EMPLOYMENT TRIBUNALS

Claimant: Mr T Ahmed

Respondent: The Commissioner of the Police of the Metropolis

Heard at: London Central (in person) **On:** 13, 14, 15, 16, 17, 20 May 2024

Before: Employment Judge B Smith (sitting with members)
Mrs Marsters
Mr Baber

Representation
Claimant: Mr Singh (Counsel)
Respondent: Mr Sendall (Counsel)

JUDGMENT having been sent to the parties on 31 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant is a detective constable serving with the Metropolitan Police Service since 1 January 2002. ACAS conciliation commenced on 14 March 2023 and concluded on 25 April 2023. Since November 2021 his role is as a disclosure officer for proceedings in the Family Court ('Family Law Disclosure'). The claim was presented on 24 May 2023.

2. The claimant brings claims of:

   (i) failure to make reasonable adjustments pursuant to ss.20 and 39(5) Equality Act 2010 ('EQA'); and

(ii) harassment on the grounds of disability pursuant to s.26 and 39(2) EQA.

3. The respondent agreed that the claimant was disabled for the purposes of s.6 EQA 2010 at the material times.

4. The claimant was diagnosed with ischaemic heart disease in August 2008. Four stents were inserted into his heart. The claimant says that his disability impacts on his ability to exercise, engage with stress activities, look at a screen, and travel to and from work. He was on restricted duties following heart surgery and a recovery period in 2008.

5. The claimant was permitted to work from home during the Covid-19 pandemic in part because he was assessed to be clinically vulnerable to catching covid.

6. For the purposes of these proceedings, the claimant returned to work from a period of sick leave on 27 September 2021. He was subsequently subject to various occupational health and adjusted duties-type reviews.

7. An occupational health report was made after a telephone consultation on 7 December 2022. A further occupational health assessment took place on 19 January 2023. Permanent working from home was agreed by the claimant's then line manager DS Rana Dhillon on 30 January 2023 and this was later overturned by DCI Brian Kelleher. Sarah Waller, a HR Manager, provided advice to DCI Kelleher, to the effect that MPS do not support working from home permanently.

8. In very simple terms, the claimant says that the respondent should have permitted by way of a reasonable adjustment working from home (potentially subject to a 6-month review) and that the pressure from the respondent to work from an office or police station amounted to harassment.

9. The respondent's grounds of resistance to the claims included that it denied that the claimant's current role can be truly undertaken on an entirely remote

basis. This is because the claimant is engaged within the risk management unit (RMU) which requires him to 'flex' across different roles as demand and resources vary from time to time, in addition to assisting the wider Community Safety Unit (CSU) with domestic abuse investigations. The respondent also relied on the need to facilitate cross-team and collaborative working and engagement; the need to undertake a degree of face-to-face welfare check-ins, supervision meetings and discussion of performance/development; the need to take part in in-person training and continuing professional development events; the need to provide in-office resilience for time-sensitive tasks; and the need to ensure that IT hardware and software remain current by physically docking laptops regularly.

Procedure, documents, and evidence heard

10. The parties were represented by solicitors and counsel throughout.

11. It was necessary to reconstitute the panel after the first reading day (10 May 2024) for administrative reasons. No issues about this were raised by the parties and the proceedings started afresh.

12. No adjustments were required or asked for by any of the parties or witnesses other than for the claimant. The claimant was permitted to use a laptop to read a clean digital copy of the hearing bundle. Also, the tribunal took regular breaks throughout proceedings. The claimant confirmed that he was happy to proceed after each break. It was necessary for the claimant to take some medication during the hearing which made him tired. The parties jointly raised concerns about the claimant's presentation during the hearing and the tribunal shared these concerns. As a result, the claimant continued his evidence by CVP the following day with an increased frequency of breaks. No party raised concerns about the fairness of the proceedings with these adjustments in place.

13. The claimant gave sworn evidence. The respondent's witnesses were Sarah Waller, DCI Brian Kelleher, and DI Matthew Loftus. All gave evidence under oath or affirmation.

14. By the time of the final hearing the list of issues was agreed by the parties and adopted by the tribunal. The parties confirmed from the outset of the hearing that no applications to amend the claims were required or made.

15. The agreed documents were:

    a. Hearing bundle paginated to 1575;
    b. Agreed list of issues (named '*Claimant's proposed update to list of issues'*);
    c. Witness statement of the claimant;
    d. Witness statement of Sarah Waller;
    e. Witness statement of Brian Kelleher;
    f. Witness statement of Matthew Loftus;
    g. Claimant's supplementary bundle; and
    h. Claimant's opening note, including narrative chronology.

16. The tribunal only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and both parties indicated specific pages for the tribunal to read.

17. Both parties made oral submissions at the close of the evidence. Both parties made written submissions. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions.

Relevant Law

18. We applied the Equality Act 2010. In particular, we have applied sections 20, 21, 26, 39(5) and 39(2) EQA. These informed the phrasing of the list of issues and our conclusions below. We were referred to, and took into account, the various cases referred to by the parties in their written submissions. It is not proportionate to repeat those here.

19. We took into account the EHRC Code of Practice on Employment ('The Code') where necessary.

(i) *Reasonable Adjustments*

20. The duty to make reasonable adjustments is found in ss.20 EQA. That duty applies to employers: s.39(5) EQA 2010. The failure to comply with the duty provision is at s.21 EQA 2010. The relevant questions are:

    a. what is the provision, criterion or practice ('PCP') relied upon;
    b. how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;
    c. can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and
    d. has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?

21. The Code says at [6.10] that a PCP *'should be construed widely so as to include, for example, an formal or informal policies, rules, practices, arrangements or qualifications include one-off decisions and actions'.*

22. *Pendleton v Derbyshire County Council* [2016] IRLR 580 and *Nottingham City Transport Ltd v* Harvey [2013] ALL ER(D) 267 EAT demonstrate that, generally, a one-off incident will not qualify. However, a practice does not need to arise often to qualify as a PCP. In *Ishola v Transport for London* [2020] ICR 1204 the Court of Appeal said that the words provision, criterion or practice '*carry a connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.'*

23. A PCP can include an expectation, and the identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach

and a tribunal should widely construe the statutory definition: *Ahmed v Department for Work and Pensions* [2022] EAT 107 at [25].

24. Substantial disadvantage means more than minor or trivial: s.212 EQA 2010. It must also be a disadvantage which is linked to the disability.

