



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss L Mason

**Respondent:** The Chief Constable of Greater Manchester Police

**Heard at:** Manchester (in private; by CVP) **On:** 14 June 2024

**Before:** Employment Judge Dunlop (sitting alone)

## Representatives

For the claimants: In person

For the respondent: Mr C Adjei (Counsel)

# RESERVED JUDGMENT ON A PRELIMINARY HEARING

1. The Tribunal has no jurisdiction to hear the claimant's complaint of unauthorised deductions from wages (s.13(1) Employment Rights Act 1996) because the disputed payments relate to her (former) role as a police officer. The claimant held that role as an office-holder, and not as an employee or worker, and there is no statutory authority for the Tribunal to hear such a claim brought by an office-holder. That part of the claimant's claim is therefore dismissed.
2. The claimant is permitted to amend her claim to proceed with the matters set out in the List of Issues annexed to this Judgment.
3. The matters which are struck through in the annexed List of Issues are not permitted to proceed, either because an amendment to the claim would be required, and I have refused the claimant permission to amend, or because it would be an abuse of process to allow those matters to proceed.

# REASONS

## Introduction

1. The reasons for my Judgment in relation to the unauthorised deductions from wages claim were given orally during the hearing on 14 June 2024. No

written reasons will therefore be given unless a request is made within 14 days of this Judgment being sent to the parties.

2. I note here that, in line with that Judgment, Miss Mason held the office of police constable and is not technically an employee of the respondent. Nonetheless, I have referred to 'her employment' in this Judgment, using that phrase in a non-technical way, as a less-cumbersome approximation for "the period when she held office as a police constable within the respondent force".
3. I reserved my Judgment in respect of the amendment application, and the application that some parts of the claim should be struck out as an abuse of process. I therefore now give written reasons for that decision alongside the Judgment. I refer to this claim (2403103/2023) as Miss Mason's "second claim", which is true for practical purposes, although technically there were other claims presented which have not continued, for reasons I will not set out here.
4. Miss Mason is self-represented, and the amendment application comes about in circumstances which are not uncommon. The claims that Miss Mason wished to bring were not fully apparent from the claim form she submitted to the Tribunal on 2 March 2023. Over the course of two preliminary hearings and, particularly, a preliminary hearing in front of Employment Judge Slater on 5 December 2023, the Tribunal clarified the claims that Miss Mason wished to bring. The respondent's position, set out in an email dated 12 January 2024, was that a number of the matters set out in the resulting List of Issues were not matters which appeared in the claim, and therefore an amendment to the claim would be required. The respondent identified the proposed claims/complaints in respect of which it objected to amendment being permitted.
5. Following this, both sides put forward their positions in writing as to the various contested parts of the List of Issues. As well as the familiar dispute over amendment to add new complaints/issues, however, there were additional arguments in this case. These arose because Miss Mason has another claim against the respondent (2403446/2022), which is part of a small multiple, presented alongside the claim of another claimant, Ms Ridley-Laing. I will refer to that claim as "the multiple claim".
6. The multiple claim has itself been subject to extensive case management in an attempt to clarify the issues arising. That resulted in a final List of Issues (subject again to permission to amend being given) which was updated by Miss Mason on 26 May 2023. At a hearing on 30 August 2023 I made decisions to permit or refuse the various proposed amendments, resulting in a final List of Issues for Hearing. It is the respondent's position that some of the matters now identified in proposed List of Issues for the second claim are either matters which are already included in the multiple claim, matters which Miss Mason sought to introduce into the multiple claim and for which permission to amend was refused, or matters which she ought to have complained about in the multiple claim, if she wished to do so. For these various reasons, the respondent says that to allow such matters to proceed as part of the second claim would be an abuse of process.

