



# EMPLOYMENT TRIBUNALS

## Claimant

Mr Aaron Prentice

## Respondent

British Transport Police

v

**Heard at:** Norwich (hybrid)

**On:** 4 November 2024 (reading day)  
5, 6, 7, 8, 11, 12 and 13 November 2024  
14 November 2024 (deliberations)  
15 November 2024 (Judgment given)

**Before:** Employment Judge Postle

**Members:** Mrs B Handley-Howarth and Mr D Hart

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Caiden, Counsel

## JUDGMENT

The unanimous Judgment of the Tribunal is that the Claimant's claim under the Equality Act 2010 for the protected characteristic of disability, in particular: direct discrimination, discrimination arising from disability, failure to make reasonable adjustments, indirect discrimination and harassment, are not well founded.

## REASONS

1. The Claimant brings the following claims to the Tribunal under the Equality Act 2010:
  - 1.1. for the protected characteristic of disability;
  - 1.2. direct discrimination, section 13;
  - 1.3. discrimination arising from disability, section 15;
  - 1.4. indirect discrimination, section 19;

- 1.5. failure to make reasonable adjustments, section 20; and
- 1.6. harassment, section 26.
2. The specific issues are set out in the Case Management Hearing Record of 27 November 2023, before Employment Judge Matthews and to be found at pages 396 – 408 of the Hearing Bundle.

### **Jurisdiction**

3. There is also jurisdictional issues in relation to time.
4. In particular the Claimant was dismissed on 26 October 2022, Early Conciliation took place between 2 November 2022 and 4 November 2022. The ET1 Claim Form is dated 5 November 2022. Insofar as the Claimant's claims relate to alleged acts or omissions prior to 3 August 2022, are potentially out of time.
5. The Tribunal will have to consider whether in respect of those alleged acts, has the Claimant shown that there was conduct extending over a period up to and including 3 August 2022, within section 123(3)(a) of the Equality Act 2010 and if not, has the Claimant brought his claim within such other period as the Tribunal thinks is just and equitable?

### **Disability**

6. The Claimant's disability is Attention Deficit Hyperactivity Disorder (ADHD), which the Respondents accept and had knowledge of from 12 January 2021.

### **Evidence**

7. In this Tribunal we heard evidence from the Claimant through a prepared Witness Statement and the Claimant tendered three other Witness Statements. Counsel for the Respondent confirmed he would not be cross examining any of those additional Witnesses as they were character witnesses and did not have any direct evidence to give on the issues to be determined by the Tribunal.
8. The Respondents gave evidence through:
  - 8.1. Sergeant Mark Holland, BTP;
  - 8.2. Inspector Kara Lee, BTP;
  - 8.3. Temporary Chief Inspector Jonathan Pine, BTP;
  - 8.4. Assistant Chief Constable Allan Gregory, Network Policing;
  - 8.5. Divisional Commander Martin Fry, QPM;
  - 8.6. Detective Inspector Andrew Selby, BTP;

- 8.7. Mr Jack Bourne, Head of Information Technology, BTP; and
- 8.8. Mrs Sophie Bove, Inclusion and Diversity Business Partner and Disability and Neurodiversity Lead, BTP.

All giving their evidence through prepared Witness Statements.

- 9. The Tribunal also had the benefit of a Bundle of documents consisting of 2,076 pages and a further additional Bundle provided by the Claimant.
- 10. The Tribunal also had a Chronology, Cast List and lengthy written submissions from the Respondent's Counsel, along with written submissions from the Claimant.
- 11. As they are in writing, no disrespect is intended by not rehearsing them.

## **The Law**

### Direct Disability Discrimination

- 12. The definition of direct discrimination contained in s.13(1) of the Equality Act 2010 provides as follows:

- 13. Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

- 13. In relation to claims of direct discrimination and indirect discrimination, there is a requirement for a comparator. Section 23(1) of the Equality Act 2010 details the requirement and circumstances of a comparator in the following terms:

- 23. Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case.

- 14. The material parts of the burden of proof provision which apply to all claims under the Equality Act 2010 are contained in §.136(2) and (3) of the Equality Act 2010 as follows:

- 136. Burden of Proof

- (1) ...
  - (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- 15. It is important to bear in mind that unreasonable conduct does not amount to discrimination.

Failure to Make Reasonable Adjustments

- 16. The relevant parts are §.20 and 21 of the Equality Act 2010 and s.212,
  - 20. Duty to make adjustments
    - (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
    - (2) The duty comprises the following three requirements.
    - (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- 17. Section 21 provides,
  - 21. Failure to comply with duty
    - (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
    - (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- 18. Section 212 provides,
  - 212. General interpretation
    - (1) In this Act-  
“substantial” means more than minor or trivial.
- 19. Guidance as to the structured approach and findings needed by a Tribunal in relation to a PCP:
  - 19.1. Tribunals should first identify and make factual findings on the four relevant elements, namely:
    - 19.1.1. the relevant provision, criterion or practice (the PCP);

- 19.1.2. the persons who are not disabled with whom comparison is made;
- 19.1.3. the nature and extent of any substantial disadvantage suffered by the employee (from the PCP found); and
- 19.1.4. any step or steps it would have been reasonable for the employer to take.