25. The identity of non-disabled comparators may be clearly discernible from the PCP under consideration: *Fareham College Corporation v Walters* [2009] IRLR 991 EAT. The fact that disabled and non-disabled people may both be affected by a PCP does not in of itself preclude a finding of substantial disadvantage where the likelihood and or frequency of the impact is greater for a disabled person: *Pipe v Coventry University Higher Education Corporation* [2023] EAT 73.

26. The Code at [6.28] lists factors which might be taken into account when deciding if a step is reasonable to take, including whether taking any particular steps would be effective in preventing the substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources, the availability of the employer of financial or other assistance to help make an adjustment, and the type and size of the employer.

27. The tribunal must consider the extent to which the step will prevent the disadvantage to the claimant.

28. The claimant must prove facts from which it could reasonably be inferred, absent an explanation, that the duty has been breached: *Project Management Institute v Latif* [2007] IRLR 579 EAT a [54]. The burden then shifts to the respondent under s.136 EQA 2010, confirmed in *Rentokil Initial UK Ltd v Miller* [2004] EAT 37 at [43]:

'*…the burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But,*

if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.'

(ii) *Harassment relating to disability*

29. Under section 26 EQA someone harasses another if they engage in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect or violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must take into account the claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: *Pemberton v Inwood* [2018] EWCA Civ 564.

30. When deciding whether the conduct related to a protected characteristic we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: *Hartley v Foreign and Commonwealth office Services* [2016] ICR EAT. 'Related' is a reasonably broad word, on its face, and is a looser statutory requirement than direct causation. The context of any given conduct is important: *Warby v Wunda Group plc* EAT 0434/11.

31. If there are facts from which a tribunal could find that the conduct was related to disability it is then for the respondent to discharge the burden of proof that it was not.

Findings of fact

32. There is no dispute about the authenticity of the documents.

33. The claimant is a detective constable serving with the Metropolitan Police Service since 1 January 2002. ACAS conciliation commenced on 14 March 2023 and concluded on 25 April 2023. Since November 2021 his role is as

a disclosure officer for proceedings in the Family Court ('Family Law Disclosure'). The claim was presented on 24 May 2023.

34. The claimant has a physical impairment, namely ischaemic heart disease. The impact of this on the claimant is that it affects his ability to exercise, engage with stress activities, look at a screen, and travel to and from work. When the claimant is stressed he feels tightness and pain in his chest and he fears death. He has other family members with the same or similar condition who have died from heart attacks and he himself has had several heart attacks. We make these findings because we accept the claimant's evidence as to the impact that his impairment has on him. The claimant gave consistent and credible evidence which was not undermined by any cross-examination. It is also supported by the medical records, occupational health records, and his contemporaneous written communications which include references to the impact that his impairment has on his day-to-day activities.

35. The officers and agents of the respondent were at all material times acting in the course of their employment by the respondent and the respondent is responsible for their actions under the EQA. This is because these are admitted by the respondent.

36. There is some dispute between the parties as to the extent of the claimant's restricted duties before the material time. However, it is clear (and undisputed) that before the material time, namely when he started his current role in Family Law Disclosure in November 2021, the claimant was at various points restricted in the duties that he could undertake at work for health reasons. He also took some time off sick and as career breaks. Some of those restrictions included no overtime, no night shifts, and reduced travel.

37. The claimant's position during the material time was against a background of previous concerns about racism. We accept that the claimant's condition was in that context. This is because the fact of those background concerns was accepted by the respondent's witness DCI Kelleher. He accepted in

cross-examination that the claimant had concerns about his experiences of structural racism and he accepted that it was plausible that the claimant had not been supported in the past on this issue. This is consistent with and supported by an email sent by DCI Keller on 14 December 2022 stating '*I believe he* [the claimant] *validly described his experience of structural racism; and has likely not been supported in the past with processes like grievances etc.'*

38. An Adjusted Duties Capability Report ('the 2015 Report') dated 15 October 2015 recommended various adjusted duties including '*to avoid stressful environments'*. Adjusted duties are applicable to officers at the respondent and are not necessarily the same, but could be the same, as reasonable adjustments under the EQA.

39. The claimant worked in the complex fraud team in 2016 and subsequently took a career break for health reasons. There followed a period where the claimant returned to borough policing. However, he was unhappy with this given a lack of restrictions on his duties.

40. An occupational health ('OH') report was dated 2 April 2019 which referred to stress at work. The claimant had a further heart attack and subsequent operation on 16 February 2020. On 21 July 2020 the claimant's cardiac nurse recommended that he work from home for as long as possible.

41. The claimant returned to work on 9 July 2020 following an OH review on 8 July 2020. This report included that '*it is recommended that DC Ahmed continues on the Adjusted duties as per his updated Adjusted Duties Capability Report dated 15 October 2015 which states that he is for Computer Based Training only or no OST, he is to avoid stressful environments, no night shifts and no 10 hour shifts on early and late shifts*.' It also recommended a phased return to work. A fit note dated 7 July 2020 said that the claimant may be fit for work taking into account advice including '*better working from home'.* The claimant then undertook some amended recuperative duties.

42. The respondent was advised by a letter from the claimant's GP dated 22 July 2020 that he should work from home as long as possible and that it was very important for him to avoid any form of stress and anxiety as this could be detrimental to his health.

43. The claimant returned to work on 27 September 2021 on 'recoup duties' with a view to a phased return and working from home until a review of any previous covid vulnerability assessment. The OH recommendations at that stage are noted as including at that time no telephone contact, office-based duties initially, no speed, time or safety critical tasks, no heights, and a stress assessment to be carried out as soon as possible.

44. Following a discussion with DCI Willis the claimant started in his current role in Family Law Disclosure in November 2021. This is a desk-based role. The claimant understood that this would be a permanent working from home role. We make this finding because of the claimant's witness evidence on this point, which we accept. For the purposes of these proceedings his first line manager was DS Barnard.

45. The claimant's role did not have any operational requirement for it to be carried out at a police station or office. We make this finding because of the claimant's evidence which is consistent with the description of the claimant's role by his line manager DS Dhillon in email correspondence about reasonable adjustments. Also, it was accepted by the respondent's most senior witness, DCI Kelleher, in cross-examination that there was no operational requirement for the claimant's role to be done from an office or police station. DI Loftus also accepted in evidence that there was no operational requirement for the claimant's role do be done from an office or police station.

46. With one exception, the 15 or so members of the claimant's team were on restricted duties. All of the other members of the team worked from home to a degree.