7. It is relevant to set out a brief chronology of the claims as follows:

10 May 2022	Multiple claim presented
3 November 2022	Miss Mason resigns on notice
4 December 2022	Miss Mason's employment terminates
2 March 2023	Second claim presented
5 May 2023	The issues the multiple claim were confirmed (subject to permission to amend being granted)
30 August 2023	Amendments determined in the multiple claim
5 December 2023	The issues the second claim were confirmed (subject to permission to amend being granted)

### My approach

8. My approach has been to consider the amendment point initially, setting to one side the abuse of process arguments. Where I would have been minded to allow an amendment, I have then considered whether the abuse of process argument causes me to reach a different conclusion.
9. In making those decisions, I have worked through the draft List of Issues prepared by Employment Judge Slater. For clarity, I have annexed that List of this Judgment. The underlined text represents the areas where the respondent argued that amendment would be necessary, and where it opposed permission to amend being granted. Where the underlined text is struck-through, I have not allowed the amendment. In some cases, that has resulted in no 'live' allegations in respect of a particular cause of action. I have therefore struck through the whole section relating to that cause of action. I have also struck through the section relating to unauthorised deductions from wages, reflected my Judgment that that claim cannot proceed for different reasons (see above). Where the underlined text is not struck-through, I have allowed the amendment. The Issues which will proceed to final hearing are therefore all of the Issues set out in this List which are not struck through.
10. In reaching this decision I reminded myself of the oral judgment, with reasons, which I gave on 30 August 2023, in order to apply a consistent approach to these complex linked claims.

### The Law

11. In considering the claimant's application to amend I had regard to the principles set out in **Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT**. This identifies that relevant considerations in an amendment application include the nature of the amendment, the applicability of time limits and the manner

and timing of the application. The over-arching question is the balance of hardship between the parties and, although time limits are relevant, they are only one factor and not determinative.

12. The more recent case of **Vaughan v Modality Partnership 2021 ICR 535**, **EAT** confirms that the **Selkent** factors are not a checklist, to be considered mechanically, and that the test of injustice and hardship is paramount.
13. In relation abuse of process, there have been no final determinations of any of the complaints or issues before the Tribunal in either of the claims. Therefore, I am of the view that no formal estoppel applies. Mr Adjei, in his skeleton argument suggests that there is an issue estoppel in respect of one particular point, as the claimant has previously sought to amend the multiple claim to include that point, and been refused. I disagree, as the decision as to whether to permit an amendment to one claim is not the same as the decision as to whether to permit a similar amendment in the context of a different claim. My view is that the authority on which Mr Adjei relied (**Pugh v RT Electrics Ltd [2017] ICR**) does not assist him. It concerned a different situation of a Tribunal at a final hearing re-opening a decision on jurisdiction which had already been made (in the same claim) at a preliminary hearing.
14. However, even if there is no formal estoppel, the Tribunal may prevent a complaint or argument from being advanced in accordance with the rule in **Henderson v Henderson 1843 3 Hare 100 ChD** which provides '*where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case*'.

### Protected disclosures

15. The claimant's claim, as clarified, relies on four alleged protected disclosures. The respondent objects to three of them. I accept, as per **Vaughan**, that an application to add unpleaded protected disclosures is a substantive application to amend. It is not merely clarification.
16. In considering the extent to which matters complained of are already in the claim form (which is relevant to the **Selkent** issue of determining the nature of the amendment) I record that the claim form includes a summary of the complaints that Miss Mason wishes to bring, contained in box 8.2 of the ET1 and also in the first 1.5 pages of the attachment to the form. The remaining 8.5 pages of the attachment contain duplications of correspondence sent by the claimant to the respondent. I have paid particular attention to what is said in the 1.5 pages, as it is reasonable to assume that that contains the complaints the claimant wishes to put before the Tribunal. It is disappointing, having seen the problems that attaching large volumes of correspondence to a claim form resulting in in the multiple case, that Miss Mason again proceeded to take that approach to her claim. I have, however,

also taken in to account the material included in the 8.5 pages, to determine the extent to which a particular complaint or allegation can be said to already be on the face of the pleadings.