19.2. The employee needs to show substantial disadvantage.

- 20. In this case the PCPs are agreed. However, the burden is on the Claimant to show the substantial disadvantage.
- 21. In this case knowledge of the disability is not the case.
- 22. In the event that the Claimant shows a relevant PCP and a substantial disadvantage, the issue of whether a sought after adjustment is needed in relation to that PCP falls to be determined by the Tribunal in assessing objectively whether practical step(s) (the adjustment) is reasonable. Importantly an employer is not required to select the best or most reasonable of selection of reasonable adjustments, nor is it required to make the adjustment that is preferred by the disabled person, rather the test is an objective one, meaning,

“So long as the particular adjustment selected by the employer is reasonable, it will have discharged its duty.”

#### Discrimination Arising from Disability

- 23. Section 15 provides,

15. Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if-
  - (a) A treats B unfavourably because of something arising in consequence of B’s disability, and
  - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

- 24. The Employment Appeal Tribunal have made it clear that s.15 of the Equality Act 2010 contains five elements which the Tribunal should consider separately and make findings on. These are:

- 24.1. A contravention of s.39(2) of the Equality Act 2010, in the present case the root is s.39(2)(c) dismissal or 39(2)(d) detriment;

- 24.2. The contravention relied upon by the employee must amount to unfavourable treatment. Accordingly it is at this stage the action or inaction is relevant and not the mental process;
- 24.3. It must be “something arising in consequence of disability” and this phrase is given its ordinary meaning. It must be part of “the employer’s reason for the unfavourable treatment, there is no point in identifying something which played no part in the employer’s reasoning”;
- 24.4. The unfavourable treatment must be because of something “arising in consequence of disability”. At this stage the mental processes are relevant and the fundamental question being whether “something arising in consequence of the disability” operated on the mind of the discriminator consciously or unconsciously to a significant extent; and
- 24.5. Finally, there is the issue of any justification, that is whether the employer can show the treatment was a proportionate means of achieving a legitimate aim.

#### Indirect Discrimination

- 25. Section 19(1) and (2) defines indirect discrimination as follows:

- 19. Indirect discrimination

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.
  - (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if-
    - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
    - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
    - (c) it puts, or would put, B at that disadvantage, and
    - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- 26. The Claimant is therefore required to prove s.19(2)(a) – (c) of the Equality Act 2010, that is:
  - 26.1. the existence of a provision, criterion or practice;

- 26.2. that the PCP put those with a disability at a particular disadvantage compared to those without; and
- 26.3. it puts, or would put the Claimant at the same disadvantage.
- 27. There is no reversal of the Burden of proof in relation to §.19(2)(a) – (c). Section 136 of the Equality Act 2010 does not apply to these elements.
- 28. If the employer is able to show that a particular Claimant was, or had not been, disadvantaged by the requirement that can defeat the claim.
- 29. Section 19(2)(d) provides that if the Respondent cannot show, “it, the PCP, to be a proportionate means of achieving a legitimate aim” it cannot amount to indirect discrimination.

**Harassment Related to Disability**

- 30. Section 26 of the Equality Act 2010 provides,

26. Harassment

- (1) A person (A) harasses another (B) if-
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of-
    - (i) violating B’s dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) ...
- (3) ...
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account-
  - (a) the perception of B;
  - (b) the other circumstances of the case: and
  - (c) whether it is reasonable for the conduct to have that effect.

- 31. The Tribunal therefore need to consider:

31.1. Did the Respondent engage in unwanted conduct?

31.2. Did the unwanted conduct have either the purpose or effect of:

- 31.2.1. violating B's dignity; or
- 31.2.2. creating an intimidating, hostile, degrading, humiliating or offensive environment? The Tribunal must therefore consider:
  - i. whether a putative victim perceives themselves to have suffered the effect in question (the subjective question);
  - ii. whether it was reasonable for the conduct to be regarded as having the effect (the objective question); and
  - iii. of course all the circumstances of the case.
- 31.2.3. Was this related to the protected characteristic, in this case disability?

### **The Facts**

- 32. The Respondents are a National Police Force for the Railways and are responsible for providing a Policing Service to Rail Operators, their staff and passengers throughout England, Scotland and Wales, as well as policing the London Underground, Docklands Light Railway, the Midland Metro Tram System, Croydon Tramlink, Tyne and Wear Metro, Glasgow Subway and Emirates Airline. The Respondent operates in a unique policing environment that is not restricted by County lines, meaning Officers and staff provide specialist policing across the whole country. Each day the Respondent is responsible for policing the journeys of on average six million passengers and a quarter of a million tonnes of freight involving ten thousand miles of track, three thousand Railway Stations and Depots, Trains and all related Rail infrastructure. The Respondent currently employs or engages approximately 3,069 Police Officers, 300 Special Officers, 362 Police Community Support Officers and 1,689 Police staff.
- 33. The Respondent is an independent body responsible for ensuring an efficient and effective Police Force for Rail Operators, their staff and passengers, overseeing British Transport Police.
- 34. The Claimant was employed as a Police Constable with the Respondents from 1 June 2020 until 26 October 2022. His employment was subject to an initial probation period of two years, during which his performance and conduct would be reviewed and monitored.
- 35. The Respondent operates an Unsatisfactory Performance and Probation Officer (UPOP) Policy and Procedure which provides a fair and transparent framework to be adopted when dealing with issues that indicate a Probationary Constable may not be fit physically or mentally to



perform their duties required, or may be unlikely to become an efficient or well conducted Constable.