47. The claimant's predecessor had carried out the role on a remote basis for around 7 years. We make this finding because that is how the role is described in correspondence: the claimant stated in an email dated 11 April 2022 to his then line manager DS Barnard that '*The previous officer in the role worked from home for seven years before I was placed in his position. He was given the role due to similar issues. As mentioned it is a role that is independent in its nature and can be done from home in its entirely'.* This assertion in correspondence was not challenged at the time by the relevant people at the respondent. A similar assertion was made by the claimant, again uncorrected and unchallenged, to his new line manager (DS Dhillon, as of November 2022) on 25 November 2022. The claimant's line manager similarly asserted this to be the case in a HR query on 14 December 2022. The respondent, as a large police force, is well-equipped to carry out factual investigations. The respondent did not adduce any evidence to establish that the claimant's predecessor had not conducted the same role on a remote basis. The claimant's oral evidence on this point was unchallenged.

48. An OH assessment dated 5 December 2021 stated that the claimant was fit to return to adjusted duties. These appear to be either the same or very similar to those recommended in 2015. It states that increased stress at work can compromise his coping and symptoms by reference to his underlying medical (heart) condition. The claimant says that he then felt safe and secure and his health began to improve.

49. The claimant's 'second line manager' (also known as a 'middle manager'), ie. his line manager's manager, was DI Loftus from July 2022.

50. DS Barnard sent an email to the claimant on 10 October 2022 stating that Mr McDonagh (a superintendent) '*wants to see you in the office at least once a week. Is there anything restriction wise why you couldn't do that?'* The claimant responded to the effect that he has been managing his stress levels through routine and productive activity during his breaks. He also said that having been in role for ten months had helped him a lot.

51. On 2 November 2022 DI Loftus sent a group email containing notes of a group meeting which included '*Working from home – default position for RMU is at least three days in the office per week. Any individual OH or welfare needs please let me know and we will review in line with policy. Recognise that WFH is a useful option and can be very productive, however need to have in-office resilience across the CSU.'*

52. During a MS Teams call with the claimant on 15 November 2022 DI Loftus discussed about the claimant potentially returning to the office for 1-2 days a week. DI Loftus denied in evidence stating that the claimant should come in next week during that call. The claimant says that this request was made. We prefer the claimant's recollection and make this finding. The is because DI Loftus' position is unsupported by documentary evidence. The claimant's recollection is consistent with the wider move by the respondent to get people back into the office. Also, the claimant did report the content of this call to his line manager by email dated 15 November 2022 at 15:55 stating '*He* [DI Loftus] *also said that I needed to be in next week. ….I've had to seek some advice around the issue as he mentioned that I needed to come in as of next week. I can't come in before the OH consultation anyway.'* The claimant's recollection is clearly supported by near contemporaneous email correspondence. Also, DI Loftus admitted in cross-examination that he didn't recall all of the specifics of the call.

53. The claimant's case alleged that DCI Loftus and Jason Maureemootoo sought to place Jason Maureemootoo in the claimant's role as discussed in correspondence on 7 October 2022 and the meeting on 15 November 2022. We do not find that this happened. We find that the evidence at its highest only showed that Jason Maureemootoo had, by email, expressed an interest in assisting with the claimant's role. This is because of the content of the email correspondence. DI Loftus expressly denied this allegation and we accept his evidence to that effect. We consider that this was something that the claimant was perhaps worried about, because of the historic context, but we do not find that it happened as a matter of fact.

54. On 15 November 2022 DI Loftus by email asked DS Barnard to make an OH referral asking for advice regarding a safe return to the office.

55. On 25 November 2022 the claimant emailed DS Dhillon stating that he suffered a heart condition which was diagnosed 13 years ago, he had stents placed in his arteries in 2009, and had suffered a heart attack in 2020. He says that he is controlling the condition and keeps an eye on his stress levels. The email refers to working from home which had helped to control his mental and physical state and the fact that the claimant was on restrictions.

56. The claimant had an OH consultation on 7 December 2022. The background section of the written referral states that the claimant has been on restricted duties since 2015. It states that the claimant is likely to meet the criteria for being disabled under s.6 EQA. The report concludes that '*Working from home is at management discretion only. He is able to travel. Transitioning back to the office however may well provoke an emotional reaction….* [in respect of duties] *No contact with the public unless by phone in non confrontational situations. No AID, to avoid time critical work and unpredictable environments.'*

57. On 7 December 2022 the claimant emailed DS Dhillon outlining concerns. DS Dhillon responded that '*I do not agree with that decision* [on travel into work] *on the face of it due to the type of work that you are doing and involved in and the fact that you have already been doing effectively for so long from home in any case'.*

58. By email dated 12 December 2022 DS Dhillon permitted the claimant to continue working from home and stated that he was not expected to travel into the office.

59. By email dated 13 December 2022 DI Loftus stated to DS Dhillon *'In relation to Tariq coming back to the office, HR advice is quite clear that the MPS does not allow permanent working from home, so we need to moving*

towards him being able to return (albeit given his role I imagine that requirement would be fairly minimal)…. I am therefore content for Tariq to continue to work from home until OH have completed their report, however following receipt of that I would expect to see a plan as to how and when Tariq will be coming back into the office.'

60. In or around December 2022 or January 2023 the claimant asked his line manager to be allowed to work from home, full time, as a reasonable adjustment. We make this finding because this request is responded to by DS Dhillon by email dated 30 January 2023 making express reference to the request.

61. The claimant's GP sent a letter dated 22 December 2022 including '*He has suffered mental health issues and history of Anxiety for some years due to issues at work … He has informed me that he has been working from home for almost 2 years. This has enabled him to control his anxiety and cardiac condition. It is better for his overall health if he is able to continue working from home.'*

62. The claimant had a further OH referral dated 19 January 2023 (Dr Murphy – 'the January OH report'). This confirmed that the claimant would likely amount to a disability for the purposes of s.6 EQA. The referral included '*Potential Psychological trauma caused by allegedly being a victim of racist behaviour from colleagues leading to stress and anxiety*.'

63. The January OH report also includes that:

    a. the claimant has an underlying cardiac disease and gets chest pains when feeling stress and anxious;
    b. there was no reason to doubt the claimant when he states that he is too stressed to resume any office-based working at all;
    c. the claimant reported there being active pressure for him to resume office-based working;

d. '[a]*t the moment and for the foreseeable future therefore, I can see there* [being] *no prospect whatsoever of him resuming any office or station based work activities in any circumstance';*
e. the claimant was advised that his stress and anxiety levels will be best managed by him continuing to work from home, as confirmed by his own doctor;
f. in light of the reported stress levels, it advises that the claimant avoids or reduces any situation that may increase his stress and anxiety within the workplace including travel to and from the workplace and use of public transport that he has informed increases his stress and anxiety levels; and
g. whether or not working from home can be accommodated was ultimately a decision for the MPS.