17. I also have regard to the fact that the alleged protected disclosures are not claims in themselves, and therefore time limit issues do not arise. Each is relied on as part of the claimant's automatic unfair dismissal claim, which is in time.
18. The first disputed protected disclosure is expressed as follows: "*19 January 2022 Claimant verbally disclosed a hate crime related to disability to Ann Clayton.*"
19. I consider this is obliquely referred to in the 1.5 pages, which set out a chronology starting with the claimant reporting sick from work on the 20 January 2022, and stating that she had faced victimisation following previous protected disclosures. The assertion that the claimant has reported a hate crime, also appears in several places in the supporting correspondence.
20. It is relevant that the alleged report, to Ann Clayton, will be considered as part of the final hearing, as it is relied on as a protected act for the purposes of the victimisation complaint which forms part of the victimisation claim in those proceedings. The allegation that that protected act played a part in the alleged acts which amounted to a breach of the implied term for the purposes of a constructive unfair dismissal claim follows on naturally, in my view, from the matters which were complained of in the multiple claim. (I make no comment as to whether Miss Mason will in fact be able to establish this was a protected disclosure within s.43B ERA). To the extent that an amendment is necessary for Miss Mason to rely on this protected disclosure, I allow it.
21. The next disputed protected disclosure is "*22 March 2022 in a text to Ann Clayton, the claimant disclosed information that she had been directly discriminated against because of disability on 19 January [amended from 29 January] and wanted it recorded.*"
22. The date of 22 March 2022 and the actions Miss Mason says she took are clearly set out in the 1.5 pages referred to above, albeit not labelled as a protected disclosure. The allegation that Miss Mason had said that this was an act of disability discrimination is not, as the respondent says, clear on the face of the claim, but in my view this allegation pervades all of the claimant's complaints. For those reasons, I consider that the nature of the amendment required is minor. Although the respondent says that it will suffered prejudice in relation to allegations concerning Ann Clayton, as she has left the force, it is pertinent that there are other allegations which will proceed which concern her, and also that the disclosure here is said to be by text message, which will presumably be available for the Tribunal to read and analyse, making witness evidence less important. I therefore allow this amendment.

23. The next disputed protected disclosure is “*in a statement made on 20 July 2022, the claimant disclosed to Chief Superintendent Chris Hill that: there had been a hate crime; that information related to the pay appeal and injury on duty had been tampered with by Ann Clayton; that the Health and Safety at Work Act have not been complied with; that there had been breaches of the Equality Act 2010; that the Public Sector Equality Duty had not been complied with; that the transfer of the payslip system had excluded those currently off sick.*” In her response to the respondent’s application, Miss Mason acknowledges that this alleged protected disclosure was not specifically raised in the claim form. It is therefore a substantive amendment. I take the view, however, that the prejudice to the claimant of not allowing the amendment outweighs the prejudice to the respondent of allowing it. The respondent has pointed to no specific forensic prejudice arising from the inclusion of this alleged protected disclosure. If it is not allowed, the claimant would be proceeding with a constructive dismissal claim from which the alleged disclosure which happened closest in time to the resignation itself is excluded. This may therefore, for practical purposes, exclude from the Tribunal’s consideration those detriments which are closer in time to the resignation and runs the risk of making the Tribunal’s analysis of the constructive unfair dismissal claim somewhat artificial.
24. For the reasons explained, all the disputed protected disclosures will be permitted to proceed.

#### **The automatic unfair dismissal claim**

25. Miss Mason resigned from the police. She asserts that the actions of the force were such as to amount to constructive dismissal. As a police officer, she has no right to bring a claim of ‘ordinary’ unfair dismissal. She can (and does) say that her constructive dismissal was on the grounds that she had made a protected disclosure, and was therefore ‘automatically’ unfair (s.103A ERA).
26. This complaint does not form part of the multiple claim. The respondent accepts that it forms part of this claim. Employment Judge Slater set out various matters which are relied upon as breaching the implied term of trust and confidence. Some of those matters, the respondent accepts, are clarifications of the complaint, and should be permitted to proceed. Others, it says, go beyond clarification and require amendment.
27. There was some dispute between the parties as to the extent to which some of the matters relied on were mentioned in the claim. This was not determinative to my decision in respect of this part of the amendment application. Broadly, the claimant has always been clear that she is bringing a constructive unfair dismissal claim. It is not unusual for the details of how the respondent is said to have breached the implied term to be fleshed out after the initial presentation of the claim. This is what has happened in this case. The case is still (unfortunately) at an early stage. There is no prejudice to the respondent in dealing with these allegations. In fact, this respondent is in a better position for knowing with some precision what the allegations are. For those reasons, all of the disputed matters in respect of the constructive dismissal claim will be allowed to proceed.