36. The Claimant's Probation period was originally due to end on 31 May 2022 but due to concerns with his performance, behaviours and conduct his Probationary period was extended until 23 August 2022. It was further extended for a second time until 23 September 2022. It was finally extended again until 31 October 2022.
37. The Respondent's Recruitment Training Programme and Policy (pages 505 – 517) is split into three phases:
  - 37.1. Phase 1 – the Foundation Phase of 22 weeks;
  - 37.2. Phase 2 – minimum 8 weeks Tutor Phase; and
  - 37.3. Phase 3 – Independent Patrol Phase and lasts up to the ninetieth week of training.
38. Throughout, all Phases are continued monitoring and assessed. Monitoring is designed to ensure appropriate levels of support and additional help should that be required. Each Phase has to be signed off prior to commencing the next Phase. The final aim of the training is to ensure that a Police Constable is competent and able to deal with matters required for policing in general. Student Officers are required to keep an Evidential Record of the work they have undertaken to fulfil each competency and have 18 months to complete the Professional Development Portfolio.
39. Sergeant Holland, as an Observer of Training, was present on a number of occasions between September 2020 and 6 October 2020 when the Claimant was required to undertake role play and exercise. This is a staged event in acting a scene that an Officer may encounter in real life. As a result of those observations, that caused Sergeant Holland to email the Claimant's Trainer on 7 October 2020 at 0911 and 0913 with a number of concerns about the Claimant. The email stated,

"I would be extremely uncomfortable to have PC Prentice either on my Team that I was supervising and I would be concerned and uncomfortable if he was on any form of football deployment I was running."
40. At this time Sergeant Holland would not and could not have known the Claimant was disabled with ADHD, as this was only communicated by the Claimant to Sergeant Vyse at the end of a meeting with him on 12 January 2021.
41. By 7 December 2020, the Claimant had completed his Divisional Development Unit Record, Phase 2. Having completed Phase 1 and 2 he was now moved on to the Beat Patrol.

42. By 12 January 2021, a number of concerns were arising over the Claimant, particularly video footage regarding an arrest made by him on 11 January 2021 which showed a number of issues the Claimant should have addressed. Particularly, omitting to inform the reason for arrest, having to be prompted twice to handcuff and arrest the suspect, not effective in communicating and personal presence during the incident.
43. As a result of this Sergeant Vyse arranges a meeting with the Claimant on 12 January 2021 to discuss / debrief before the Claimant's rest day, saying words to the effect the Tribunal suspects, that this needs to be done and does not look good. Clearly this was before the Claimant for the first time announces at the end of the meeting he suffered with ADHD. An informal Action Plan was to be put in place to deal with the Claimant's shortcomings and a further meeting with the Claimant was scheduled for 20 January 2021 to discuss areas of improvement and look at additional training and development that could be provided to assist him achieve the minimum standard accepted. That meeting actually takes place around 19 January 2021 (Minutes at pages 881 – 884). The areas of improvement are outlined and he is given Smart Objectives to achieve within a three month time span.
44. With the Claimant's consent an Occupational Health Referral was made on 20 January 2021 (pages 886 – 890). The purpose of the Referral was to assess if the Claimant's ADHD was impacting on his performance which was requiring improvement, in addition to investigate if there were any reasonable adjustments or measures that could be put in place to assist him in his role.
45. At both the meetings of 12 and 19 January 2021, from the Minutes, there does not appear any suggestion Sergeant Vyse was questioning the Claimant's honesty or integrity, rather whether or not ADHD was disclosed on his Application Form to the Respondent. The question was merely posed to the Claimant and not unreasonable. Furthermore, there is no indication from the Minutes of the meetings that Sergeant Vyse suggested the Claimant should move to another area of work. Sergeant Vyse made it clear the Claimant was posted to Norwich and only a very Senior Officer could arrange a transfer.
46. Thereafter there were monthly reviews and feedback. The Claimant, in the Action Plan, was warned if he failed to improve this could lead to a Stage 1 UPOP, the unsatisfactory performance of Probationary Officers Policy and Procedure. Ultimately the Action Plan was extended for a further three months and would not be extended again. At this point the Claimant's progress was referred to Inspector Lee to review (page 949).
47. Meanwhile in the meantime the Claimant had raised some concerns and complaints about Sergeant Vyse with his Federation Representative on 15 January 2021 (pages 835 – 836).
48. It was clear that throughout the Reviews of the Claimant's Action Plan, it is noted that the Claimant's Witness / Victim Statements are falling short and

he had yet to start his Probationary Assessment Pack, i.e. the Portfolio. However, he had made significant improvement on the first two objectives and certainly by May had achieved satisfactory standards. At the six month Review between the Claimant and Sergeant Vyse on 30 July 2021, discussions were over the Claimant's lack of statements being produced which was still a major concern, particularly as to the content, rather than the grammatical or spelling aspect. Again, there is no evidence supporting the fact that Sergeant Vyse suggested everyone pass their statements to the Claimant, merely the quality and content and the number being produced by the Claimant were the issues. The Claimant was also still struggling with the paperwork side of his role and it was noted that only 50% of the Claimant's Case Files were of satisfactory standard in the Criminal Justice Unit. Sergeant Vyse questioned the Claimant as to what assistance was required (pages 946 – 949) and offered the Claimant a Referral to the Neurodiversity Lead Ms Cole and offered a Workplace Assessment. At this stage they were declined by the Claimant to take up these offers.