64. DS Dhillon had seen the claimant's last (ie. January 2023) OH referral and the letter of support from his GP. We make this finding because it is mentioned in DS Dhillon's email dated 30 January 2023. This email included the following:

'*The adjustments are all set out (and agreed), in your last CMO report and these agreed adjustments will include Permanent* [sic] *working from home (full time) for as long as you remain disabled and needing this support. You have already worked from home for over two years in the role that you do today and previous to that the person doing your role also worked full time from home. …. It is a role that can be performed from home easily. I am satisfied that your role in the RMU today (primarily dealing with the LRF's and Mailbox management as well as your other daily tasking, can all be carried out by your remote working as current with no adverse effect to performance and/or efficiency loss to the unit or without any detriment to your team colleagues and also with no detriment to your own MH. Indeed I note from your last OH report that Doctor Murphy clearly states* ***that 'at the moment and for the foreseeable future I see no prospect whatsoever of him (Tariq), resuming in any office or station based work activities in any circumstances'*** *…*

I therefore approve your request to work full time from home in your current role. *There may be (very rare), instances where I will require you*

to 'come in' on the odd occasion and we have already previously discussed how that would work and the support that you will require should that instance arise.

…

Matt/Sarah, please can you help me to ensure that all Tariq's CMO agreed RA's and Duties records (Carm's) and HR records, for DC Tariq Ahmed are updated with second line manager endorsement of all his adjustments as I have agreed above.'

65. DI Loftus was copied into this email which included, in bold, the extract from the January 2023 OH report about the clear medical advice given on working from home.

66. There was clearly confusion within the respondent about whether or not the first line manager had authority to agree reasonable adjustments or whether or not these required second line manager approval. We find that first line manager approval was enough. This is because the respondent's policy flow chart on the reasonable adjustments process clearly states that '*Does the first line manager deem the adjustment(s) reasonable?'* If yes, '*The line manager or second line manager should approve and implement.'* We do not consider this to be effectively undermined by DS Rhana's mention of second line management endorsement because the overall content of his letter, taken as a whole, does not suggest that that his decision is contingent on further line manager approval. Also, this is consistent with the clear and express statement by CI Alexander Ogilvie (who investigated a grievance later raised by the claimant that) in an email dated 14 September 2023 that '*if a line manager has put in place what they determine a reasonable adjustment (however unreasonable that may later be perceived), the only way this can be revoked is via a formal adjusted review process. It is not enough for a more senior line manager to simply revoke or change an adjustment and this is where we need to be careful.*' DCI Kelleher stated in cross-examination that he had no reason to disagree with this point. It is correct that DCI Ogilvie stated in an email to the claimant's later line manager DS Nicki Chapman on 21 September 2023 that '*I explained to Tariq that the removal of the adjustment of permanent WFH that was put in place by Rhana was appropriate and, for all intents in purposes, was never*

formally in place as part of his adjusted duties review in January 2023.' However, we were not provided with any clear explanation as to how this apparent change in position came about and it is not clearly supported by the policy document on adjustments. Accordingly, we prefer Mr Ogilvie's original statement which was unchallenged by DCI Kelleher.

67. We find that the respondent did have knowledge at all material times of the claimant's disability and, in general terms, the effect that it had on his day-to-day activities. This is for following reasons.

68. The respondent was aware of a number of historic OH or similar referrals and reports dating back to at least 2015. For considerable part of the claimant's time at the respondent he has been subject to adjusted duties due to his heart condition. This included periods of long term sick and career breaks for health reasons. There are references to avoiding stressful environments in the claimant's historic occupational health-type documentation as being necessary and appropriate.

69. Also, the claimant emailed his then line manager on 10 October 2022 referring to managing his stress levels through routine and productive activity and his illness. DI Loftus accepted in cross-examination that he knew that as of October 2022 the claimant had a cardiac issue, and that he was extremely clinically vulnerable in term of Covid-19.

70. Various occupational health-type reports also include statements the effect that the claimant may be disabled for the purposes of s.6 EQA.

71. The claimant did not expressly consent for the January 2023 OH report to be disclosed to the wider organisation. However, it is clear from the correspondence that DS Dhillon, the claimant's then line manager, had seen it with the claimant's permission. We find that this is sufficient to mean that the respondent had knowledge, alternatively constructive knowledge, because DS Dhillon was the claimant's line manager at the time. This is sufficient for the purposes of this claim.

72. Also, key parts of the January 2023 OH report were disclosed to others at the respondent in email correspondence, sometimes by way of them being copied (or blind copied) in, within the timeframe of the claims. For example, by email dated 24 February 2023 DCI Keller referred to the medical advice that there was no prospect of the claimant resuming office or station-based work activities in the context of a wider discussion. This undermines the argument that the wider respondent did not, or should not, have the required knowledge. Also, DI Loftus in a later email dated 18 May 2023 accepted that he did not '*need'* a copy of the full report.

73. It is also relevant to find that even when the full January 2023 OH report was disclosed to the wider respondent in around August 2023 to a new line manager of the claimant, DS Nicki Chapman, the respondent's decision making remained the same. It cannot be said that the evidence shows that disclosure of the full report made any difference to the respondent's decision making later on.

74. The respondent's HR team stated that '*there is no permanent WFH'* to DI Loftus on or around January 2023.

75. The claimant submitted a grievance on 26 January 2023 that was handled by DCI Ogilvie about pressure to return to the office.

76. On 31 January 2023 DCI Kelleher emailed Superintendent Haynes stating '*It would appear that Rhana as his line manager has approved his requested adjustment to WfH full time despite the clear direction from SLT and his LM that this was not to be supported.'*

77. An email from the respondent's HR team on 2 February 2023 said that '*there is no permanent WFH'* and quoted a 'working away from the work location' policy.

78. By email dated 8 February 2023 to the claimant and others DCI Kelleher stated that the claimant's request for full-time work-from-home '*cannot be*

approved as a reasonable adjustment… despite your [line manager's] approval… because it is not in-line with either policy or advice offered' and directed that the arrangements be revisited. The decision was confirmed by email dated 10 February 2023: '*At present my direction remains that the BCU will not consider the specific adjustment of permanent WFH as reasonable one'.*

79. From emails dated 24 February 2023, DCI Kelleher and DI Loftus discuss the December OH report. DI Loftus states '***If** Dr Murphy's opinion is as Rhana aserts* [sic] *then I think it would be ethically and morally wrong to force Tariq into the office or punish him for not coming back if medical opinion is that he is not able to work in the office for the reasonable future then the organisation needs to take a position on that, not ignore it'.* At that stage, these officers had not seen the full January 2023 report but had seen extracts of it as provided by DS Dhillon by email.