## Harassment related to disability

28. There are three allegations of harassment related to disability set out in the List of Issues and the respondent objects to them all.
29. In respect of 6.1.1 (“25 August 2022 Ann Clayton sent three questions about the claimant’s disability in connection with an OH referral, without the claimant’s knowledge.”)
30. This was alluded to in the additional 8.5 pages of the claim. Whilst it is clear that this is something Miss Mason is unhappy about, it is not clear that it is a complaint of harassment. However, Miss Mason has stated at Box 8.2 that she is bringing a complaint of disability-related harassment and, in the circumstances, this is more in the nature of clarification than a substantive amendment. To the extent that an amendment is necessary, it is appropriate to grant it. The balance of prejudice favours the claimant (notwithstanding that this is an allegation involving Ann Clayton) because she is a litigant in person and she should be permitted to clarify her claim when the ‘ingredients’ of the claim were present in the claim form (albeit when it is read generously).
31. The respondent also says that the harassment complaints should not be allowed to proceed because they are absent from the multiple claim. It is said that to fail to bring these matters as part of the multiple claim, and instead to bring them as part of the second claim is an abuse.
32. This allegation relates to 25 August 2022, a date which post-dates the presentation of the multiple claim in May that year. The respondent’s position is that the claimant could (and should) have amended the multiple claim to include these matters, instead of including them in a new claim. I reject that argument. Broadly, a claimant who remains in employment following the presentation of a claim to the Tribunal, and finds that new events happen which they wish to complain about, has the choice of applying to amend their claim or presenting a new claim. There are advantages and disadvantages to each approach. Usually, however, there is no rule to say that the fact that there is an existing claim which *could* be amended means that the individual is precluded from bringing a new claim. The choice is up to the individual. I accept there might be circumstances where the conduct appeared abusive and that general principle could be disapplied, but I do not see that as being the case here. The multiple claim, including the new matters that were added to it, broadly deals with matters up to presentation of the claimant’s grievance in February 2022. Miss Mason has made a distinction between those matters and the latter part of the narrative which led up to her resignation, which she has put in claim 2. That distinction seems to me to be logical and hard to criticise, particularly as she is acting in person. I see no abuse of process in the approach she has taken.
33. In relation to the second and third harassment allegations (Issues 6.1.2 and 6.1.3) Miss Mason acknowledged in her written response that these had not been specifically detailed in the claim. This is therefore a more substantive

amendment. Further, given the dates when these matters were said to have taken place, and the date when ACAS conciliation commenced, they are matters which may well be out of time (subject to any finding of a continuing act and/or just and equitable extension).

34. Allegation 6.1.2 involves Ann Clayton and refers to a continuing course of conduct. It is not readily apparent that the Tribunal will be able to determine this from reviewing the documents, and the respondent may be prejudiced by Ms Clayton's likely absence from the hearing. In all the circumstances, I consider that the balance of prejudice is finely balanced, but ultimately favours the respondent on this allegation, and the amendment is not permitted.
35. Allegation 6.1.3 is similar to allegation 6.1.2 but alleges that the HR department were consistently asking the claimant about her disability and her reasonable adjustments within a particular time period. Similar considerations apply as set out above and, again, the balance of prejudice is finely balanced. However, as this allegation does not hinge on the involvement of Ms Clayton, I am content to allow the amendment. I repeat the comments above as to the argument about abuse of process. It may be that the respondent will need more information in due course as to who in the HR department is said to have done this, and how. I would hope that this information can be given informally, and that both parties can deal with the matter in evidence in a proportionate way.

### **Direct disability discrimination**

36. There are two allegations of direct disability discrimination in the list of issues, numbered 7.1.1 and 7.1.2.
37. In relation to 7.1.1 this is an allegation about a specific remark said to have been made to Miss Mason in January 2022. The same alleged remark forms the basis of a harassment complaint in the multiple claim. It is not mentioned explicitly in the claim form for the second claim, and a substantive amendment would therefore be required to allow it to proceed. The balance of prejudice here favours the respondent; the allegation is already being put forward in the multiple claim, the claimant loses little, if anything, by not having a 'second bite of the cherry' by framing the allegation as a direct discrimination claim. Further, it occurred in the time period which is (broadly) within the purview of the multiple claim rather than the second claim. There is a prejudice to the respondent in the multiplicity and complexity of the proceedings, notwithstanding the fact that they are already required to deal with this allegation.
38. In relation to 7.1.2, this is an allegation about the conduct of 'HR' towards the end of October 2022. The respondent acknowledges that this conduct is referred to in the claim, but argues that it is not expressly stated to be an allegation of discrimination. I am satisfied that the claim form identifies this incident, and (separately) states that a claim of (direct) disability discrimination is being brought. For analogous reasons to those set out at paragraph 30 above, I am content to allow this issue to go forward, and to permit an amendment to the claim to the extent that it is necessary to do so.