49. Sergeant Vyse makes a Report to Inspector Lee on 16 August 2021 (page 950) having advised the Claimant of this and for Inspector Lee to consider the way forward.
50. On 23 September 2021 (page 965) there is a further meeting between Sergeant Vyse and the Claimant over his mishandling of a cannabis grinder and joint which the Claimant accepted the words of advice and his mistakes.
51. Despite the Portfolio needing to be completed and the responsibility of the Probationer to ensure it is done to the required standard, by the end of August only 22% had been completed.
52. Given the Reports from Sergeant Vyse about the Claimant's progress, the Action Plan and Portfolio not being completed, Inspector Lee took advice from HR and made the decision to commence the UPOP process. The Claimant was informed of this by letter of 5 October 2021 (page 967). Originally the process was started in September but due to the availability of the Federation Representative it was delayed. The letter sets out the following:

"I am writing to confirm that your performance is being considered on the Unsatisfactory Performance and Probation Officers Policy and Procedure. In line with the UPOP Policy and Procedure your attendance is required at a First Stage meeting to discuss your performance. The meeting will be held on 22 October 2021 at 3pm and will be held on Teams.

Your performance is considered unsatisfactory for the following reasons: failure to satisfactorily complete the Action Plan given by Sergeant Vyse to improve the overall quality of your Victim / Witness Statements and to include, but not limited to, any key relevant points

in arrests and relevant points to prove; insufficient completion of your Portfolio and mishandling of C's property.

If following the meeting your performance is still considered unsatisfactory, you will receive a letter confirming this and a written Improvement Notice.

If sufficient improvement is not made within a specified period, you may be required to attend a Stage 2 meeting.

In line with UPOP Policy and Procedure you have the right to be accompanied by a Federation Rep or work colleague..."

53. The First Stage UPOP meeting went ahead on 22 October 2021 (pages 984 – 987), in attendance is Inspector Lee, Mr Dixon the Federation Rep and the Claimant. At this stage, week 70, probationary persons should have achieved 70% of their Portfolio. It is accepted there had been an issue at the beginning with the Claimant not having an Assessor, but there was concern over the Claimant's lack of pro-activity in chasing the matter which was rectified in July 2021. It was expected that the Claimant would have now progressed with the Portfolio, but had not done so.
54. The Action Plan put in place expected 70% of the Portfolio to be completed by 31 December 2021, with a Review half way. It reiterated the importance of completion. Inspector Lee asked what assistance in training the Claimant required to complete the Portfolio and suggested a one to one meet with the Assessor. The Claimant had now had a meeting with Ms Eve Cole and he was to forward any of her recommendations to Inspector Lee. There was a short attachment to Colchester as there was more likely appropriate incidents that would assist the Claimant in achieving the required competence and the Trade Union Representative would explore niche training for the Claimant.
55. What is clear, there had been continued various issues between the Claimant and Sergeant Vyse, the Claimant's behaviour and lack of insight into the job and his shortcomings, which on occasions Sergeant Vyse quite properly, as the Station Sergeant at Norwich, had to bring to the Claimant's attention.
56. In the meantime, Officers at Norwich Station were raising concerns about the Claimant on a confidential basis. The concerns were raised over the Claimant's lack of emotion when discussing things that would normally cause others to show emotion, for example the Claimant talked about the euthanasia of his cat and when talking about one of his brothers who was in prison for a double murder, apparently the Claimant would discuss this incident as if it was a perfectly normal occurrence. He had also stated if he were a Firearms Officer he would have no qualms about shooting someone dead. Further, he had informed colleagues at Norwich he had a Firearms Licence and had joked about coming to work and shooting his colleagues. This called into question the Claimant's state of mind and

suitability to be a Police Officer and carry a firearm or hold a Firearm Licence.

57. As a result of this Professional Standards had been in contact with Norfolk Constabulary in November, the Anti-Corruption Unit, with the suggestion that the Claimant's Firearms Licence should be reviewed. The first Intelligence Report dated 25 October 2021 read that the source was reliable. The person putting the Report together decided who could use it and at this stage only the Anti-Corruption Unit were to see the Report. The Report mentioned the fact that the Claimant had ADHD and read,

"There were concerns by Officers on the ground and local supervision over erratic comments the Officer had made, including around firearms. We know via PNC he has a shot gun Licence and a firearms Licence. If you could review the shot gun and firearms Licence as the issuing Force please to see if there is anything that can be done to determine if the Officer is still fit to have one. Attached is the Officer's Report from our Training School, it is recent within the last two years and you will note towards the end there are some references to his mentality. This is the reason I am sharing as his state of mind is focal to the concerns raised."

58. That Report appears to have been escalated to his Manager which resulted in the status handling code being up rated to the Firearms Officer, that intelligence could be shared and read, that the Claimant's brother was in prison for a double murder, the Claimant had found the victims, the fact that the Claimant had said that if he ever became a Firearms Officer he would have no qualms about shooting someone dead and joked about coming into his place of work and shooting someone, the fact the Claimant was on an Action Plan and believed he was likely to be sacked in due course.
59. It is clear from the content of those Intelligence Reports that they did not breach any confidentiality. Only the first Report referred to the Claimant's ADHD and the second was sanitised. It was only the second Intelligence Report that led to a Norfolk Police Firearms Officer becoming involved and ultimately seizing the Claimant's firearms. What is clear is the Respondent would have no influence or decision making after the Intelligence Reports were submitted to Norfolk Police and any decision about whether to revoke the Claimant's gun Licence rests entirely with Norfolk Police and not the Respondent.
60. This issue led to some forceful and unprofessional exchange of emails between the Claimant and Norfolk Police. As a result of the correspondence, Inspector Lee (page 1052) emailed the Claimant reminding him of his Professional Standards behaviour and advising the Claimant against further email correspondence in the manner that he had adopted, no more and no less. There was no threat by Inspector Lee of disciplinary action, nor was he told to keep quiet. Inspector Lee pointed out that if he was unhappy there was a complaints procedure to follow.

