimant's duty rota during the period 3 October to 4 November 2023, to which the page number 014 has been given. The numbers shown in parenthesis below refer to the page numbers or the first page number of a large document in that bundle; the page numbers commencing with a 0 being pages in a supplementary bundle of documents.

The claimant's complaints

4. As been identified at the Preliminary Hearing conducted on 2 May 2023 (28) the claimant's complaints were as follows:

   4.1 The respondent had failed, contrary to section 21 of the Equality Act 2010 "the 2010 Act"), to comply with the duty to make adjustments imposed upon her by section 20 of that Act.

   4.2 The respondent had indirectly discriminated against her in relation to disability contrary to sections 19 and 39(2)(d) of the 2010 Act.

5. It is to be noted that at that time, these proceedings involved claims by three claimants, which had been combined. The claims by the other two claimants then fell away for reasons of which this Tribunal is unaware and only the claim of this claimant has continued. This explains why, on occasions, there are references in the list of issues to "the Claimants" in the plural and to "them", "they" etc.

The issues

6. The parties had produced a list of issues, which is attached as the Appendix to these Reasons. It reflects the issues set out in the record of the Preliminary Hearing referred to above (33) but also, somewhat unusually, contains averments or contentions made by the respective parties in relation to the issues.

7. At the commencement of the hearing, Mr Morgan referred to paragraph 2.2.1.3 in the list of issues and advised that he was not intending present the respondent's case on that basis. It was therefore agreed that that paragraph should be deleted.

Consideration and findings of fact

8. Having taken into consideration all the relevant evidence before the Tribunal (documentary and oral), the submissions made by or on behalf of the parties at the Hearing and the relevant statutory and case law, including that referred to by the Mr Morgan, (notwithstanding the fact that, in pursuit of some conciseness, every aspect might not be specifically mentioned below), the Tribunal records the following facts either as agreed between the parties or found by the Tribunal on the balance of probabilities.

    8.1 The claimant is employed as a police constable with Northumbria Police of which the respondent is the responsible officer. The claimant commenced her employment on 15 September 1997.

    8.2 Following an incident at work in October 2012 the claimant was diagnosed with post-traumatic stress disorder (PTSD) (55). She was diagnosed with irritable bowel syndrome (IBS) in 2019 (69). On these bases the respondent accepts that the claimant is a disabled person as defined in section 6 of the 2010 Act.

    8.3 In May 2016 the claimant joined the Resources without Deployment, which later transformed into the Telephone Investigation Unit (TIU). Roles within the TIU are adjusted roles, meaning that they are suitable for officers who are not fully deployable. It comprises some 120 people. The TIU is part of the Primary Investigation Centre (PIC) within the Communications Department of Northumbria Police.

    8.4 Despite the first lockdown as a consequence of the Covid pandemic in March 2020, the claimant continued to work in the respondent's office at Ponteland. At that time the claimant found the working environment to be stressful. She explained that there were not many in the office and new recruits were relying upon her. Additionally, going to work put her family at risk. These circumstances impacted upon her symptoms of stress and IBS. So as to better manage those symptoms the claimant sought permission to continue in her TIU role working from home, which was agreed in July 2020.

    8.5 For various reasons, including the Covid lockdown, the majority of those employed by Northumbria Police also worked from home at this time.

    8.6 In 2021 a force-wide review of new ways of working was undertaken, which arose from the various arrangements that had been put in place during the pandemic. In around Spring 2022, the Chief Officers' Team of Northumbria Police directed that employees should be brought back to location-based rather than home-based working.

    8.7 This was a significant undertaking in terms, for example, of relocating computers and other equipment and addressing the impact on staff including those with health issues or who had adjusted their domestic arrangements. Specifically in respect of the PIC, there was a need to bring

the team back to the office to train on a new information management system, "Connect". Previous experience with the introduction of a different system, "STORM", had shown that training was better delivered face-to-face rather than remotely.

8.8 On 3 October 2022, Ms Wallace wrote to an officer of the Police Federation ("the Federation") to inform him of the proposals and that, many officers having worked from home was some 2½ years, some resistance was expected (100).

8.9 Superintendent Adams wrote to all affected employees by email of 13 October 2022 to inform them of the end of home working and the return to working at Ponteland (105). He gave a commencement date of 7 November 2022. In the event, for logistical reasons, particularly in respect of IT issues, the return was staggered with TIU staff beginning to return on Monday, 14 November 2020 (111). Amongst other things, Superintendent Adams recorded in his email that he anticipated queries, "understandably so", and asked that concerns be fed through first-line managers who would feed them up to the senior management team. He also explained that a 'frequently asked questions' document would be produced, which it was. In particular, Superintendent Adams stated as follows:

> "Finally, no one underestimates the impact of this decision after such a period away:
>
> 1. We will ensure adjustments are made where appropriate to assist you individually through the process.
> 2. Your Inspectors are fully briefed and will be able to respond to any queries you may have in the first instance."

8.10 The following day, 14 October, the claimant wrote, not to her first line manager but directly to Superintendent Adams with a copy to Ms Wilson (111). She explained that for some time she had work from home "due to an ongoing stomach complaint" and that she suffered from PTSD. She stated,

> "I have found that there is a significant correlation between attending an office environment and the flare up of a debilitating stomach complaint. Given the above, and my belief that I am disabled under the Equality Act 2010, I would kindly request that a reasonable adjustment could be made to allow me to continue to work from home.

8.11 In light of the matters raised by the claimant in her email, Ms Wilson considered it appropriate to refer her to Occupational Health (OH), which she did that day, 14 October 2022 (108). OH services are provided to Northumbria Police, not by an internal department but by a third party provider.

8.12 The claimant was not actually at work a great deal around this time. In the period of some three weeks between 14 October and 4 November 2022 she worked on 14, 20, 21 and 31 October and 1, 2 and 3 November, her absences being due to annual leave, rest days and rostered rest days (014).

8.13 In an email timed at 21.45 on 31 October the claimant wrote to Ms Hetherington (118). She stated that she had not received a reply to her email of 14 October to Superintendent Adams. She also stated that her GP had signed her as fit for work, provided she worked from home for the time being, which she said she would discuss with OH during her appointment on 1 November 2022.

8.14 The following morning (1 November), on receipt of the claimant's email, Ms Hetherington telephoned the claimant and then wrote to her later that day (118). The Tribunal interjects that the claimant and Ms Hetherington had known each other for many years: first when they both began to work for a local council, "as 16-year-olds from school" (as the claimant put it while giving evidence) and then they both became police officers.

8.15 In her email, Ms Hetherington explained the reason for her delayed response as being that she knew the claimant was on holiday and wanted to speak to her on her return. She continued,

> "All staff who have raised concerns about returning to the office are being invited into to have a face to face discussion with myself and Vicki Wallace. This gives you the opportunity to discuss all of your concerns whereas an email is not the greatest way to communicate on important and personal issues.
>
> As per our discussion this afternoon I will speak to Vicki Wallace and arrange a time next week (during your duty time) and let you know. There is no problem in bringing a representative from the Federation."

8.16 During cross examination, the claimant agreed, first, that a face-to-face discussion was preferable (albeit adding that one reason was that Northumbria Police "won't put anything in writing") and, secondly, that it was better to await the report from OH following her assessment, which was to take place on 1 November, in order to understand what reasonable adjustments might be made. She was, however, dismissive of Ms Hetherington suggesting, "She did not know what she was talking about – she was out of her depth. My impression was – she has not got a clue." This was not the impression that the Tribunal gained of Ms Hetherington whom it is satisfied gave clear, consistent and persuasive evidence.

8.17 The claimant's OH assessment duly took place on 1 November and the report was issued that day (120). Amongst other things the report records that the claimant is "Fit – with restrictions/adjustments" and,

> "it is likely that a return to working in the office environment will have a negative effect on Nicola's overall health, however this is an organisational decision. If a return to office working is deemed necessary, then a supportive and engaging approach would be recommended to help facilitate the return. No other identifiable adjustments are identified at this stage."

8.18 As Ms Hetherington had promised, on 4 November 2022 she asked Ms Wallace to arrange a meeting, which she attempted to do (124) and they identified 10 November 2022 as a suitable date. On the evening of 7 November Ms Wilson spoke to the claimant following which she wrote to Ms Hetherington (125). She asked if a meeting involving the claimant might be scheduled for that week and noted that the claimant was, "of the belief that just because she submitted a sick note and spoken with OHU that it was a given she'd be allowed to stay at home".