80. DS Dhillon at some point in or around Spring 2023 started sick leave.

81. By email dated 27 April 2023 DI Loftus said to the claimant *'you should not have been told you can work permanently from home and so we need to explore what the alternative would look like in practice … I am satisfied that you only need to be in the office a minimal amount of time to comply with the reasoning set out below, my thoughts would be something along the lines of once a fortnight for an initial period and we can see how that goes … I am aware that returning to the office will cause you some concern*.' The fact that DI Loftus, with a reasonable degree of knowledge about the claimant's health position and background, expressly acknowledges awareness of the concerns that the claimant had about returning to the office is indicative of knowledge that the request for the claimant to return to the office would have a considerable effect on him.

82. By email dated 18 May 2023 DI Loftus said to the claimant:

'Hi Tariq, I've not had a response to this [an email sent 27 April 2023]*, please could let me know which day you will be coming into the office next week. If there is anything else you would want put in place as an adjustment or to support you please let me know. Also, I need to get your 'No Aid No Ops' marker on CARMS renewed. For this please can you send me the restrictions that are shown on your last OH report (I don't need the report itself, I am aware that you have not consented to me seeing this).'*

83. The claimant responded by email on the same date including that '*The MO advised that at the moment and for the foreseeable future, I can see there being no prospect whatsoever of him resuming any office or station based work activities in any circumstance'.*

84. The claimant's January OH report was made available to his new line manager, DS Chapman, in or around August 2023. Despite this, the respondent maintains that it cannot support permanent working from home and the claimant is subject to other internal procedures relating to attendance.

85. The respondent required members of staff to work in the respondent's offices at least some of the time. We make this finding because this was expressly accepted by Sarah Waller, HR manager, in her evidence to the tribunal. Also, this wider position by the respondent was supported by a considerable material of other documentary evidence, some of which is outlined elsewhere in this decision. This includes an email dated 2 February 2023 from SSCL Shared Services which states '*My colleague has clearly advised that there is no permanent WFH'.* A similar email is dated 8 February 2023 from Sarah Waller.

86. A grievance outcome dated 6 February 2024 recommended that '*the MPS needs to provide definitive clarification around the working from home policy. There is a seemingly firm, albeit anecdotal, organisational stance*

that permanent working from home is not allowed but this is not backed up by any written policy and therefore subject to interpretation by line managers …. It is my recommendation that the MPS revise the working from home policy to explicitly state that permanent working from home is not allowed, if this is indeed the correct organisational position.'

87. We find that the respondent's position that the claimant was not permitted to work permanently, or effectively permanently, from home amounted to a request for him to come into the office at least some of the time. The respondent adopted this position since 8 February 2024 when it refused the claimant's request to work from home on that basis. This was also revoking the permission previously granted by DS Dhillon, the claimant's then line manager. We do not accept the respondent's argument that refusing permission and not providing a particular start date, or frequency for office attendance, did not amount to a request to attend. It followed as a matter of logic that if the claimant was not permitted to work from home on an exclusive (or effectively exclusive) basis, then this amounted to a general request for him to attend at least some of the time.

Conclusions

Jurisdiction

1. Did any of the acts or omissions relied upon take place prior to the primary limitation period, beginning on 15 December 2022?
2. If so, did any of those acts or omissions form part of a continuing act of discrimination with acts falling within that primary limitation period?
3. If not, would it be just and equitable to extend time in respect of those acts or omissions?

88. The relevant time for the reasonable adjustments claim, it was accepted by the parties, was when the respondent revoked the permission that was previously granted to the claimant to work from home on an exclusive, or effectively exclusive, basis. That permission was granted by DS Dhillon on 30 January 2023 by email. That permission was revoked by DCI Kelleher

on 8 February 2023 by email. The relevant date for the reasonable adjustments claim is therefore within time.

89. The three events in harassment claim which are arguably out of time were an email from superintendent McDonagh dated 10 October 2022 saying that he wished to see the claimant in the office at least once a week, and asking if there are restrictions that prevent this, the email from DI Loftus to the claimant and others on 2 November 2022, the MS Teams meeting on 15 November 2022, and the allegation that DI Loftus and Jason Marueenmootoo sought to place Mr Maureenmootoo in the claimant's role as shown in correspondence dated 7 October 2022 and 15 November 2022.

90. These acts did take place before the primary limitation period starting 15 December 2022.

91. We were mindful of the difference between an act with continuing consequences and truly continuous acts. We find that these were part of a continuing act. This is because they concerned the respondent's reaction to the claimant's disability and working arrangements. This was a fluid process across a significant period of time. Although it involved different individuals, they were clearly attempting to implement the overall position of the respondent with regards to working arrangements and the actions, overall, amounted to the respondent's reaction to the claimant's requests. They are not, on a proper analysis, discrete and unrelated acts by individuals.

92. In the alternative, if this conclusion is wrong, it would be just and equitable to extend time. This is because the events were clearly part of the broader background to the later events and there is no prejudice to the respondent to them included in the claim. Also, it would have almost certainly been premature for the claimant to have started a separate, earlier claim, about these incident's alone at an earlier stage.

Disability

2. It is not in dispute that the Claimant has ischaemic heart disease and that at all material times he was disabled for the purposes of s.6 of the Equality Act 2010. This is because it is admitted by the respondent.

3. Did the Respondent know or could the Respondent reasonably have been expected to know about the Claimant's disability? If so, on what date did the Respondent have that knowledge? The Claimant says the Respondent knew when he had his heart procedure on August 2008 or at least by 20/5/10.

93. We find that that the respondent did know, or if this is wrong could reasonably have been expected to know, about the claimant's disability for the reasons outlined above. We find that the respondent had this knowledge from at least when the claimant's duties were restricted in 2015. If this is wrong, the relevant date was in October 2022, when DI Loftus and the claimant's line manager had a degree of knowledge about disability. Alternatively the respondent had this knowledge from 30 January 2023 when DS Dhillon approved the claimant's reasonable adjustment given the content of that email, as outlined above. On any analysis, the respondent had (or could reasonably have been expected to have) knowledge since before 8 February 2023 when the reasonable adjustment previously granted was refused.

Failure to make reasonable adjustments

4. The Claimant contends that the Respondent operated the provision, criterion or practice ("PCP") of requiring members of staff (alternatively members of staff that are fit to do so) to work in the Respondent's offices at least some of the time.