Notwithstanding this the Claimant did not keep quiet and continued with further correspondence.

61. In the meantime, on 30 November 2021 there had been a Learning and Development Supervisors Review at the seventy week stage between Sergeant Vyse and the Claimant. Within the Police there is a Learning Model in use (page 749) which explains the journey from where a Trainee goes from incapable to fully competent. At the start of that journey, which could be described as “you don’t know what you don’t know”, this is in the Model from unconscious incompetence to unconscious competence which could be described as automatic pilot. During this meeting, discussing the Claimant’s progress, reference was made to the Learning Model by Sergeant Vyse that the Claimant displayed unconscious incompetence on a number of occasions and that it was up to the Claimant to recognise and develop his weaker areas and be pro-active in asking for help and assistance. He would then be able to move through the hierarchy of competence, becoming unconsciously competent. This was clearly not a criticism of the Claimant, but part of the Learning Model to assist him in understanding areas in which he needed to gain more experience. It should be noted that the Claimant at this stage was some three quarters into his Probationary period, yet the Claimant was exhibiting traits at the bottom end of the competency pyramid.
62. Inspector Lee, throughout January 2022, was increasingly concerned about further reports coming from Officers about the Claimant and his lack of improvement generally. Inspector Lee, having taken advice from HR, decided to commence the second Stage 1 UPOP process and on 4 February 2022 the Respondent sent the Claimant a letter confirming that his performance was again being considered under the Respondent’s UPOP Policy and Procedure and requiring his attendance at a Stage 1 meeting on 14 February 2022. The Claimant’s performance was considered unsatisfactory for the following reasons:
  - 62.1. Incivility towards Sergeant Vyse on 8 January 2022 at Norwich Station and further emails sent to Sergeant Vyse on Friday 28 January 2022;
  - 62.2. Honesty and integrity in relation to incidents notified to Officers in relation to videos and violence towards children;
  - 62.3. Neglect and failure in duty whilst dealing with a sexual assault that occurred on 22 January 2022 at Marks Tey Railway Station; and
  - 62.4. Breach of the Police and Criminal Evidence Act 1984, Code A and Use of Force in relation to a stop and search that was carried out on 2 March 2021 (this was, although historical, one of the most concern amongst a number of other incorrect approaches by the Claimant which had been reviewed by an independent Sergeant).
63. Following the Stage 1 meeting, a written Improvement Notice (page 1210) and a written Improvement Action Plan was implemented and on 22 April

2022 a Review took place which found there continued to be some development required from the Claimant. However, he had completed the requirements of the Action Plan and no further action was necessary, but the Claimant continued to be subject to the written Improvement Notice until the end of his probationary period which had again been extended at that stage to August.

64. On 23 June 2022, the Respondent wrote to the Claimant informing that his performance was again being considered under the Respondent's UPOP Policy Procedure requiring his attendance at a Stage 2 meeting on 26 July 2022. The Claimant's performance was considered unsatisfactory for the following reasons:
  - 64.1. Authority, respect and courtesy: unprofessional conduct that undermined the confidence in his professionalism and that of the Respondent, this was towards both the public and colleagues;
  - 64.2. Honesty and integrity: allegations that he had discussed with colleagues information that he knew to be untrue or suspected to be the case;
  - 64.3. Orders and instructions: his repeated failure to follow instructions and supervision that had on occasions led to refusal or unwanted challenges to those providing directions;
  - 64.4. Duties and responsibilities: he failed to complete his Probationary Portfolio within the given time frame; and
  - 64.5. Conduct: the manner in which he conducted himself to the public, colleagues, stake holders and supervisors fell far below the standards expected of a Police Constable.
65. Chief Inspector Jonathan Pine Chaired the Stage 2 UPOP meeting on 26 July 2022. He decided that an Action Plan to address the Claimant's behaviour and conduct had been tried but it had not corrected the behaviours and given the continued conduct and behaviour he had decided to refer the Claimant to Chief Superintendent Martin Fry for his consideration for a Stage 3 UPOP meeting. The issue of the Claimant's ADHD was not relevant in Chief Inspector Pine's decision making process.
66. In the meantime the Claimant was placed on restricted duties at Colchester and a Personal Safety Plan was carried out to assess the risks and manage the situation going forward. The Personal Safety Plan was completed by Inspector Lee and the Claimant was on that since 1 September 2022 (pages 1555 – 1560). In the meantime, the Claimant's extended Probationary period was due to end and was further extended until 23 September 2022. Then again on 23 September 2022 the Claimant's further extended Probationary period was due to end but again was extended to 31 October 2022.