8.19 In cross examination the claimant said that during their telephone call on 7 November, Ms Wilson had been insistent that it did not matter what the doctors said, she would return to work anyway. She had been fuming at the way she was spoken to so, on 8 November 2022, she telephoned the duty sergeant to say that she was sick. She commenced a period of sickness absence that day from which she was not to return until August 2023. In cross examination Ms Wilson answered that she could not remember what claimant maintained had occurred during their conversation but only recalled what she had written in her email to Ms Hetherington. The Absence Management Record (202) makes no reference to the claimant having mentioned her telephone call with Ms Wilson when she telephoned to say that she was sick, which the Tribunal considers would have been like if the content of that teller call had been the cause of her telephoning the sergeant to say that she was sick. That record contains, amongst other things, the following:

8.19.1 "Nicola is too stressed to come into work and her trigger today is the fact that she knew she had to come in for CPD";
8.19.2 "she simply does not feel able to ever come back to the workplace";
8.19.3 "she intends to be on the sick for the foreseeable and is annoyed as it doesn't feel she is being listened to";
8.19.4 "She states she is disabled and that the request for her to come back is possibly illegal and that she is only prepared to work as long as the job is wfh";
8.19.5 Nicola believes she is being betrayed by bosses that have previously praised her for her excellent work."

8.20 As a consequence of the claimant's absence, Ms Wilson attempted to contact her on 8 November first by text and then by 'phone when she left a voicemail message; both of which approaches she repeated on 9 November. The claimant confirmed that she was aware of these attempts to contact her but did not respond as Ms Wilson, "was the last person I wanted to talk to".

8.21 The claimant did, however, then send an email to Ms Wilson on 10 November (134). The claimant did not refer to what she says Ms Wilson said to her during their telephone call on 7 November. Instead, she reiterated that she had a disability and did not "feel able to work away from home given the several mental and physical health conditions that I suffer from that are exacerbated when I attend a workplace", and that the OH had suggested that she did continue to work at home. Finally, she stated that her GP had placed her "on sick leave with stress and anxiety."

8.22 Ms Wilson was on holiday so the claimant forwarded her email to her Inspector (134) and he, in turn, forwarded it to Ms Hetherington on 14 November (133). She wrote to the claimant on 15 November noting that the intended meeting on 10 November had not gone ahead due to the claimant's sickness but that she would be speaking to Ms Wallace and AP (a Federation officer) that afternoon after which she would update the claimant (133).

8.23 Around this time, an issue arose as to whether officers within the PIC would be allowed to work from home. On the basis of the documents available to the Tribunal it appears that the starting point was an email from Ms Wallace to OH on 19 October 2022, which she wrote in the context of the decision that officers were being asked to return to the workplace (113). She stated,

> "Whilst home working will always be available for consideration as a short-term, rehabilitative measure for officers for example after illness or injury, management were keen for you to be aware that it is not a reasonable adjustment which can be offered on a permanent basis."

8.24 This issue was then referred to in a message sent by OH to an employee within Northumbria Police on 21 October 2022 in which it is stated, "We have been advised that homeworking is no longer an option" (116).

8.25 AP raised this issue with Ms Hetherington in an email of 10 November 2022 (130), a copy of which he sent to Ms Wallace, in which he stated,

> "several members have advised me that they are being told they are not allowed to continue to work from home, where circumstances would suggest that they should be allowed to continue to do so as a reasonable adjustment.
>
> I think it would be useful to discuss a number of cases for which there appear to be reasonable adjustments required due to disability and the officer being told to attend the office to work contrary OHU advice?"

He cited the claimant's case as one of those he had in mind.

8.26 Ms Wallace replied that day stating, amongst other things, that with regard to the officers to whom AP had referred,

> "No meetings with these officers have taken place as yet, therefore management have not yet had the opportunity to formally consider what bespoke support might be necessary for these officers – it feels like we are jumping ahead somewhat without those meetings having happened.
>
> A full range of reasonable adjustments are available for consideration, and both management and myself welcome your support in working to meet both organisational and individual needs. It may be helpful to discuss this further ….." (129)

8.27 Ms Wallace then wrote again to AP on 16 November 2022 (138) including as follows:

> "The ability to work from home <u>permanently</u> is not something which PIC are able to afford any more – as you're aware, the introduction of connect is fast approaching and whilst officers can undertake the mandatory training from home, there is a wide acceptance that officers need continual exposure to the system to become fully competent in the system with access to 'connectors' being available in the office to coach individuals through any issues. In addition, officers are required in the office for other CPD, 1:1's etc.
>
> We are however aware of our equality obligations, and through the one to one process, having considered each person's individual needs, we believe we have been able to arrive at some good solutions …."
>
> "…. we are actively working with people to try and find solutions bespoke to individual need, however the ability to work from home 100% of the time, never to visit a police premises again is not something which PIC are able to afford any longer. If this type of adjustment is required, then the discussion which will take place with the individual through the 1:1 process will resolve around other roles in the organisation which might be better able to accommodate their needs."

8.28 As a consequence of her sickness, the claimant could not attend the meeting that had been intended for 10 November 2020. A further date of 24 November was agreed for a meeting to be attended by Ms Hetherington, Ms Wallace, the claimant and AP (141). Unfortunately, at the claimant's request, that meeting also had to be cancelled due to her experiencing chest pains, which could have been caused by angina.

8.29 On 24 November 2022 Northumbria Police received notification from ACAS of early conciliation in relation to these matters (19), which the Federation advised Ms Wallace had been put in as a protective measure

due to having been caught out on time points in previous cases. This is referred to in the claimant's Grounds of Complaint, "This claim has been lodged protectively and the Claimant reserves the right to provide further information of the claim" (18).

8.30 On 29 November, following a positive meeting involving Ms Hetherington, Ms Wallace and LB of the Federation in relation to other matters, the discussion moved on to the claimant's situation and, particularly, what support measures could be put in place for her in the context of the general requirement for officers to return to work in the office.

8.31 By email of 30 November (145), LB wrote to Ms Hetherington and Ms Wallace as follows:

> "I spoke to Nicola yesterday as discussed and she is very relieved with your proposal.
>
> I gave her the rough outline and whilst she is still too poorly to return right now she believes that a detailed plan to work towards would be beneficial and give her something to work towards.
>
> Please could we follow the same format as discussed with the other members yesterday, whereby Vicky produces an initial plan with scope to discuss and adjust the details?
>
> I'm happy to pass any plans on to Nicola and have discussed with her the requirement for a supported meeting with you as soon as she is well enough."

8.32 In light of this response and as had been requested by LB, Ms Wallace produced a draft supportive measures document (149), which she submitted to LB on 9 December 2022 (161) commenting, "let me know if Nicola would like to discuss anything further". LB sent to the document to the claimant that day (161) and responded to Ms Hetherington on 15 December (160) stating, "I've spoken to Nicola in relation to the supportive measures document and she really appreciates the content and the adjustments you've suggested". She continued that the claimant would like to query the wording of a few points, which she would appreciate being considered. In summary, the claimant's requests were as follows:

8.32.1 Whether the exact sickness details could be recorded?

8.32.2 Whether the reference to the unauthorised absence procedure (UAP) could be altered to clarify that it was not "to be used as a tool to manage unsatisfactory performance" or "there are no unsatisfactory performance issues at this time" or possibly be removed completely?

8.32.3 Whether it could be clarified that the reference to it not being reasonable and unachievable for the claimant to be allowed to remain on sickness absence until fully fit was because she "has a disability and so will never be able to be fully fit."

8.33 Ms Wallace replied on 22 December (159) agreeing to incorporate the first and third of the above points but explaining that the second point created a sight difficulty because, although she did not believe there was any intention to initiate the UAP at the current time, "instead preferring to work with yourself and Nicola towards resolution", in the event that the claimant's "absence becomes prolonged then this may have to be revisited", albeit reminding LB that the starting point of any UAP was supportive measures. Ms Wallace amended the supportive measures document accordingly (162). She attached the amended version to her email, which concluded, "I welcome any thoughts."