94. We find that the respondent did have this PCP, namely requiring members of staff to work in the respondent's offices at least some of the time. This was expressly accepted by the respondent's HR Manager witness Sarah Waller. Also, there is an abundance of written correspondence in which permanent (meaning exclusive) working from home is said not to be

permitted by the respondent. DCI Kelleher and DI Loftus also accepted that although this was not a written policy, a decision to this effect had been made by their superiors and it was to be given effect by them. Although DCI Kelleher acknowledged the possible existence of individuals working from home on an exclusive basis, he did not have direct knowledge of them. Even if these individuals exist, we find that the clear policy message in the correspondence is such that this was not an arrangement the respondent officially approved of. The extent of this PCP certainly applied to the claimant in his role as a police officer. This PCP applied to both disabled and non-disabled persons.

5. Did the application of the PCP place the Claimant at a substantial disadvantage when compared with non-disabled persons. In particular the tribunal will consider:

a. *does he find travelling to and from the office stressful, potentially causing his health to deteriorate?*
b. *does he find working in the office stressful, in part due to his concerns over historic issues of racism at work, potentially causing his health to deteriorate?*
c. *does he find being requested repeatedly to return to working in the office stressful, potentially causing his health to deteriorate?*

95. We find that the PCP did place the claimant at a substantial disadvantage when compared with non-disabled persons. This is because, to a degree, we consider that the disability speaks for itself. Also, the claimant clearly was in fact disadvantaged by the application of the PCP when compared to non-disabled persons. This is because of the inherent link between his heart condition and stress which is clearly identified in more than one occupational health and medical document, and the claimant's own evidence which we accepted.

96. More specifically, we find that the claimant did as a matter of fact find travelling to and from the office stressful, particularly when compared to people who are not disabled. This was supported by his evidence as

corroborated by the occupational health-type documentation. We find that the claimant did find working in the office stressful which had the potential to cause his health to deteriorate. This is clearly supported by the medical evidence which strongly recommends working from home to reduce stress. We also accept the claimant's evidence that being repeatedly asked to return to work in the office, or discuss the matter in principle, was stressful and had the potential to cause his health to deteriorate. The claimant had a heart condition requiring four stents to be inserted and had suffered two heart attacks. If the claimant had attended the office we accept his evidence that this would have been very stressful and carried a significant risk of a further heart attack. The medical advice to work from home was not challenged by the respondent and was clearly consistent with the rest of the evidence in the case.

97. Also, the claimant's adjusted duties report of 2015 stated that he must avoid stressful environments. The respondent's own witness DCI Kelleher effectively admitted the substantial disadvantage suffered by the claimant as a result of the PCP in cross-examination. The December 2022 OH report accepted that travel to the office would involve an emotional reaction by the claimant. There were also various recommendations that stress risk assessments should be carried out by the respondent.

6. If so, did the Respondent know, or could he reasonably have been expected to have known, that the Claimant was likely to be placed at the disadvantage?

98. We find that the respondent did know that the claimant was likely to be placed at the disadvantages identified. This is because of our wider findings on knowledge more generally. Also, DCI Kelleher accepted in cross-examination knowledge of the three elements of disadvantage alleged by the claimant. Also, we feel that the content December 2022 OH report is sufficient to give the respondent knowledge of the disadvantages of applying the PCP to the claimant. Also, the GPs letter dated 22 December 2022 included the fact that it is better for the claimant's overall health if he

is able to continue to work from home. This was seen by at least DS Dhillon because it is referred to in his 30 January 2023 email. Also, knowledge that the claimant was likely to be placed at the identified disadvantages can be inferred from the acknowledgement by DI Loftus in his emails dated 24 February 2023 and 27 April 2023.

99. Alternatively, the respondent could reasonably have been expected to have known for the same reasons, particularly bearing in mind that the respondent had carried out a substantial number of OH-type reports and referrals for the claimant.

7. The Claimant contends that the following adjustments should have been made to avoid the disadvantage:

a. permitting him to work from home permanently; and/or

b. implementing a non-permanent structure whereby the Claimant's arrangement of working entirely from home is reviewed periodically, such as every 6 months.

8. Was it reasonable for the Respondent to take the steps referred to above (to the extent that they were not so taken), in order to prevent the PCPs causing the substantial disadvantage?

100. We did not find that a permanent arrangement without any review was reasonable because it did not take into account any potential changes in the claimant's condition (either improvements or deteriorations). Also, we did not find that the evidence was clear that the claimant's condition would necessarily have the permanent effects that it was having at the relevant times.

101. However, we do find that it was reasonable for the respondent to take the step of implementing a non-permanent structure whereby the claimant's arrangement of working entirely from home is reviewed periodically, such as every six months.

102. We find that this was a reasonable step because the claimant's role could be done exclusively from home. It is a desk-based role. Both DCI Kelleher and DI Loftus accepted in evidence that there was no operational element to the claimant's role that required him to be in a police station or office. There is no written job description which suggests that his role had wider duties or responsibilities. The claimant did the role on a permanent at home-basis for a significant period of time without issues arising. The respondent's witnesses accepted that there were no performance issues. DS Dhillon clearly accepted that the claimant's role did not require him to come into the office. The role was also done by the claimant's predecessor for seven years on an at-home basis.

103. The respondent's position was that this was taking an overly narrow interpretation of the claimant's role. However, the evidence suggested that the claimant was able to have team meetings successfully by MS Teams, and there was no real evidence of disadvantage to the respondent from the claimant working exclusively working from home. It was accepted (or not clearly disputed) that the claimant's training could be done remotely. Although the respondent had a wider desire for what it called 'in-office resilience' and a need for officers to potentially 'flex between roles', this was undermined by the fact that all bar one of the 15 or so members of the team were on restricted duties. All of the other members of the team worked from home to a degree. We therefore find that the evidence did not establish that the claimant could not have, at least to a degree, have assisted with other roles in the team with his working from home arrangements. Also, the respondent accepted that there was no prospect of the claimant being deployed to front-line duties, or to attend a major incident, because of his health restrictions. Accordingly, any wider disadvantage to the respondent from the claimant's adjustment was minimal at best. It was only identified in vague and general terms. It was not suggested that this reasonable adjustment would have any particular impact beyond that of the claimant (such as, for example, meaning that a large group of officers would be affected).

104. We find that there were no, or no material, practical difficulties arising from the adjustment. This is because there was no clear evidence from the

respondent that it would cause or had caused practical difficulties, such as relating to IT or welfare check-ins. There was no identifiable evidence as to a cost issue from the adjustment. It was not disputed that working from home was clearly beneficial to the claimant's health and reduced his stress which was risk factor for his heart condition. The respondent is a large employer and one which frequently uses at least some working from home for some of its employees. There was also no cogent or material evidence that the claimant's permanent or effectively permanent working from home had created supervision or performance monitoring difficulties for the respondent during the relevant times.