67. The Stage 3 UPOP meeting with Chief Superintendent Fry took place on 19 October 2022, at which the Claimant again had his Trade Union Representative present. This was an extensive meeting where the Claimant seemed to accept if he was in Chief Superintendent Fry's position he would dismiss the Claimant, given the background of concerns. Chief Inspector Fry adjourned the meeting to consider his determination and his decision.
68. The meeting was reconvened on 26 October 2022 to deliver his oral determination, at which it was confirmed the Claimant was to be dismissed. The detailed reasoning for that was set out in writing to the Claimant on 27 October 2022 (pages 1756 – 1769). In summary, Chief Superintendent Fry decided that the Claimant was not, nor was he ever likely to be, an effective and efficient and well conducted Constable. That was the reason that his service would be dispensed with in accordance with the conditions of service, with immediate effect. The Claimant was notified of his Right of Appeal.
69. The Claimant appealed the decision to dismiss via email on 27 October 2022, the Appeal Hearing was Chaired by Assistant Chief Constable Allan Gregory on 4 January 2023. Assistant Chief Constable Gregory wrote to the Claimant on 25 January 2023 with his Appeal Outcome confirming that the Claimant's Appeal was dismissed and the decision to dismiss was upheld. The reasoning for that decision was he had seen evidence of worrying behaviours and comments by the Claimant taken collectively, together with his failure to satisfactorily complete his Personal Development Plan despite extensions being granted, all of which amount to significant performance concerns and attitudinal problems to authority and other colleagues. Assistant Chief Constable Gregory took on board Inspector Pine's concerns around the Claimant's former work colleagues of feelings of being unsettled by the Claimant's behaviour. Furthermore, Assistant Chief Constable Gregory confirmed that he could see no evidence of discrimination, or any evidence that the Claimant had been singled out for scrutiny of his underperformance, or that he had not been provided with the appropriate support following his disclosure of his ADHD diagnosis.

## **Conclusions**

### Time Limits and Jurisdiction

70. The first issue that the Tribunal must consider is time limits and jurisdiction. The relevant time limit date is 3 August 2022. Anything prior to that date is out of time. That of course is subject to it either being part of a conduct extending over a period after that date, or being extended under the just and equitable extension.
71. What the Claimant would have to show is that the events that are in time, are acts of discrimination. If the Tribunal concludes they are not, then the conduct extending over a period of time if it were, would not assist the Claimant.



72. In those circumstances it would be sensible for the Tribunal to deal with the two acts which are in time, namely:
- 72.1. Placing the Claimant on restricted duties because of the suggestion he was violent and a danger to himself, colleagues and the public, on 1 September 2022 which the Claimant asserts is direct discrimination and discrimination arising from disability; and
- 72.2. The Claimant's dismissal on 27 October 2022 which is alleged to be an act of direct disability discrimination and discrimination arising from disability.
73. In relation to the first, placing the Claimant on restricted duties, the evidence of Inspector Lee is that she identified several risks from the Personal Safety Plan (pages 1572 – 1578). Interestingly enough, the Claimant accepts that the content of the Personal Safety Plan was true, although he believed it had been twisted to make him look like a psychopath.
74. In relation to direct discrimination, clearly there is no less favourable treatment. As Inspector Lee put it,
- “No one has ever done the variety of conduct the Claimant has listed in his Plan. Had they done so and they were not disabled they would have been treated exactly the same.”
75. In relation to that issue and discrimination arising from disability, again it must fail as there is no evidence that the risk and concern for his conduct arose in consequence of his ADHD.
76. In relation to the second claim in time, the Claimant's dismissal on 27 October 2022, there is clear evidence from the Respondent that they have a number of employees within the Respondent with disabilities. Sergeant Holland has Diabetes and Mrs Bove gave statistics in her Witness Statement about the number of employees with disabilities and ADHD who have passed their Probationary Period.
77. Furthermore, numerous adjustments were made for the Claimant. For example, extending Probation on a number of times, additional one to one assessment, Occupational Health support and advice, Ms Eve Cole's Diversity Officer's support and recommendations, niche training by dedicated digital trainers, time limits to meet Action Plans and the Portfolio extended.
78. Once Sergeant Vyse was aware of the Claimant's ADHD he arranged an Occupational Health Referral to see what, if any, reasonable adjustments were necessary. That is clearly helpful to support the Claimant.
79. It is also noted the Respondents did not proceed immediately to the UPOP Policy route. Action Plans were put in place in an attempt for the Claimant to meet and achieve the appropriate levels.

80. The Dismissal Letter of 27 October 2022 (pages 1759 – 1769) was clear that someone who was not disabled, with all the background and performance issues and the conduct displayed, would have been treated the same. Arguably they might have been treated worse and moved to dismissal in a much shorter period.
81. In any event, the Tribunal concludes that the supporting evidence is clear. The only reason for the Claimant's dismissal was his ability to perform the role of a Police Constable at all levels and had absolutely nothing to do with the Claimant's ADHD. Chief Superintendent Fry was clear, following several extensive Probationary periods, that in not completing his mandatory Portfolio his performance was well below what was expected and the behaviour was not consistent with a Police Constable.
82. The Dismissal Letter makes it clear (page 1767),
- “... You struggle with authority and will go on to challenge people if you feel challenged, cornered or not treated equally or with the respect of others. This is evident by some of the material I have seen, that is the emails to Supervisors and Norfolk Police from the UPOP Proceedings... I am of the view that the overall situation will not change. There is little you can do to manage your behaviours and there is nothing additionally BTP can do that could minimise the risk to you personally, or the risk to the reputation of BTP if you are operationally deployed with regard to the behaviours.”
83. Therefore that claim fails.
84. In those circumstances, technically all other claims would fail as they are out of time.
85. However, for the sake of completeness the Tribunal will nevertheless deal with them.