8.34 The Tribunal is satisfied that the supportive measures document represents a genuine attempt on the part of Ms Wallace and Ms Hetherington to produce, in liaison with LB and with input from the claimant, a document that records fairly comprehensively the measures (in terms of section 20 of the 2010 Act, the "steps") that would be put in place to support the claimant and address her concerns about returning to the workplace. It rejects the claimant's contention that, "It was just put together between HR and the Federation to appease me. It just came about because I went to ACAS."

8.35 Sections in that supportive measures document set out the following: the history of the claimant's absence (as LB had requested in the first point of her email of 15 December referred to above) including medical and OH advice; welfare visits and contacts there had been; supportive measures that had been undertaken. An entry in the Welfare visits section records that the document was being completed in response to the request from LB and continues as follows:

> "Nicola remains welcome to have input into this document either via a meeting with management or remotely, the priority is that it's a document which is sufficiently reflective of the situation and meets the needs of all parties, in particular Nicola's health. It is a document which aims to set out exactly what support and reasonable adjustments are being afforded to Nicola, which might enable her to return to work following her current period of absence, but also with a view to maintaining a sustained return to work thereafter." (150)

8.36 An entry in the Support section of the document (164/165) reads as follows:

> "Taking into account the OHU advice provided, it is proposed that Nicola continue homeworking as part of a reasonable adjustment, however to attend the workplace for training, CPD and one to ones.
>
> It is identified that reasonable adjustments within this could be made to support Nicola, for example flexibility on shift times to avoid travelling at peak times to minimise time spent driving, and

also attending work for part days rather than full days, if this would be helpful to Nicola.

It is acknowledged that this still necessitates a requirement for Nicola to attend the office periodically, which has the potential to impact her condition, however a supportive and engaging approach will be taken towards this, for example by carefully planning the attendance of Nicola at work by providing plenty of notice, and giving Nicola some input on which days may be best for her to attend etc. It is felt it would be remiss to have a situation with an individual whereby they are never seen face to face by management, and also raises a concern under Section 2 of the Health and Safety at Work at 1974, which outlines managements responsibilities towards ensuring the health and safety of individuals, which extends to include their mental health."

8.37 A key section of the document in relation to these proceedings is headed, "Duties/Workplace" (166) excerpts from which are as follows:

Temporary amendments to duties to assist the management of their condition	As outlined above, management are proposing that Nicola may continue homeworking in line with the OHU advice of 1 November 2022 however Nicola is required to attend the workplace for training, CPD and 1:1's with her supervisor, with those reasonable adjustments outlined above. This arrangement would be subject of regular review, to ensure that it meets both Nicolas needs, and also organisational needs too.
Phased return to work plan, recuperative duties and risk assessment	A phased return to work will be made available to Nicola, at such time as she is well enough to return to work. This will see Nicola increase her hours gradually over a period of 4 weeks. Nicola will carry out her substantive role during this period of time, and it is not felt necessary to seek any form of amended duties, however this can be subject of discussion in the event that Nicola feels this is an issue.
Reasonable adjustment framework	This includes a phased return to work following sickness, the ability to continue working from home, adjustments around office attendance including flexibility to shifts to assist with travel time, and attending work for part days only if this assists Nicola in managing her condition. In the workplace, Nicola will have access

	to a DSE compliant workstation (with input from H&S officer if required), and will be able to take regular breaks as required.

8.38 Additionally, in relation to the section, "Allow to remain on sickness absence until fully fit", reflecting the third point raised by LB on behalf of the claimant in her email to Ms Hetherington on 15 December (160), it is recorded,

> "This is not reasonable, and unachievable to Nicola as she has a disability therefore will never be in a position to be classified as a fully fit officer." (168)

8.39 Finally, with regard to the second of the points raised by LB on behalf of the claimant in that email of 15 December, it is recorded as follows:

> "Unsatisfactory attendance procedures should not commence until all supportive measures have been considered and exhausted and there remains no improvement in attendance. If there has been no improvement in attendance, then formal UAP may commence. If management decides to take no further action at this time, further action may be taken should further sickness absence issues occur." (169)

8.40 The references in the supportive measures document to the claimant having flexibility on shift times and some input into upon which days it might be best for her to attend at work are consistent with the claimant's oral evidence that training on a particular topic was provided over a five-week period and if she was not well enough to attend training on a particular day it would be repeated on later days within that five-week period when she would hopefully have been well enough to attend.

8.41 This supportive measures document would always have been important in these proceedings. It became especially so when the claimant accepted in cross examination at the end of the first day of the hearing, first, that it contained proposals for adjustments that were reasonable and, secondly, that from 9 December 2022 when the document was sent to LB, Northumbria Police had complied with its duty to make reasonable adjustments and that that had removed the disadvantage. It is right that the claimant added that that had come "too little, too late" but that is not the question. In any event, the Tribunal rejects that contention as to this being "too little" as that is inconsistent, first, with the claimant having confirmed, through LB, that she was content with the document and, secondly, with her concession. The Tribunal also rejects the contention that the document was produced "too late" given its findings as to the timescale as set out below under the heading "*The time taken to complete the exercise*".

8.42 Even without that concession by the claimant but especially so in light that concession the Tribunal is satisfied that the content of the supportive measures document did indeed represent the respondent's compliance with the duty to take reasonable steps and did remove the disadvantage to which the claimant was put.

8.43 At the commencement of the second day of the hearing the claimant sought to shift her position somewhat by maintaining that the supportive measures document was a return to work document following sickness absence and that the respondent should have addressed her disability in accordance with the Reasonable Adjustments Framework (170) but had failed to do so. In answer to a question from the Employment Judge directed at understanding the claimant's contention, she accepted that the Duty/Workplace section of the supportive measures document contained proposed adjustments but continued to maintain that they were supportive measures for a return to work after sickness and repeated that the respondent had not addressed her disabilities. That answer appeared to be inconsistent, however, with paragraph 20 of the claimant's Grounds of Complaint (14) in which it is stated that the supportive measures document that was created and sent to the claimant on 9 December 2022 "was to assist with setting out what support and adjustments the Claimant required. This refers to the adjustments discussed during the meeting on 29 November 2022". The claimant was asked to what document reference was being made in that paragraph 20 and replied that it was the supportive measures document at page 162; she did not suggest that it was a reference to the Reasonable Adjustment Framework document at page 170. When asked whether the Duties/Workplace section of the supportive measures document contained reasonable adjustments she replied that they were supportive measures for adjustments to facilitate a return to work after sickness whereas the document at page 170 was to address disabilities and that there are no documents in this case to say that these had been looked at, "they didn't assess my disabilities". She added that the supportive measures document was "just a tool to get people back to work".

8.44 The Tribunal does not accept the claimant's contentions in this regard. In both its draft and final forms (149 and 162) the document is clearly headed "Supportive Measures (Attendance) Officers and Staff" and indeed that same heading is used on the document which ultimately provided the basis for the claimant's return in August 2023 (004). The Tribunal prefers the evidence of Ms Hetherington and Ms Wallace that the supportive measures document follows the standard template used by Northumbria Police in relation to circumstances such as these and while it does not expressly refer to the Reasonable Adjustment Framework (170) it does give effect to the principles contained in that Framework. As Ms Wallace said, "We work in the spirit of the document [*i.e. the Framework document*] and individual documents reflect this including the supportive measures document". It is also to be noted that in neither the Grounds of Complaint attached to the claimant's claim form nor in her witness statement did the claimant make these points about the supportive measures document

being only in respect of adjustments to facilitate a return to work after sickness whereas the Reasonable Adjustment Framework document at page 170 was to address disabilities; indeed she had not referred to that latter document at all prior to the commencement of the second day of the hearing when she sought to shift her position somewhat away from the concession she had made the previous afternoon in relation to the effect of the supportive measures document.

8.45 The claimant continued to be absent from work at this time with her fit notes being progressively extended. This is recorded in the absence management record, which also sets out the contact Ms Wilson had with the claimant (202). As had been the case on 8 and 9 November, referred to above, she made unsuccessful attempts to contact the claimant on 13 and 17 December before they were able to meet on 19 December 2022. At their meeting the claimant explained that it was believed that she was suffering from stress and did not appear to have angina as originally thought. Further contact was maintained with the claimant by Ms Wilson by text message on 30 December 2022 and 9 and 24 January, 3 February and 3, 9, 15 and 16 March 2023 and by telephone on 17 January and 28 March 2023. In her text message of 3 February 2023 Ms Wilson informed the claimant that it was time for another meeting and although the claimant received that message she did not respond (205).