### Discrimination arising from disability (s.15)

39. The List of Issues includes two complaints under s.15. The respondent does not challenge the inclusion of the first complaint (relating to the refusal of the claimant's pay appeals) but does challenge the inclusion of the second. The less favourable treatment for the second complaint is said to be "*requiring the claimant to work at Sedgley Park with immediate effect and without her reasonable adjustments*" the corresponding "something" which arises from her disability is said to be "*The claimant challenging Superintendent Rachel Harrison's inappropriate behaviour because of her and Miss Ridley-Laing's disabilities.*"
40. In Mr Adjei's skeleton argument, it is accepted that the complaint about Sedgley Park is made in the claim, along with the assertion that the claimant challenged discriminatory treatment. Mr Adjei says that it is not asserted that the fact that she made those challenges was, itself, "something arising" from the claimant's disability. To the extent that an amendment may be needed, it is clearly of a minor nature, and Mr Adjei raises no specific point on prejudice. I consider this is a legitimate clarification of the claim, and no formal amendment is needed. To the extent that it is, the **Selkent** principles would lead me to allow the amendment.
41. The force of the respondent's argument, in this instance, is directed towards abuse of process. The respondent notes that the requirement to return to Sedgley Park is said to have happened from 20 January 2022 (see Issue 3.1.1.3 in relation to constructive dismissal). That pre-dated the first claim being brought by several months. The respondent says that this complaint should therefore have been part of the multiple claim, either originally or by way of amendment.
42. In fact, complaints about the physical unsuitability of Sedgley Park already form part of the multiple claim, where they are raised as part of a reasonable adjustments complaint. If the claimant also wished to allege that being required to work at Sedgley Park was an act of s.15 discrimination, it is hard to see why that was not particularised as part of the extensive clarification exercise which took place in the multiple claim. That involves many other acts which are said to have taken place around the same time, as well as a reasonable adjustments complaint specifically on this point.
43. In circumstances where that claim has been fully clarified over such an extended period, I agree with Mr Adjei that it would be an abuse of process to allow the second claim to introduce a new complaint about this matter. For that reason, the contested parts of the List of Issues in the s.15 complaint will not be permitted to proceed.

### Failure to make reasonable adjustments

44. The reasonable adjustments claim as it appears in the list of issues (i.e. as clarified by Employment Judge Slater) relates to Sedgley Park, and the provision of a particular type of chair, and covers essentially the same

grounds as the reasonable adjustments claim which is already proceeding as part of the multiple claim.

45. I agree with Mr Adjei that this claim is not made apparent on the face of the claim form (although there are some references to these matters) and an amendment would be required to introduce it.
46. I am satisfied that Miss Mason is not materially prejudiced if the amendment is not allowed – she has the same complaints running as part of the multiple claim. The prejudice to the respondent is not significant, as they will already have to prepare to address these issues. However, I accept that there is some general prejudice in being faced with a multiplicity of over-lapping claims. The balance of prejudice falls against the claimant, and the amendment will not be permitted.
47. For completeness, I would also accept Mr Adjei’s supplementary argument that allowing this complaint to proceed in the circumstances would amount to an abuse of process.

### **Victimisation**

48. The victimisation complaint in this case relies on one protected act – the submission of a grievance by the claimant on 9 February 2022. There are five alleged detriments flowing from that protected act, of which the first two are challenged by the respondent.
49. The first alleged detriment is *“on 20 January 2022 removing the claimant with immediate effect from the DEI team”*.
50. Mr Adjei now accepts that this allegation appears in the claim, and so there is no need to determine whether the claim can be amended.
51. However, Mr Adjei makes strong submissions on the abuse of process argument in relation to this detriment. He notes (and I accept) that I rejected an application to add (essentially) the same protected act to the victimisation complaint which forms part of Miss Mason’s case in the multiple claim. He contends that this creates an issue estoppel. Alternatively, he says that as the detriment took place several months before the first claim was presented, it should have been presented as part of the first claim and it would be an abuse of process to allow it to proceed now.
52. I do not agree with Mr Adjei that the determination of the previous amendment application creates an estoppel in itself (as discussed above in the Legal Principles section of this Judgment). I do, however, agree that it would be abusive, in the *Henderson* sense, to allow Miss Mason to proceed with a claim about the events on January 2022 as part of the second claim. For that reason, the complaint relying on that alleged detriment will not be permitted to proceed.
53. The second contested detriment is *“Gareth Parkin telling the claimant that if she wanted to report a hate crime it had to be done by ringing 101 (the*