### The Issues

#### *Direct Discrimination*

86. *Issue 4.1.1 Police Sergeant Mark Holland's suggestion that he did not want the Claimant on his Team on 12 October 2020.*
87. Clearly that claim must fail at the first hurdle as Sergeant Holland did not know the Claimant was disabled at that time and could not reasonably have known that the Claimant was disabled. The information only came to light following a meeting between the Claimant and Sergeant Vyse on 12 January 2021.
88. *Issue 4.1.2 Temporary Police Sergeant Vyse suggesting that the Claimant needed to get “this” done and said, “it wasn’t looking good” for the Claimant on 12 January 2021.*

89. Sergeant Vyse saying prior to the meeting, needed to get “this” done and “it wasn’t looking good” followed an incident on 11 January 2021 in which the Claimant was involved whereby he failed to notify the reason for an arrest, failed to handcuff the suspect and needed prompting.
90. It was intended that the meeting was to proceed before the Claimant’s rest day, hence “this needs to be done” as the meeting was to discuss the incident and the reference, the gist of which “it wasn’t looking good” was in respect of the Claimant’s handling of the incident on 11 January 2021.
91. It is only then, after the meeting has taken place, that the Claimant declares he has a disability.
92. Therefore Sergeant Vyse’s words could not have been motivated by the Claimant’s disability.
93. Therefore that claim fails.
94. *Issue 4.1.3 Sergeant Vyse suggesting that the Claimant move to another area of work on 12 January 2021.*
95. It is clear from the evidence that no such conversation was had. Rather the Claimant was posted to Norwich and it required a very Senior Officer to transfer. Clearly the Claimant is mistaken in what was discussed between him and Sergeant Vyse.
96. That claim is not well founded.
97. *Issue 4.1.4 Sergeant Vyse questioning the Claimant’s honesty and integrity because he had not previously disclosed his ADHD on his initial application to join the Respondent.*
98. All appears to have been done is that Sergeant Vyse did question the Claimant as to whether or not he had declared his disability on his application form, no more and no less.
99. The claim is therefore not well founded.
100. *Issue 4.1.5 Sergeant Vyse criticising the quality of the Claimant’s Witness / Victim Statements and suggesting everyone pass their statements to him, July 2021.*
101. It is clear that the criticism was not because of the Claimant’s disability. The same would have been said of any Probationary Constable who was struggling with written statements in relation to content, whether or not they had a disability.
102. Furthermore, there is no evidence that Sergeant Vyse ever said at a meeting in July 2021, that everyone pass their statements to the Claimant. The Tribunal notes there are no emails supporting that suggestion.

103. Therefore this claim fails.
104. *Issue 4.1.6 Sergeant Vyse suggesting the Claimant would not be able to cope with his Probationary Assignment PDP, ASB, SPOC and attending business as usual on 12 August 2021.*
105. Again, the Tribunal would say there is absolutely no evidence to support this assertion and in the Claimant's Witness Statement he does not deal with this issue at all.
106. There is no documentary evidence that corroborates such an accusation and the contemporaneous record of the meeting (page 948) is that the Claimant has yet to start his Portfolio,
- "I asked PC Prentice to think about what strategies and methods he was going to put in place to enable him to complete this within the time scale. In addition to this PC Prentice will still be expected to undertake BAU response investigation and his ASB and SPOC role."
- (page 948)
107. Therefore that claim fails.
108. *Issue 4.1.7 Sergeant Vyse telling the Claimant that he was unconsciously incompetent on 30 November 2021 within his Week 70 Report.*
109. The comment is reference to the Respondent's Learning Model (page 749) as being the hierarchy of competence. What was said is,
- "PC Prentice displays unconscious incompetence in his behaviour and this has been evident to me on a number of occasions by saying, "I don't know what I don't know"."
110. The Model applies to all employees and was a way for the Claimant to reflect on his weaker areas that he is unsure about and to be pro-active in asking for help. That could have been said to any Probationary Constable, disabled or not and therefore that claim fails.
111. *Issue 4.1.8 Sergeant Vyse's allegation of poor performance from the Claimant's arrival in Norwich in December 2020, until his dismissal in October 2022.*
112. Here the allegations are not specific. However what Sergeant Vyse did was report the Claimant's performance issues and progress, both positive and negative. This was part of Sergeant Vyse's remit as a Supervising Officer. That will have taken place whether a Probationary Constable was disabled or not.
113. The claim therefore fails.

114. *Issue 4.1.9 Inspector Lee and Sergeant Vyse drafting Intelligence Reports that is said to breach confidentiality in October / November 2021.*
115. The suggestion is that the Respondents sharing concerns about the Claimant with Norfolk Constabulary was in some way a breach of confidentiality. There are in fact two Intelligence Reports, one was dated 25 October 2021 (pages 988 – 994) and the second, 22 November 2021 (pages 2072 – 2076).
116. Prior to making this claim the Claimant was not aware of the content of the first Report which was sent to the Anti-Corruption Unit only and for their eyes only, in other words not shared elsewhere within Norfolk Constabulary.
117. The second Report was sanitised, made no mention of the Claimant's ADHD and could be shared with the Firearms Department within Norfolk Constabulary.
118. There was, looking at these Reports, no breach of confidentiality. It is clear the Respondents have a duty to raise concerns regarding its Officers and once they pass that on to Norfolk Constabulary it is entirely within their hands how they use that information and what action they take.
119. The actions of the Respondent, particularly Sergeant Vyse and Inspector Lee, would have been exactly the same whether the Claimant was disabled or not.
120. Therefore that claim fails.
121. *Issue 4.1.10 Inspector Lee threatened the Claimant to keep quiet or face disciplinary action on 13 December 2021.*
122. We look at pages 1052 and 1053 to see what Inspector Lee actually said in her email,

“Please may I remind you of the standards of professional behaviour. The way you are speaking to a colleague is unprofessional, unnecessary and not of the standard expected of a BT Police Officer. Norfolk Police have a duty to ensure the suitability of those that hold Firearms / Shot Gun Licences and carry out enquiries when they deem it to be appropriate to do so. Norfolk Police are reviewing your suitability to continue to hold this Licence. I am sure they will contact you should they need anything further from you and will update you in due course. I suggest that you refrain from sending any further emails to Norfolk Police and allow them to carry out their enquiries.”