8.46 Although not of direct relevance in these proceedings the Tribunal records the following points.

8.47 A further referral was made to OH on 21 March 2023 for which the claimant was assessed on 30 March 2023 with the report being issued that day (215). Amongst other things that report records that the claimant is “not fit for duty” and the following:

> “she states she does not feel she is able to return to work in any capacity and is looking into early retirement. She experiences an exacerbation in her symptoms of IBS and PTSD when thinking about work or has any communication with work.”

8.48 The claimant having been absent from work due to sickness since 8 November 2022, the new Head of Communications Department, Chief Superintendent Alderson, wrote to her on 3 April 2023 to inform her that, in accordance with the Police Regulations 2003, she would reduce to half pay from 4 May 2020 (217). The claimant replied on 12 April commenting, amongst other things, that she now felt that she needed advice on ill-health retirement.

8.49 By letter of 28 April 2023 (220) Ms Alderson informed the claimant that her reduction to half pay would become effective on 4 May 2023. On 11 May the claimant submitted a formal grievance to Ms Alderson in respect of that decision (226), which was later rejected and the claimant remained on half pay.

8.50 Ms Alderson wrote again to the claimant on 19 April 2023 (001). Having noted that the claimant had felt unable to progress Ms Hetherington's offer of a meeting, Ms Alderson repeated that offer. That meeting took place on 23 May 2023 (002) and involved Ms Alderson, the claimant, her two Federation representatives (AP and LB) and RC from People Support. One of the key outcomes of that meeting was that it was agreed that a new supportive measures document would be produced, which it was (004). As indicated above, on the basis of that document the claimant returned to work from sickness absence albeit continuing home working with further "discussion being required around training, CPD and 1-2-1's with her supervisor, and as to whether there would be a requirement to attend the workplace for these to be completed" (007). The claimant returned to work on 8 August 2023 on a phased basis and with recuperative duties details of both of which being set out in a Recuperative Duties Form (010).

8.51 The above findings of the Tribunal address the chronology in this case. More generally, the claimant made a number of criticisms of the process to which the Tribunal now turns in no particular order.

Ms Hetherington having conduct of this exercise

8.52 The claimant questioned Ms Hetherington as to why such a significant task of bringing employees back to location-based work had been managed only by her. She replied that this had allowed for fairness. It was very important to treat everybody fairly but with reference to their individual needs. There had been three Inspectors any one of whom could make a decision influenced by personal relationships resulting in different approaches. To overcome that only she had dealt with this task albeit working very, very closely with Ms Wallace who was the expert in respect of People Services. The Tribunal accepts that evidence noting, especially with Ms Wallace being the sole point of contact for HR advice, that that would produce continuity and consistency of approach. On a related point the Tribunal also notes that those two individuals liaised closely with Federation representatives being primarily AP in the early stages and LB later.

The approach to the exercise

8.53 The claimant similarly questioned the approach to the exercise. As she put it, "They didn't speak to me but asked everyone to return to work." The claimant put this issue of the approach to the implementation of the return to location-based work to Ms Hetherington suggesting that it would have been more appropriate to proceed by, first, contacting employees on an individual basis to identify issues to which the proposal would give rise. Ms Hetherington answered that with 120 staff across the department (police constables, sergeants and inspectors) it was unrealistic to approach them all individually, which she suggested would produce 120 different answers. Instead, the decision had been taken to give staff 4 to 5 weeks' notice of when they were expected to return to the office, allow time for those who

had issues to come forward to speak to her and Ms Wallace, then speak to them, consider the points that had been raised and, if necessary, make adjustments to accommodate them. The Tribunal accepts that that approach was reasonable and sensible in the circumstances. Ms Hetherington explained that while that had been the plan, it had not happened for the claimant due to her absence from work because of sickness. She did not accept the suggestion the claimant put to her that, as a disabled officer, she should have been treated as a priority, explaining that other staff were in exactly the same position and it would have been unfair to prioritise the claimant in that way. The Tribunal accepts that evidence.

8.54 In this connection also, the claimant put to Ms Hetherington that a risk assessment should have been undertaken. She replied that that was unrealistic asking, rhetorically, in relation to which of the employees a risk assessment should have been undertaken, all 120 employees or only those on limited duties for which there were six different reasons? The Tribunal also accepts that evidence in relation to which Ms Hetherington repeated the essential plan for the return to office working: the staff would come forward with any issues; there would be a meeting; reasonable adjustments would be considered. In the latter respect she always used the supportive measures document as a framework.

The telephone call on 1 November 2022

8.55 While answering questions during cross examination, the claimant had stated that during their telephone call on 1 November 2022 about returning to the office, when she had told Ms Hetherington that she was disabled, her response was, “Nicola, you’re a police officer.” The claimant did not put this point to Ms Hetherington during cross-examination and, therefore, the Tribunal asked her about it. She replied that she remembered the conversation but her recollection was different. She explained that she spoke to the claimant because they had known each other a very long time. They had a very good relationship and the claimant was very valued in the department and was an extremely hard worker. That was why she had spoken to the claimant after she had heard that she did not want to meet face-to-face. She had said to the claimant that she would be supportive and there was nothing that could not be sorted, and she was not there to make issues for her. As best she could recall she had said, “Look Nicola, we will sort it out”, and had emphasised the importance of meeting face-to-face. She found the claimant to be extremely sceptical during their conversation but at the conclusion she had agreed to a meeting.

8.56 Having heard and carefully considered the oral evidence of both the claimant and Ms Hetherington on this point and brought into account that the claimant did not refer to it in either her Grounds of Complaint or her witness statement, the Tribunal prefers the evidence of Ms Hetherington.

The time taken to complete the exercise

8.57 The claimant was also critical of the length of time that had been taken to address her issues regarding returning to the office. On several occasions she stated that she had been "ignored for six weeks"; that being a reference to the period from the date of her email to Superintendent Adams on 14 October to the date of receipt by ACAS of the early conciliation notification, 24 November 2022 (19). As mentioned, the claimant wrote to Superintendent Adams on 14 October. That email was forwarded to Ms Hetherington to deal with. At that time she had some absence from work and the claimant was on holiday and had other days off only working on 14, 20, 21 and 31 October and 1, 2 and 3 November as set out above. On returning to work on 31 October the claimant had spoken to Ms Wilson who asked her to contact Ms Hetherington. This she did by email of 31 October timed at 21.45 (118) and, as recorded above, on receiving that email on 1 November Ms Hetherington telephoned the claimant and then sent an email to her proposing a meeting. It is repeated that in cross examination of the claimant on this point she accepted, first, that a face-to-face discussion was preferable and, secondly, that it was better to await the report from OH following her assessment, which was to take place on 1 November, in order to understand what reasonable adjustments might be made.

8.58 As recorded above, progress was then interrupted by the claimant's absence from work due to ill-health. The claimant did not respond to attempts by Ms Wilson to contact her on 8 and 9 November by text and then by 'phone but did write to Ms Wilson on 10 November, which she then forwarded to her Inspector and he, in turn, to Ms Hetherington on 14 November. She wrote to the claimant on 15 November noting that the intended meeting on 10 November had not gone ahead due to the claimant's sickness but that she would update the claimant after a meeting with Ms Wallace and AP that afternoon.

8.59 Despite the claimant being unable to attend meetings proposed for 10 and 24 November, in a meeting with the Federation representative, LB, on 29 November LB requested that, as had been done in respect of other employees, a supportive measures document should be produced. This was agreed, a draft was sent to LB on 9 December, she replied with the claimant's questions on 15 December and the final draft was produced on 22 December; albeit that remained a draft in relation to which it was stated that any further thoughts of the claimant would be welcome.

8.60 Ms Hetherington's progress with claimant's situation must also be seen in the context of her having to address concerns, comments etc raised by other members of the TIU, fourteen examples of whom are listed in her email of 3 November 2020 (122) but there were others in addition; from memory, she thought that there were 12 to 15 individuals who had health needs whose issues were equivalent to those of the claimant would have to be accommodated.