105. We did not agree with the observations by the respondent about whether or not the proposed reasonable adjustment included an exception in which the claimant would attend the office on the rare occasion that it was because of a real and genuine necessity. We do not consider that the reasonable adjustment required further definition to be readily understood or implemented. We do not consider that if there was a rare occasion that the claimant did need to attend, such as for IT reasons to dock a laptop, this was necessarily precluded by the wording of the reasonable adjustment as proposed, or that this was material to our decision. It is not the case, on the evidence, that the respondent accepted or would have accepted a reasonable adjustment couched in those terms. This is because it revoked the wording proposed by DS Dhillon by the 8 February 2023 decision by DCI Kelleher.

106. We were satisfied that making the reasonable adjustment considered would have alleviated the substantial disadvantage suffered by the claimant. This is because of the clear and uncontested evidence of benefits to him when he previously worked under effectively the same arrangements.

9. Has the Respondent failed to take such steps?

107. We find that it did. This is because on 8 February 2023 respondent expressly revoked the permission that the claimant had been given to work

from home on an exclusive, or effectively exclusive basis, by DS Dhillon on 30 January 2023.

108. For those reasons the claim for failure to make reasonable adjustments succeeds.

Harassment related to disability

11. Was the Claimant subjected to the following treatment:

a. Matthew Loftus requesting and/or pressuring him to return to working in the office, including on 2 November 2022, 15 November 2022, 27 April 2023 and 18 May 2023;

109. We find that the 2 November 2022 email, which was sent to the wider team, did not amount to a request or pressure for the claimant to return to the office. This is because of the content of the email. This is because the reference to in-office working, as worded, refers only to a default position of 3 days a week which is expressly subject to occupational health or welfare needs. We do not find that it amounted to pressure because it was clearly subject to further discussion for occupational health needs and DI Loftus expressly invited a future discussion on that topic to the extent it applied. Although we accept that the claimant found the receipt of this email concerning, given his history, we do not consider that this email objectively analysed amounted to a request for the claimant to return or pressure to return.

110. We find that the MS Teams meeting on 15 November 2022 did amount to a request and pressure to return to the office. This is because we accept the claimant's evidence on this point as outlined above.

111. We find that DI Loftus' email dated 27 April 2023 did amount to both pressure and request because the express wording of the email: '*Given the nature of the Family Law disclosure role I am satisfied that you only need to be in the office a minimal amount of time to comply with the reasoning set out below, my thoughts would be something along the lines of once a fortnight for an initial period and we can see how that goes*.' We do not consider that the

absence of a specific start date, as argued by the respondent, is sufficient to demonstrate that this email was neither a request nor amounted to pressure to returned to the office at least some of the time. This takes into account the fact that these communications were against the backdrop of the claimant's request for exclusive, or effectively exclusive, home working had been expressly denied. We reject the respondent's suggestion that that absent a specific return date there was no request as being wholly unsupported, and in fact contradicted by, the evidence.

112. We find that DI Loftus' email to the claimant dated 18 May 2023 which included '*please could [sic] let me know which day you will be coming into the office next week'* was an express request to attend the office in the following week and clearly amounted to pressure for the claimant to attend the office. This is obvious from the wording used.

113. Our findings that express requests made by DI Loftus were pressure (as above) took into account the fact that he is both a senior officer and the claimant's second line manager.

> *b. Brian Kelleher refusing to allow Rhanna Dhillon's attempt to permit the Claimant to work from home full-time on 8 February 2023, and again on 10 February 2023; and/or*

114. We find that these things happened. They are not clearly denied by the respondent and are well-established in the email correspondence.

> *c. more generally the Respondent's staff members placing pressure on the Claimant to perform some work in the office? This includes:*
>
> *i. Matt Loftus and Jason Maureemootoo seeking to place Jason Maureemootoo in the Claimant's role (which he performs from home), discussed in correspondence on 7 October 2022 in the meeting on 15 November 2022.*

115. We do not find that this happened as a question of fact for the reasons outlined above.

> *ii. Requiring that the Claimant is repeatedly assessed by Occupational Health in an attempt to have him return to the office.*

116. We do not find that this happened. This is because we do not find that there is sufficient evidence to find that this was the respondent's motive. The wording of the questions in the report is insufficient to find that it was an attempt to have the claimant return to the office.

117. The only other evidence relied on by the claimant in support of this was the email from DS Barnard to the claimant referring to superintendent MdDonagh wanting to see the claimant in the office at least once a week, and asking if there are any restrictions which would prohibit this. We do not find that this was placing pressure on the claimant because it includes '*Is there anything restriction wise why you couldn't do that'*. Also, the claimant's response did not suggest that he found this amounted to pressure, and it included that the claimant can speak to Mr McDonagh if he would like. This is inconstant with the original request amounting to pressure.

> *d. Referring to 'Policy', 'Guidance' and 'advice' that the Respondent does not support working from home permanently, however not providing this Policy, Guidance or Advice that is relied upon for review.*

118. We find that this happened because at various points in the correspondence the respondent's individuals used words to the effect that the respondent did not support working from home permanently. It is also correct that no such policy guidance or advice was clearly made available to the claimant. However, this is because no such policy or guidance was clearly available in written form, at least at that time.

119. However, we do not find that this amounted to a pressure for the claimant to perform some work in the office. This is because there was no causal

connection between referring to policy which was not provided and any pressure.

12. Did that treatment have the purpose or effect of violating the Claimant's dignity?

120. We do not find that any of the treatment that occurred had the purpose or effect of violating the claimant's dignity. This is because of a lack of clear evidence establishing this, either as to the respondent's purposes or the effect on the claimant. This is also because the purpose of the treatment was to implement the direction given by the more senior officers which did not amount to these things.

121. We accept that the claimant found the treatment to be stressful and unpleasant but was not such that it had the effect of violating his dignity. We do not find that the claimant genuinely perceived the conduct has having that effect and we do not find that, even if this is wrong, that perception was reasonable taking into account all of the circumstances of the case.

13. If not, did it have the purpose or effect of creating an intimidating, hostile, degrading, humiliating and/or offensive environment for him?

122. We find that the request and pressure by DI Loftus for the claimant to return to working in the office on 18 May 2023 did have the effect of creating an intimidating environment for the claimant. We accept that it had this effect and that it was reasonable for it to have that effect on the claimant. This is because it was made by a senior officer who was also the claimant's second line manager and against a backdrop of increasing requests about return to the office. It was made in the context of clear medical evidence of which DI Loftus was aware including the stark position as to the claimant's return to office working being unforeseeable, as set out in the 30 January 2023 email from DS Dhillon. DI Loftus himself accepted that it would be morally and ethnically wrong to force the claimant back into the office in his email 24 February 2023. We accept the claimant's evidence that the constant pressure for him to return to the office without considering the medical evidence was harassing and increased his stress and exacerbated his

cardiac symptoms. We consider this act to be when the line was crossed by the respondent and the effect on the claimant that his life had become intolerable is clear from his evidence.