*number for members of the public to report a crime) and refusing to speak to the claimant about it.”* The respondent says that this is a more significant amendment, because it is not referenced in the second claim. I agree that it does not seem to be referenced. I understand, from references made elsewhere, that this event also took place in January 2022 and was linked to the ‘hate crime’ allegation and the allegation that the claimant was removed from the DEI team. All of these are matters covered in the multiple claim, and a very similar allegation seems to form part of the victimisation claim (as amended) in the multiple claim. Further, the allegation of detriment, as I understand it, predates the protected act relied on in the second claim. For all these reasons I consider that the balance of prejudice favours the respondent in this instance and the second detriment should also not be allowed to proceed as a complaint in the second claim. If amendment were not needed, I would consider it an abuse of process to allow this complaint to proceed for analogous reasons.

## **Conclusion**

54. That addresses all of the contested amendments, and means that the List of Issues should now be finalised. Case management orders for the progression of the matter to a final hearing are made in other documents.
55. I note for completeness that in a discussion towards the end of the hearing Miss Mason indicated that there may be certain points in the List of Issues that she did not, in fact, intend to take forward as part of the second claim. I indicated that, if this was the case, she should write to me after the hearing clearly identifying those points so that I could remove them from the list of issues without spending more time than was necessary determining this application. (Particularly bearing in mind that these cases have already taken up a disproportionate amount of judicial resources). Whilst the Tribunal did receive a letter from Miss Mason in due course, it appeared to add to the complexity rather than resolve it, being more in the nature of further submissions. As there was no clear indication that any matter was being abandoned, and as I had almost completed this Judgment in any event, I considered it would not be appropriate to have regard to the letter and have not done so in reaching this conclusion.

**Employment Judge Dunlop**

Date: 2 July 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

11 July 2024

FOR EMPLOYMENT TRIBUNALS

## Annex Complaints and Issues

### 1. Time limits

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

1.1.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

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

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

### 2. Protected disclosures

2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the claimant say or write? When? To whom? The claimant says s/he made disclosures on these occasions:

**PD1** 19 January 2022 Claimant verbally disclosed a hate crime related to disability to Ann Clayton

**PD2** 9 February 2022 Claimant's grievance

**PD3** 22 March 2022 in a text to Ann Clayton, the claimant disclosed information that she had been directly discriminated against because of disability on 29 January and wanted it recorded correctly.

**PD 4** In a statement made on 20 July 2022, the claimant disclosed to Chief Superintendent Chris Hill that: there had been a hate crime; that information related to the pay appeal and injury on

duty had been tampered with by Ann Clayton; that the Health and Safety at Work Act had not been complied with; that there had been breaches of the Equality Act 2010; that the Public Sector Equality duty had not been complied with; that the transfer of the payslip system had excluded those currently off sick.

- 2.1.2 Did she disclose information?
- 2.1.3 Did she believe the disclosure of information was made in the public interest?
- 2.1.4 Was that belief reasonable?
- 2.1.5 Did she believe it tended to show that:
  - 2.1.5.1 a criminal offence had been, was being or was likely to be committed; PD1, PD2 and PD4.
  - 2.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation; PD1, PD2, PD3 and PD4.
  - 2.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered; PD4.
  - 2.1.5.4 information tending to show any of these things had been, was being or was likely to be deliberately concealed. PD2 and PD4.
- 2.1.6 Was that belief reasonable?
- 2.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

3. **Unfair dismissal – s.103A Employment Rights Act 1996 (protected disclosure)**

- 3.1 Can the claimant prove that there was a dismissal?
  - 3.1.1 Did the respondent do the following things:
    - 3.1.1.1 19 January 2022 the respondent removing the claimant from her role in the DEI team.
    - 3.1.1.2 From c.20 January 2022 until 2 days before the claimant left, the respondent failing to provide the claimant with adequate welfare support.
    - 3.1.1.3 20 January 2022, requiring the claimant to return to work at Sedgley Park with immediate effect, removing the reasonable adjustments which had been in place.