8.61 All in all, having carefully considered all of the evidence before it, the Tribunal is satisfied that the respondent conducted this significant exercise regarding returning staff to the office professionally and in a timely manner.

8.62 On a related point, the claimant maintained that the respondent had only begun to progress her situation following the referral to ACAS on 24 November 2022 but the Tribunal is satisfied that, as can be seen from the above, that contention is not supported by the evidence and is misplaced.

Working from home

8.63 The claimant was also critical of what she saw as the respondent's decision that, as a policy, officers would never be allowed to work from home. This issue has been fully addressed in the Tribunal's findings of fact above. In summary, the Tribunal is satisfied that this was a misunderstanding in the minds of OH and thence the Federation and the claimant. It accepts the evidence primarily of Ms Wallace and Ms Hetherington that the policy was more that while homeworking would be available as a short-term, rehabilitative measure, staff would not be allowed to work from home permanently 100% of the time and never visit police premises again but would be required to attend in person training (particularly with regard to the Connect system), other CPD and 'one to ones'. That said, through the meetings that were proposed with individual employees, adjustments (which Ms Wallace referred to as being "bespoke support") would be agreed to achieve good solutions to accommodate their needs. The Tribunal also accepts the evidence of Ms Wallace that any working from home arrangement must be subject to review in light of the circumstances at the time both in relation to the individual and the requirements of his or her role. The Tribunal considers this is fully reflected in both the Support section and the Duties/Workplace section of the supportive measures document (164/165 and 166) lengthy excerpts from which are set out above.

Submissions

9. After the evidence had been concluded the respondent's representative and the claimant made submissions. It is not necessary for the Tribunal to set out the respective submissions in detail here because they are a matter of record and the salient points will be obvious from its findings and conclusions below. Suffice it to say that the Tribunal fully considered all the submissions made and the parties can be assured that they were all taken into account by the Tribunal in coming to its decision.

10. That said, the key points made by Mr Morgan on behalf of the respondent included as set out below:

Reasonable adjustments

10.1 The respondent did not have the first PCP as the initial email from Superintendent Adams on 13 October 2022 contains the "escape clause" on page 107 of ensuring that adjustments will be made where appropriate.

10.2 The supportive measures document was a living, collaborative document requiring the claimant's input. It was not a PCP but was a proposal to which the claimant could say yea or nay or suggest amendments.

10.3 More to the point this requirement did not apply to the claimant as she was ill at the time that she was required to attend training, CPD and 1:1s. In Home Office v Collins [2005] EWCA Civ 598, CA it was held that it was not reasonable to complain about adjustments until they could be of benefit: see paragraph 2.2.2 in the list of issues, "the Claimant was not put to these disadvantages in practice with the Claimant not returning to working from the office."

10.4 It had been intended that the supportive measures document would be gone through in detail but that fell away when the claimant accepted that the respondent had made reasonable adjustments in that document and that those had removed the disadvantage. That answer had blown the case out of the water. She then said that the adjustments should have been made sooner but that was not the pleaded case as is recorded in the record of the Preliminary Hearing (28).

10.5 As to knowledge, the claimant had worked at the office during the early stages of the Covid lockdown.

10.6 This was not an employer that had done nothing, had not prevaricated or delayed. It had obtained an OH report before making any decision. Inevitably that takes time and it is contrary to the claimant's position that the employer ignored her.

10.7 The claimant had returned from holiday on 31 October and Ms Hetherington wrote to her the following day. She is not blessed with an abundance of time and was met with a barrage of employees who wanted to work from home. The Tribunal will recall her clear recollection of her conversation with the claimant on 1 November. She had not put her head in the sand but had dealt with the claimant's concerns.

10.8 It is apparent from the contemporaneous emails that the email from OH to a colleague of the claimant to the effect that homeworking was no longer an option was wrong.

10.9 The issue of delay raised by the claimant does not arise because it was not pleaded but, in any event, it is not borne out by the facts.

10.10 Even on the facts, the adjustments proposed in the supportive measures document were agreed with the claimant only raising three points none of

which were of substance. The respondent was ready and willing to put those adjustments in place as needed.

Indirect discrimination

10.11 The claimant had not set up her claim regarding matters such as the comparative and the disparate impact. In any event the totality has to be looked at: the need for an effective policy, training for the Connect system and the welfare of the employees. This represents a legitimate aim and it was dealt with properly.

10.12 Reference having been made to the decision in Mr Octave Dominique v Toll Global Forwarding Ltd UKEAT/0308/13/LA, the respondent had made reasonable adjustments and that should be put in the balance in respect of the complaint of indirect discrimination.

10.13 This claim does not get off the ground as the scaffolding is not in place regarding discrete impact and the criterion being applied.

11. The key points made by the claimant included as follows:

11.1 I agreed about the supportive measures document yesterday but it is not a supportive measures document, it is a document to bring me back to work. I disagree that measures were in place to address my disability but to get me back to work.

11.2 I had been through this before in 2016 with the UAP and this time history was repeating itself. I was on sick to see if something could be sorted out.

11.3 I messaged Ms Hetherington on the 23rd. I had just returned from a doctor and had heart problems. The way I was treated – of the whole department nobody was told and by Christmas I was really ill. LB asked if I was in the position of taking my own life.

11.4 I was put on half pay and not told until I received my pay slip.

11.5 Ms Alderson came in and said comeback, get your job and retire, which I do in December this year.

11.6 Why would I put myself through this if I did not feel I have been discriminated against? Nothing was in place for disabled people and nothing had been risk-assessed. Northumbria Police never addressed my disability. The document at page 170 was not addressed.

11.7 I had worked from home for more than two years and there was no suggestion that I was not working well. Under the Disability Act this should be addressed. I don't think that the officers had any knowledge of the Disability Act but relied on HR.

The Law

12. The principal statutory provisions that are relevant to the issues in this case are found in the 2010 Act and are set out below.

> *"19 Indirect discrimination*
>
> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if —*
>
> *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
> *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
> *(c) it puts, or would put, B at that disadvantage, and*
> *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*
>
> *(3) The relevant protected characteristics are —*
> - *…..*
> - *disability;*
>
> *"20 Duty to make adjustments*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."*
>
> *"21 Failure to comply with duty*
>
> *(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
>
> *(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."*
>
> *"39 Employees and applicants*
>
> *(1) An employer (A) must not discriminate against an employee of A's (B)-*
> *…….*
> *(c) by subjecting B to any other detriment*.

"136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

"212 - General interpretation

(1) In this Act -

…..

"detriment" does not, subject to subsection (5), include conduct which amounts to harassment;

….

"substantial" means more than minor or trivial".

…….

(5) A duty to make reasonable adjustments applies to an employer."

Application of the facts and the law to determine the issues

13. The above are the salient facts and submissions relevant to and upon which the Tribunal based its Judgment having considered those facts and submissions in the light of the relevant law and the case precedents in this area of law in relation to which it has also brought into account EHRC Code of Practice on Employment (2011) ("the Code").

14. There is a degree of overlap between the complaints presented by the claimant that the Tribunal has considered and each of those complaints was born in mind throughout our deliberations. That said, the Tribunal has reminded itself that its determination of the claimant's complaint that the respondent failed to comply with the duty to make adjustments will inform our decision in respect of her complaint of indirect discrimination.

Section 6 Equality Act 2010 – Disability

15. The respondent accepts that the claimant is disabled.

Section 20 Equality Act 2010 – Failure to make reasonable adjustments

16. The following propositions (in no particular order) can be said to emerge from relevant case law in the context of the above statutory framework and the Code to which the Tribunal has had regard:

16.1 It is for the disabled claimant to identify the PCP of the respondent on which she relies and to demonstrate the substantial disadvantage to which she was put by that PCP.

16.2 The function of the PCP is to identify what it is about the employer's operation that causes disadvantage to the employee with the disability: General Dynamics Information Technology Ltd v Carranza [2015] ICR 169.

16.3 It is also for the disabled claimant to identify at least in broad terms the nature of the adjustment that would have avoided the disadvantage; she need not necessarily in every case identify the step(s) in detail but the respondent must be able to understand the broad nature of the adjustment proposed to enable her to engage with the question whether it was reasonable. There must be before the tribunal facts from which, in the absence of any innocent explanation, it could be inferred that a particular adjustment could have been made: Project Management Institute v Latif [2007] IRLR 579.