123. Although DI Loftus sought to describe this email as a mere prompt to get the claimant to respond to his previous email, we do not accept this. This is because the effect, and reasonable effect, of the email must be understood in the wider context of the claimant's well-founded fear about the state of his health and what would happen if he returned to the office, and the clear medical advice the claimant had received about continuing to work from home. DI Loftus also accepted in cross-examination that this email did not include any practical or operational reason why the claimant had to attend.

124. We do not find that this was the intention of DI Loftus. This is because we accept that DI Loftus was trying to implement the wider directive in relation to home working.

125. DI Loftus accepted that this request was not made in the context of asking the claimant about his health, or a risk assessment having been carried out.

126. We do not find that other treatment had the purpose of creating an intimidating, hostile, degrading, humiliating and/or offensive environment for him. This is because the purpose of the treatment was to implement the direction given by the more senior officers which did not amount to these things. We also do not consider that any effect it did have on claimant was reasonable given the nature of the treatment and the context in which it happened.

14. If so, was that conduct related to the Claimant's disability?

127. We find that the conduct did relate to the claimant's disability. This is because the claimant was only working from home on account of his disability and the request was only made because the claimant was not working in the office some of the time. Also, DI Loftus accepted in cross-examination that the request was made as a prompt to resolve the ongoing

dispute about reasonable adjustments. The dispute is clearly related to the claimant's disability.

128. We accept that both DI Loftus and DCI Keller were placed in a very difficult position by the respondent by the respondent's rigid position in regards to home working. The respondent did not provide assistance to them by way of clear policy guidance or advice in respect of disabled officers requesting reasonable adjustments. Ultimately, we accept that DI Loftus was in a position whereby he had very limited options given that it was made clear to him, by persons unknown but of a superior rank, that he could not permit exclusive, or effectively exclusive, working from home. His actions must be understood in that context where he had very limited options available to him in what he could permit or request of the claimant. Ultimately. the contravention of the Equality Act 2010 was the responsibility of the respondent.

129. For those reasons the claim for harassment related to disability succeeds.

130. Our decisions were unanimous.

Employment Judge Barry Smith
17 June 2024

SENT TO THE PARTIES ON

20 June 2024
.....

.....
FOR THE TRIBUNAL OFFICE

Appendix A – List of Issues

Introduction

1. The Claimant brings claims for:
    a. failure to make reasonable adjustments pursuant to ss.20 and 39(5) Equality Act 2010 ("EqA"); and
    b. harassment on the grounds of disability pursuant to ss.26 and 39(2)(d) EqA.

Disability

2. It is not in dispute that the Claimant has ischaemic heart disease and that at all material times he was disabled for the purposes of s.6 of the Equality Act 2010.

3. Did the Respondent know or could the Respondent reasonably have been expected to know about the Claimant's disability? If so, on what date did the Respondent have that knowledge? The Claimant says the Respondent knew when he had his heart procedure on August 2008 or at least by 20/5/10.

Failure to make reasonable adjustments

4. The Claimant contends that the Respondent operated the provision, criterion or practice ("PCP") of requiring members of staff (alternatively members of staff that are fit to do so) to work in the Respondent's offices at least some of the time.

5. Did the application of the PCP place the Claimant at a substantial disadvantage when compared with non-disabled persons. In particular the tribunal will consider:

    a. does he find travelling to and from the office stressful, potentially causing his health to deteriorate?
    b. does he find working in the office stressful, in part due to his concerns over historic issues of racism at work, potentially causing his health to deteriorate?

c. does he find being requested repeatedly to return to working in the office stressful, potentially causing his health to deteriorate?

6. If so, did the Respondent know, or could he reasonably have been expected to have known, that the Claimant was likely to be placed at the disadvantage?

7. The Claimant contends that the following adjustments should have been made to avoid the disadvantage:

   a. permitting him to work from home permanently; and/or

   b. implementing a non-permanent structure whereby the Claimant's arrangement of working entirely from home is reviewed periodically, such as every 6 months.

8. Was it reasonable for the Respondent to take the steps referred to above (to the extent that they were not so taken), in order to prevent the PCPs causing the substantial disadvantage?

9. Has the Respondent failed to take such steps?
10.

Harassment related to disability

11. Was the Claimant subjected to the following treatment:
    a. Matthew Loftus requesting and/or pressuring him to return to working in the office, including on 2 November 2022, 15 November 2022, 27 April 2023 and 18 May 2023;
    b. Brian Kelleher refusing to allow Rhanna Dhillon's attempt to permit the Claimant to work from home full-time on 8 February 2023, and again on 10 February 2023; and/or
    c. more generally the Respondent's staff members placing pressure on the Claimant to perform some work in the office? This includes:

       i. Matt Loftus and Jason Maureemootoo seeking to place Jason Maureemootoo in the Claimant's role (which he performs from home), discussed in correspondence on

7 October 2022 in the meeting on 15 November 2022.

ii. Requiring that the Claimant is repeatedly assessed by Occupational Health in an attempt to have him return to the office.

d. Referring to 'Policy', 'Guidance' and 'advice' that the Respondent does not support working from home permanently, however not providing this Policy, Guidance or Advice that is relied upon for review.

12. Did that treatment have the purpose or effect of violating the Claimant's dignity?

13. If not, did it have the purpose or effect of creating an intimidating, hostile, degrading, humiliating and/or offensive environment for him?

14. If so, was that conduct related to the Claimant's disability?

Jurisdiction

15. Did any of the acts or omissions relied upon take place prior to the primary limitation period, beginning on 15 December 2022?

16. If so, did any of those acts or omissions form part of a continuing act of discrimination with acts falling within that primary limitation period?

17. If not, would it be just and equitable to extend time in respect of those acts or omissions?

Remedy

18. If any of the Claimant's claims are well founded, what compensation should he be awarded in respect of:
    a. financial loss arising from any discrimination;
    b. injury to feelings; and/or
    c. personal injury?

19. What, if any, recommendation should be made?

20. Should any award be increased, and if so by what amount, on account of a failure by the Respondent to comply with the ACAS Code of Practice

on Disciplinary and Grievance Procedures? In particular the grievance was unreasonably delayed.

21. What is the appropriate calculation of interest on any award made by the Tribunal?