- 3.1.1.4 From 7 June 2022, for about 5 months, the respondent deliberately concealing and/or not acting upon the claimant's pay appeals.
  - 3.1.1.5 From 7 June 2022, Ann Clayton, deleting the injury on duty forms and supporting evidence provided by the claimant for her pay appeals, before forwarding the application to HR pay appeals.
  - 3.1.1.6 25 August 2022, Ann Clayton sent three questions about the claimant's disability in connection with an OH referral, without the claimant's knowledge.
  - 3.1.1.7 C.6 October 2022, Justine Goodwin taking the decision to refuse the claimant's pay appeal without having authority to do so.
  - 3.1.1.8 31 October 2022, Omair Chunara trying to mislead the claimant as to when the outcome of the pay appeal had been sent to her.
  - 3.1.1.9 c.end October 2022, the respondent not responding to the claimant's request for forms to make an application for medical ill health requirement.
- 3.1.2 Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:
- 3.1.2.1 whether the respondent had reasonable and proper cause for those actions or omissions, and if not
  - 3.1.2.2 whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
- 3.1.3 Was the fundamental breach of contract a reason for the claimant's resignation?
- 3.1.4 Did the claimant affirm the contract before resigning, by delay or otherwise? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 3.2 Was the reason or principal reason for the fundamental breach of contract that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

#### **4. Remedy for unfair dismissal**

- 4.1 Does the claimant wish to be reinstated to their previous employment?

- 4.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 4.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 4.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 4.5 What should the terms of the re-engagement order be?
- 4.6 What basic award is payable to the claimant, if any?
- 4.7 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- 4.8 If there is a compensatory award, how much should it be? The Tribunal will decide:
  - 4.8.1 What financial losses has the dismissal caused the claimant?
  - 4.8.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 4.8.3 If not, for what period of loss should the claimant be compensated?
  - 4.8.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - 4.8.5 If so, should the claimant's compensation be reduced? By how much?
  - 4.8.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 4.8.7 Did the respondent or the claimant unreasonably fail to comply with it?
  - 4.8.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
  - 4.8.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?

4.8.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

## 5. Disability

5.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

5.1.1 Did she have a physical and/or mental impairment because of her medical conditions of fibromyalgia, chronic fatigue syndrome, depression and Reynaud's syndrome.

5.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

5.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

5.1.4 If so, would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

5.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

5.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

5.1.5.2 if not, were they likely to recur?

## 6. Harassment related to disability (Equality Act 2010 section 26)

6.1 Did the respondent do the following alleged things:

6.1.1 25 August 2022, Ann Clayton sent three questions about the claimant's disability in connection with an OH referral, without the claimant's knowledge.

~~6.1.2 From mid August 2022 to 22 September 2022, Ann Clayton continually requiring the claimant to do a disability needs assessment including requiring the claimant to do it on short notice.~~

6.1.3 From June 2022 to October 2022, HR consistently asking the claimant about her reasonable adjustments and questioning her about her disability.

6.2 If so, was that unwanted conduct?

6.3 Was it related to disability?



- 6.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 6.5 If not, did it have that effect? The Tribunal will 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.

**7. Direct disability discrimination (Equality Act 2010 section 13)**

7.1 What are the facts in relation to the following allegations:

~~7.1.1 In January 2022, Rachel Harrison talking about the claimant's Windows 10 laptop, saying "I'm trying to help you girls with your disability because you can't pick up your laptop", assuming that the claimant could not pick up the laptop because of disability when the claimant was, in fact, on leave. The claimant relies on a hypothetical comparator.~~

7.1.2 Towards the end of October 2022, HR writing to the claimant to say that management action had been sent to Ann Clayton to discuss with the claimant. The claimant relies on Ms Ridley Laing and Mr Mather as actual comparators and, in the alternative, a hypothetical comparator.

- 7.2 Did the claimant reasonably see the treatment as a detriment?
- 7.3 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances without a disability was or would have been treated?
- 7.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?
- 7.5 If so, has the respondent shown that there was no less favourable treatment because of disability?