16.4 There must be a causal connection between the PCP and the substantial disadvantage contended for: as was said in the decision in Nottingham City Transport Ltd v Harvey UKEAT/0032/12, "It is not sufficient merely to identify that an employee has been disadvantaged, in the sense of badly treated, and to conclude that if he had not been disabled, he would not have suffered; that would be to leave out of account the requirement to identify a PCP. Section 4A(i) of the Disability Discrimination Act 1995 provides that there must be a causative link between the PCP and the disadvantage. The substantial disadvantage must arise out of the PCP."

16.5 The test of reasonableness is an objective one: Saveraux v Churchills Stairlifts plc [2006] ICR 524, CA.

16.6 Making a reasonable adjustment may necessarily involve treating a disabled employee more favourably than the employer's non-disabled workforce.

16.7 As was held in Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265, "there is no reason artificially to narrow the concept of what constitutes a "step" within the meaning of section 20(3) . Any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP is in principle capable of amounting to a relevant step. The only question is whether it is reasonable for it to be taken.

16.8 It is important to identify precisely what constituted the "step" which could remove the substantial disadvantage complained of: Carranza.

16.9 It can be a reasonable adjustment if there is a prospect that the adjustment would prevent the claimant from being at the relevant substantial disadvantage without there needing to be a good or real

prospect: Leeds Teaching Hospitals NHS Trust v Foster [2010] UKEAT/0552/10. Thus, it is not for the claimant to prove that the suggested adjustment will remove the substantial disadvantage, it is sufficient if the adjustment might give the claimant a chance that the disadvantage would be removed and not that it would have been completely effective or that it would have removed the disadvantage in its entirety: see Griffiths and South Staffordshire and Shropshire Healthcare NH Foundation Trust v Billingsley UKEAT/0341/15 in which it is stated as follows:

> "Thus the current state of the law, which seems to me to accord with the statutory language, is that it is not necessary for an employee to show the reasonable adjustment which she proposes would be effective to avoid the disadvantage to which she was subjected. It is sufficient to raise the issue for there to be a chance that it would avoid that disadvantage or unfavourable treatment. If she does so it does not necessarily follow that the adjustment which she proposes is to be treated as reasonable under Section 15(1) of the 2010 Act."

16.10 Notwithstanding the above, in Romec Ltd v Rudham [2007] UKEAT 0069/07/1307 it was held that the essential question for an employment tribunal is whether the adjustment would have removed the disadvantage experienced by the claimant. In that case, in remitting the issue to the same tribunal, the EAT directed that if the tribunal concluded that there was no prospect of the suggested adjustment succeeding, it would not be a reasonable adjustment: if, however, the tribunal found a real prospect of the adjustment succeeding it might be reasonable to expect the employer to take that course of action. Thus, an employer can lawfully avoid making a proposed adjustment if it would not be a reasonable step to take Royal Bank of Scotland v Ashton [2011] ICR 632. Similarly, at paragraph 6.28 of the Code, it is provided that one of the factors that might be taken into account when deciding what is a reasonable step for an employer to take is, "whether taking any particular steps would be effective in preventing the substantial disadvantage".

16.11 Once a potential reasonable adjustment is identified, the onus is cast on the respondent to show that it would not have been reasonable in the circumstances to have had to take the step: Latif.

16.12 The question of whether it was reasonable for the respondent to have to take the step depends on all relevant circumstances, which will include the following:

16.12.1 the extent to which taking the step would prevent the effect in relation to which the duty is imposed;
16.12.2 the extent to which it is practicable to take the step;
16.12.3 the financial and other costs which would be incurred in taking the step and the extent to which taking it would disrupt any of the respondent's activities;

16.12.4 the extent of the respondent's financial and other resources;
16.12.5 the availability to it of financial or other assistance with respect to taking the step;
16.12.6 the nature of its activities and the size of its undertaking.

16.13 If a Tribunal finds that there has been a breach of the duty, it should identify clearly the PCP, the disadvantage suffered as a consequence of the PCP and the step that the respondent should have taken.

17. In the context of the above general position, the Tribunal moves on to consider the claimant's complaints in this case. In this respect, the numbering in the headings below is to cross reference to the paragraph numbering in the list of issues.

The PCP – 2.1

18. The Tribunal reminded itself that it first must identify the PCP that the respondent is said to have applied: Environment Agency v Rowan [2008] IRLR 20. That is not contentious. In paragraph 2.1 of the agreed list of issues the question is posed of whether the respondent had the following PCPs upon which claimant relies:

18.1 **"**the requirement for officers in Primary Investigation Centre ("PIC") to perform their roles either entirely or partly from the office;"

18.2 "the requirement for officers in the PIC to attend the office to undertake any training, CPD and one-to-one meetings with management in person;"

18.3 "the requirement for officers to attend the office to participate in any new system training in person;"

19. The Tribunal reminds itself that the important starting point in this connection is whether a PCP of the respondent put a disabled person at a substantial disadvantage: i.e. in this case whether there were the PCPs upon which the claimant relies. In answering that question, the Tribunal has already referred to Ms Wallace's email to AP on 16 November 2022 in which it is clearly stated as set out above:

> "whilst officers can undertake the mandatory training from home, there is a wide acceptance that officers need continual exposure to the system to become fully competent in the system with access to 'connectors' being available in the office to coach individuals through any issues. In addition, officers are required in the office for other CPD, 1:1's etc."
>
> and
>
> "the ability to work from home 100% of the time, never to visit a police premises again is not something which PIC are able to afford any longer. If this type of adjustment is required, then the discussion which will take place with the individual through the 1:1 process will resolve around other

roles in the organisation which might be better able to accommodate their needs."

20. This being so, the Tribunal is satisfied that the respondent did have these PCPs.

Disadvantage – 2.2

21. As indicated above, section 20(3) of the 2010 Act provides that the duty to make adjustments arises where an employer's PCP "puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled". At paragraph 2.2 in the agreed list of issues the disadvantage is said to be that the claimant is, "more likely to struggle to work from the office and commute to work, to agree to attend the office at set times, to undertake training, CPD and one-to-one meetings in person."

22. In considering this issue, the Tribunal acknowledges Mr Morgan's submissions in this regard that it was not reasonable to complain about adjustments until they could be of benefit, and his reliance upon the decision of the Court of Appeal in Collins. It is clear from the decision of the Employment Appeal Tribunal in London Underground Ltd v Vuoto EAT 0123/09, however, that the Collins case turned very much on its own facts and the outcome was determined not on the basis of whether the duty to make reasonable adjustments was triggered but on whether the particular adjustment sought by the claimant was reasonable. The Tribunal is satisfied that, in general terms, the statutory duty to make reasonable adjustments arises when a disabled person is placed at a substantial disadvantage by, for example, the application of a PCP. It accepts, however, that the duty is not 'triggered' unless and until the employee has indicated that he or she is intending or wishing to return to work: see NCH Scotland v McHugh EAT 0010/06. In the case before this Tribunal, however, this is not as straightforward as it might be in other cases as the circumstances for us involved not an employee who was intending or wishing to return to work as such but one who was intending or wishing to work but from home.

23. Section 20(3) of the 2010 Act requires a comparative approach and, in that respect, the Tribunal is satisfied that what is sometimes referred to as the 'pool for comparison' in this case is the group of employees within Northumbria Police that the PCPs affected or would have affected, that being the PIC, which is the group referred to above in the above PCPs and by Ms Wallace in the quotation from her email set out above.

24. Considering that pool and making a comparison between the impact of the PCPs on people without the claimant's disabilities and the impact of those PCPs on people with those disabilities, the Tribunal is further satisfied that each of the above PCPs did put a disabled person with the claimant's disability at such a disadvantage because such a person could not comply with the PCPs as readily as another person in the PIC without such disability.

25. More particularly, having regard to the claimant's disability impact statement (42) upon which the claimant relied in paragraph 2.2.1 in the list of issues, the

Tribunal is also satisfied, for the same reasons, that each of the PCPs put the claimant at that disadvantage.

Substantial disadvantage – 2.3

26. Paragraph 2.3 of the list of issues then poses the question, "Were any or all of these disadvantages substantial?" Section 212(1) of the 2010 Act provides that in that Act "substantial" means more than minor or trivial. That being so, having considered all of the evidence before it including, in particular, the claimant's disability impact statement, the Tribunal is satisfied that the disadvantages to which the claimant was put by the PCPs were substantial.

Knowledge – 2.4

27. In this respect the Tribunal has had regard to all of the circumstances set out above, including the claimant's email to Superintendent Adams dated 14 October 2022, the OH reports, the efforts made particularly by Ms Hetherington and Ms Wallace to facilitate and secure the claimant's return to work, the involvement of the Federation representative and the details contained in the claimant's Absence Management Record. Additionally, the respondent also had historical knowledge of the claimant's PTSD and IBS of which the witnesses confirmed they were aware adding that there were also aware of other employees with IBS who managed their symptoms.
28. In light of these matters, the Tribunal is satisfied that the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at the substantial disadvantage by the PCPs.

29. Taking together the decisions of the Tribunal thus far, the Tribunal is satisfied that the provision in section 20(3) of the 2010 Act that the employer is under a duty "to take such steps as it is reasonable to have to take to avoid the disadvantage" was engaged.

The steps – 2.5

30. The steps that have been contended for by the claimant in this case are as follows:

    30.1 Allowing her to work from home on a permanent basis, or until such time as her conditions have improved enough to return to the office, subject to OH and/or GP advice.

    30.2 Allowing her to conduct some or all training, CPD and one-to-one meetings remotely, depending how she felt on the day.

    30.3 Allowing her to conduct some or all of the training for the new system remotely, depending how she felt on the day.

31. The Tribunal reminds itself that it is sufficient if the adjustment might give the claimant a chance that the disadvantage would be removed: see Foster, Griffiths and Billingsley; and that in Griffiths it was held, "Any modification of, or

qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP is in principle capable of amounting to a relevant step. The only question is whether it is reasonable for it to be taken".

32. This being so, the Tribunal is satisfied that the steps contended for by the claimant would have avoided the disadvantage. As such, in accordance with that decision in Griffiths, it turns to consider whether it was reasonable for those steps to have been taken.

The reasonableness of the steps – 2.6

33. The question posed at paragraph 2.6 of the list of issues is, "was it reasonable for the Respondent to have to take those steps and, if so, when?"

34. This question is again answered by the findings of fact that the Tribunal has made arising from the exchanges involving the claimant, Ms Hetherington, Ms Wallace and the claimant's Federation representatives during the relevant period and, importantly, the supportive measures document that was produced as the fruit of those exchange first on 9 December and then as revised on 22 December 2022 to reflect the queries that the claimant had raised through LB. Of particular importance are the Welfare visits, Support and Duties/Workplace sections of that document, lengthy excerpts from which are set out above. The Tribunal is satisfied that, as recorded in the Welfare visits section, that was,

> "a document which aims to set out exactly what support and reasonable adjustments are being afforded to Nicola, which might enable her to return to work following her current period of absence, but also with a view to maintaining a sustained return to work thereafter."

35. In this regard the Tribunal also brings into account the concession made by the claimant during cross examination at the end of the first day of the hearing that from 9 December 2022 when the document was sent to LB, Northumbria Police had complied with its duty to make reasonable adjustments and that that had removed the disadvantage.

36. In answering this question posed at paragraph 2.6 of the list of issues the Tribunal has had regard to all the evidence before it including the exchanges and the supportive measures document, and that concession by the claimant all of which are referred to above. This includes that in her email to Ms Hetherington of 15 December 2022 LB stated, "I've spoken to Nicola in relation to the supportive measures document and she really appreciates the content and the adjustments you've suggested". It is implicit from this remark and the involvement of LB generally in the production of the supportive measures document that by this time, the claimant was content with the proposals and the adjustments it contained, certain of which bear repetition as follows:

> "Nicola continue homeworking as part of a reasonable adjustment, however to attend the workplace for training, CPD and one to ones."
>
> "It is identified reasonable adjustments within this could be made to support Nicola, for example flexibility on shift times to avoid travelling at

peak times to minimise time spent driving, and also attending work for part days rather than full days, if this would be helpful to Nicola."

"It is acknowledged that this still necessitates a requirement for Nicola to attend the office periodically, which has the potential to impact her condition, however a supportive and engaging approach will be taken towards this, for example by carefully planning the attendance of Nicola at work by providing plenty of notice, and giving Nicola some input on which days may be best for her to attend etc. Nicola is required to attend the workplace for training, CPD and 1:1's with her supervisor, with those reasonable adjustments outlined above."

37. Having stepped back and considered all these matters in the round, the Tribunal agrees that the concession made by the claimant was correctly made in that from 9 December 2022 Northumbria Police had complied with its duty to make reasonable adjustments and that had removed the disadvantage. That being so, it is satisfied that from that date it cannot be said that it was reasonable for the respondent to have to take the steps contended for by the claimant; quite simply because by that date, the steps necessary to avoid the disadvantage to the claimant were taken.

38. The above reflects the decision of the Employment Appeal Tribunal in Billingsley in which it was stated that even though it is sufficient that there should be a chance that the step would avoid the disadvantage, "it does not necessarily follow that the adjustment which she proposes is to be treated as reasonable under Section 15(1) of the 2010 Act."

Failure to take the steps

39. Given the above decision, it is not necessary for the Tribunal to consider the question posed at paragraph 2.7 of the list of issues of whether the respondent failed to take those steps.

Section 19 Equality Act 2010 – Indirect disability discrimination

40. In essence, the findings of the Tribunal set out above in respect of the claim of failure to make adjustments apply equally to the issues set out at paragraphs 3.1, 3.2, 3.3, 3.4 and 3.5 in the list of issues. In short, having again brought into account all the evidence before it, the Tribunal is satisfied as follows

    40.1 The respondent did have the PCPs referred to.

    40.2 They were applied to the claimant.

    40.3 They were applied to persons who do not share the claimant's disabilities.

    40.4 They did put a person with the claimant's disabilities at a particular disadvantage when compared with non-disabled persons in that the former are less likely to be able to perform their roles from the office, undertake training and meetings (etc) in person.

40.5 They did put the claimant at that disadvantage.

41. In light of the above findings, the question becomes that referred to at paragraph 3.6 of the list of issues, "Were the PCPs a proportionate means of achieving a legitimate aim?

42. As is recorded in the record of the Preliminary Hearing (35) the legitimate aim "was to provide efficient and acceptable policing services for communities served by Northumbria Police." The Tribunal accepts that that is a legitimate aim.

43. That being so, the question then becomes whether it can be shown that the requirements of Northumbria Police in relation to directing employees to return to office-based working were a proportionate means of achieving that aim.

44. In this connection it is important to recognise that the PCPs were of general application and that at least from the supportive measures document of 9 December (the substance of which was accepted by LB on behalf of the claimant on 15 December) they were only applied to the claimant in what could be described as the 'diluted' form subject to the adjustments as recorded in the substantive measures document. This accords with the decision in Griffiths, "Any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP is in principle capable of amounting to a relevant step."

45. In this regard, once again, the Tribunal refers to the excerpts from the supportive measures document, which are set out above. Crucially, the claimant was to be allowed to continue homeworking and although she was expected to attend the workplace for training, CPD and one to ones, so as to address any possible impact of those attendances, other reasonable adjustments were to be put in place in relation to such matters as flexibility on shift times and attending work for part days. Even then, it was acknowledged that as this would still necessitate a requirement for the claimant to attend the office periodically, which had the potential to impact upon her condition, a supportive and engaging approach would be taken, for example, by carefully planning the claimant's attendance at work by providing plenty of notice and allowing her to have some input into on which days it may be best for her to attend; all of which are set out in greater detail above.

46. In light of this and bringing into account, first, the fact that the supportive measures document was accepted by the claimant in December 2022 (she having the benefit of advice from the Federation at the time) and, secondly, the concession made by the claimant in the course of cross examination as recorded above, the Tribunal is satisfied (having taken care to balance the needs of the claimant and the respondent in light of the evidence before it) as to the particular matters in paragraph 3.6 of the list of issues as follows:

46.1 The PCPs in this 'diluted' form were an appropriate and reasonably necessary way to achieve the aim.

46.2 It would not have been practicable for something less discriminatory to have been done instead.

Conclusion

47. In conclusion, the unanimous judgment of the Tribunal is as follows.

47.1 The claimant's complaint that, contrary to section 21 of the Equality Act 2010, the respondent failed to comply with its duty under section 20 of that Act to make adjustments is not well-founded and is dismissed.