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

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

8.2 If so, did the respondent treat the claimant unfavourably in any of the following alleged respects:

8.2.1 Refusing the claimant's pay appeals.

~~8.2.2 Requiring the claimant to work at Sedgley Park with immediate effect and without her reasonable adjustments.~~

8.3 Did the following things arise in consequence of the claimant's disability:

8.3.1 The claimant being off sick?

~~8.3.2 The claimant challenging Superintendent Rachel Harrison's inappropriate behaviour because of her and Ms Ridley-Laing's disabilities.~~

8.4 Has the claimant proven facts from which the Tribunal could conclude that the unfavourable treatment was because of any of those things?

8.5 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

8.6 If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

8.6.1 [ **To be identified by respondent in its amended response if relying on this defence**]

8.7 The Tribunal will decide in particular:

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

8.7.2 could something less discriminatory have been done instead;

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

~~9. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)~~

~~9.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?~~

~~9.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:~~

- ~~9.2.1 Requiring the claimant to work at Sedgley Park, being physically on site, standing in a classroom and delivering lessons.~~
- ~~9.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant would suffer pain, requiring her to take opioid medication, because of the commute and because of having to walk across site.~~
- ~~9.4 Did a physical feature, namely the situation of the office at Sedgley Park, 3 floors up a winding staircase, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that going up and down stairs, contorting her body on the narrow winding stairs, a number of times a day would exacerbate her pain and fatigue?~~
- ~~9.5 Did a physical feature, namely the cold temperature in winter and hot temperature in summer of the Grade 2 listed building at Sedgley Park put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the extremes of temperature exacerbated her pain.~~
- ~~9.6 Did the lack of an auxiliary aid, namely a suitable chair in the office at Sedgley Park and the classroom, an up and down desk, monitors on screens, grip supports for a pen, an up and down mouse and a soft keyboard, heaters and fans to regulate her temperature, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that, without these aids, she suffered more pain and fatigue?~~
- ~~9.7 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?~~
- ~~9.8 Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:~~
- ~~9.8.1 Allowing the claimant to continue to work from home.~~
- ~~9.8.2 Allowing the claimant to continue with flexi working, allowing her to book on and off when she needed a rest.~~
- ~~9.8.3 Only requiring the claimant to return to work in the office when more suitable accommodation had been arranged and auxiliary aids in place.~~
- ~~9.9 By what date should the respondent reasonably have taken those steps?~~

10. **Victimisation (Equality Act 2010 section 27)**

- 10.1 Did the claimant do a protected act as follows:
- 10.1.1 In her grievance of 9 February 2022 raising with the respondent that a hate crime related to disability had been committed and that the respondent had breached the Public Sector Equality duty?
- 10.2 Did the respondent do the following things:
- ~~10.2.1 On 20 January 2022, removing the claimant with immediate effect from the DEI team.~~
- ~~10.2.2 Gareth Parkin telling the claimant that if she wanted to report a hate crime it had to be done by ringing 101 (the number for members of the public to report a crime and refusing to speak to the claimant about it.~~
- 10.2.3 From 7 June 2022, Ann Clayton, deleting the injury on duty forms and supporting evidence provided by the claimant for her pay appeals, before forwarding the application to HR pay appeals.
- 10.2.4 From 7 June 2022, for about 5 months, the respondent deliberately concealing and/or not acting upon the claimant's pay appeals.
- 10.2.5 Chief Inspector, Claire Ryle, telling the claimant she was ill because of factors including because she was menopausal, even though the claimant was only in her 30s at the time.
- 10.3 By doing so, did it subject the claimant to detriment?
- 10.4 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?
- 10.5 If so, has the respondent shown that there was no contravention of section 27?

## 11. Remedy for discrimination or victimisation

- 11.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 11.2 What financial losses has the discrimination caused the claimant?
- 11.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 11.4 If not, for what period of loss should the claimant be compensated?

- 11.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 11.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 11.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 11.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 11.9 Did the respondent or the claimant unreasonably fail to comply with it?
- 11.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 11.11 By what proportion, up to 25%?
- 11.12 Should interest be awarded? How much?

~~12. **Unauthorised deductions**~~

- ~~12.1 Does the Tribunal have jurisdiction to consider the complaint, given the claimant's status as a police constable?~~
- ~~12.2 If the Tribunal has jurisdiction, did the respondent make unauthorised deductions from the claimant's wages and, if so, how much was deducted? The claimant says she should have been paid full pay in the period 14 June 2022 to 4 December 2022 (the end of her employment) rather than half pay, since her absence was due to an injury on duty.~~