47.2 The claimant's complaint that the respondent indirectly discriminated against her in relation to the protected characteristic of disability contrary to section 39 of the Equality Act 2010, with reference to section 19 of that Act, is not well-founded and is dismissed.

EMPLOYMENT JUDGE MORRIS

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 17 March 2024

APPENDIX

List of Issues

1. **Section 6 Equality Act 2010 – Disability**

1.1. The Respondent accepts that the three Claimants are disabled as set out in their Tribunal claims dated 3 February 2023.

2. **Section 20 Equality Act 2010 – Failure to make reasonable adjustments**

2.1. Did the Respondent have the following PCPs?

2.1.1. the requirement for officers in Primary Investigation Centre **("PIC")** to perform their roles either entirely or partly from the office;

2.1.2. the requirement for officers in the PIC to attend the office to undertake any training, CPD and one-to-one meetings with management in person;

2.1.3. the requirement for officers to attend the office to participate in any new system training in person; and

2.2. Did the PCPs put the Claimant at a disadvantage compared to someone without her disability, in that they were more likely to struggle to work from the office and commute to work, to agree to attend the office at set times, to undertake training, CPD and one-to-one meetings in person ?

2.2.1. The Claimant relies on the disability impact statement (served on the Respondent on 1 June 2023) to evidence the disadvantage suffered and this list of issues should be read in conjunction with the statement. The Claimant avers that:

2.2.1.1. PTSD/stress - she suffers from a range of symptoms, including but not limited to the following, anger, irritableness, hostility, lack of concentration, difficulties socialising, lack of enthusiasm and motivation, sleep disturbance, gastrointestinal upset, chest pain, heart palpitations, sweats, fatigue, headaches,

and muscular tension. Social interactions are awkward and heightens her PTSD and stress. The Claimant also avers that the office is overcrowded, noisy, stressful, and generally argumentative whereas her home is a relaxed and calm environment. The stress of working in the office impacts on her IBS and causes the need for more frequent toilet visits, disrupting her working day. The Claimant further avers that she struggles to sleep, and the tiredness exacerbates her stress and leads to her having an apathetic attitude. She can also have angry outbursts making working relationships difficult and leading her to feeling exhausted. The Claimant can work more efficiently at home and can manage her symptoms better, having time for Skype calls.

2.2.1.2. IBS – she suffers from a range of symptoms, including but not limited to the following, difficulty in socialising, stomach upset, frequent urge to use the toilet, and cramps/pain. The Claimant finds the commute to work stressful which exacerbates her IBS, as does the office environment as described above. In addition, being asked face-to-face work-related questions increases her workload causing further stress and exacerbating her IBS. When working at home, the Claimant can comfortably use the toilet, it is less stressful and embarrassing, not having to worry about what others think when regularly required to use such facilities, or how long she may be away from her desk using the facilities. Her stomach also makes loud and erratic stomach noises which she finds embarrassing, and this impacts her mental health.

2.2.1.3. The Respondent avers that arrangements can be put in place to make the Claimant more comfortable in the workplace, with the use of different toilets and to provide a supportive environment for the Claimant.

2.2.2. Irrespective of the extent to which these disadvantages could be reduced by the Respondent in the workplace, the Respondent avers that the Claimant was not put to these disadvantages in practice with the Claimant not returning to working from the office.

2.3. Were any or all of these disadvantages substantial?

2.3.1. The Respondent avers that the disadvantages are perceived or predicted, the Claimant having not returned to work. The Claimant's case is that it is reasonably clear that the cumulative effect of her respective disabilities and the PCPs relied on place her at a substantial disadvantage and she is not required to prove their claims by risking an exacerbation of their respective impairments.

2.4. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the substantial disadvantage when applying any of the PCPs to the Claimants?

2.4.1. The Claimant asserts that the Respondent did know, or could have been reasonably expected to know (as pleaded in the Grounds of Complaint dated 3 February 2023), that they were likely to be placed at a substantial disadvantage when the decision was made on 13 October 2022 that they must return to work from the office, and has been aware thereafter when the decision was challenged.

2.4.2. The Respondent avers that the Claimant was disabled prior to Covid 19 and worked from the office. As such, it was not aware that the Claimant felt unable to do so. In particular:

2.4.2.1. The Claimant refers to the email concerning a return to the office as causing her mental health to suffer dramatically and that her symptoms of stress and PTSD were exacerbated.

2.4.3. The Respondent avers that the Claimant agreed to attend the office for CPD, one-to-ones and training and did not request further discussions around this.

2.4.4. The Claimant asserts that any agreement of attending the office for CPD, one-to-ones and training was due to being pressured by the Respondent to attend the office.

2.5. What steps could have been taken to avoid the disadvantage? The Claimant suggest:

2.5.1. Allowing them to work from home on a permanent basis, or until such time as their conditions have improved enough to return the office, subject to OH and/or GP advice;

2.5.2. Allowing them to conduct some or all training, CPD and one-to-one meetings remotely, depending on how they feel on the day;

2.5.3. Allowing them to conduct some or all of the training for the new system remotely, depending on how they feel on the day;

2.6. Was it reasonable for the Respondent to have to take those steps and, if so, when?

2.7. Did the Respondent fail to take those steps?

2.7.1. The Respondent avers that no agreement to agile working can be done on a permanent basis as such, as roles and health conditions evolve and change; however, it has permitted all the Claimant to continue to carry out her day-to-day roles in an agile way from home subject to a periodic review.

2.7.1.1. The Claimant asserts that pressure is still being applied to work from the office.

2.7.2. The Claimant agreed to attend the office for one-to-ones; CPD and training following meetings with her Federation representative. This was an on-going process, and any further thoughts or concerns of the Claimant could have been raised and would have been addressed.

2.7.2.1. The Claimant asserts that her respective conditions vary on a day-to-day basis, as such she cannot guarantee she will be able to attend the office. As such, they require flexibility of the same.

Furthermore, that meetings, CPD and training can be done remotely.

3. **Section 19 Equality Act 2010 - Indirect Discrimination**

3.1. Did the Respondent have the PCPs at paragraph 2 above?

3.2. Did the Respondent apply the PCPs to any of the Claimant?

3.2.1. The Respondent avers that the PCPs were not applied in practice to the Claimant.

3.2.2. The Claimant's case is that this is misconceived as s19(2)(a) confirms that a PCP includes one that would be applied.

3.3. Did the Respondent apply the PCPs to persons who do not share the Claimant's protected characteristic, i.e. the Claimant's?

3.4. Did the PCPs put persons with the Claimant's respective disabilities at a particular disadvantage when compared with non-disabled persons, in that persons with the Claimant's respective disabilities are less likely to be able to perform their roles from the office, undertake training and meetings (etc) in person.

3.5. Did the PCPs put the Claimant at that disadvantage?

3.5.1. The Respondent avers that the Claimant was not put at a disadvantage as she was not required to return to working from the office in practice and have not been required to attend training, CPD or attend one-to-ones during the period of the claim.

3.5.2. The Claimant's case is that the worry caused, the adverse effect on her health, the negative views of her and the pressure placed on her to return to the office all constitute disadvantages.

3.6. Were the PCPs a proportionate means of achieving a legitimate aim?

3.6.1. The Respondent says that its aim was to provide effective, efficient and acceptable policing services for communities served by Northumbria Police. The Claimants say that this is a disproportionate measure, and the above purported aim can be achieved by other non-discriminatory means that do not require all officers to attend at a physical workplace. The Tribunal will decide in particular:

3.6.1.1. Were the PCPs an appropriate and reasonably necessary way to achieve the aim?

3.6.1.2. Could something less discriminatory have been done?

3.6.1.3. should the needs of the Claimant and the Respondent be balanced?

4. <u>Remedy</u>

4.1. Should the Tribunal make a declaration that the Claimant has been unlawfully treated and subjected to discrimination?

4.2. If yes, what compensation with interest should the Claimant be entitled to?

4.3. Should the Tribunal make any recommendations? If so, what recommendations(s) should the Tribunal make?

Dated: 19 June 2023