123. In a further email on 14 December 2021,

“If you are not satisfied that the correct processes are being followed then you have the ability to make a complaint using the complaint process.”

124. It is clear there was no threat of disciplinary action when reading the email and the Claimant seemed to accept this under cross examination.

125. In any event, this had nothing to do with the fact the Claimant was disabled.

126. Therefore the claim must fail.

127. *Issue 4.1.11 Placement on restricted duties because of the suggestion the Claimant was violent and a danger to himself, colleagues and public, on 1 September 2021.*

128. The Tribunal repeats what one has previously said, namely Inspector Lee detailed all risks that were identified, as were set out in the Personal Safety Plan. Those hazards and behaviours identified goes far beyond the Respondent's allegation of being violent and a danger to himself and indeed the Claimant accepts the Personal Safety Plan was accurate, although he believed it had been twisted to make him look like a psychopath.

129. Clearly there is no less favourable treatment shown. The Claimant was displaying unusual conduct which he displayed to other Police Constables and the fact he was put on restrictive duties had nothing to do with the fact that he was disabled, simply that concerns were raised within his Personal Safety Plan.

130. *Issue 4.1.12 Chief Inspector Jonathan Pine's statement that the Claimant's personality including ADHD traits and associated behaviours, is not compatible with being a Police Officer, on 26 July 2022.*

131. Factually that statement was never made by Chief Inspector Pine. The transcript of the meeting showed what he said was,

“Personally I think that this evidence and responses show that the Police is not the right environment for you, or certainly for someone who displays those behaviours.” (page 1463)

132. That is quite different from the allegation made out and even the Claimant accepted under cross examination that if he were in Chief Inspector Pine's position with the facts known at the time, he would have dismissed as well.

133. The claim therefore fails.

*Issues relating to the failure to make reasonable adjustments.*

134. *PCP 1: the Respondents accept that it did require all Probationary Officers to complete PDP Portfolio which was part of a mandate from the Police College.*
135. On the evidence numerous Officers, whether with ADHD or other disabilities, have completed the PDP Portfolio and in any event there were a number of reasonable adjustments made for the Claimant to avoid any disadvantage, namely extra time to complete it and the Claimant's Probationary period was extended a number of times.
136. Therefore, this claim fails.
137. *PCP 2: of requiring witness statements to be completed to a satisfactory quality.*
138. The Respondents accept again that this is a PCP. The reason the Claimant was not meeting the required standard was not to do with grammatical or spelling aspects, but was a failure to include substantive important material facts in statements. On occasions he had completed them satisfactorily, as others with ADHD had. Officers with Dyslexia had also been able to complete and provide satisfactory quality statements.
139. More importantly, what reasonable adjustment, if there was a disadvantage, could be put in place? Could one consider lowering the quality of written statements, or not requiring the Claimant to complete them?
140. Clearly none of these could be considered reasonable steps to take as written statements are required for justice to be achieved. Again a fact accepted by the Claimant in cross examination.
141. This claim therefore fails.
142. *PCP 3: of requiring Probationary Officers who do not meet the requirements of Probation to go through the Unsatisfactory Performance of Probationary Officers.*
143. Once again that is accepted by the Respondents as a PCP.
144. The evidence does not point to the Claimant being disadvantaged. Clearly all Probationary Constables who do not meet a satisfactory standard go through the process whether they are disabled or not. Furthermore, the Claimant was given additional opportunities to improve by way of coaching, further training, delaying the process and extension of Probation. What the Claimant seems to disagree with is the Policy which is there for good sound reasons to ensure Police Trainees reach an appropriate standard by the end of their Training.
145. This claim therefore fails.

*Section 15 Claim*

146. A: *Police Sergeant Mark Holland's suggestion that he did not want the Claimant on his Team, on 12 October 2020.*
147. The Tribunal repeats the points made above in relation to direct disability discrimination, that Sergeant Holland quite simply did not know of the Claimant's disability. Clearly on the evidence there is nothing to show that Sergeant Holland or the Respondent had constructive knowledge of the Claimant's disability at that stage.
148. It therefore follows that this claim must fail.
149. B: *Sergeant Vyse's suggestion that the Claimant move to another area of work, on 12 January 2021.*
150. The first point to make is that if it was said, Sergeant Vyse did not know at the time the Claimant was disabled and furthermore, as it was said under the direct discrimination claim, the evidence does not suggest that that comment was made, rather that only a very Senior Officer can deal with a transfer. The Claimant was posted to Norwich and that was it.
151. The claim therefore fails.
152. C: *Sergeant Vyse criticised the quality of the Claimant's statements and then suggested everyone pass their statements to him, July 2021.*
153. This claim must fail as there was no unfavourable treatment occurring on 31 July 2021. There is no evidence to support the suggestion that Sergeant Vyse asked everyone to pass their statements to the Claimant in July 2021.
154. D: *Sergeant Vyse suggesting that the Claimant would not be able to cope with his Probationary Assignment, Personal Development Portfolio, being ASB anti-social behaviour, single point of contact and attending business as usual on 12 August 2021.*
155. Again, the Tribunal repeats, this allegation has not been proven. It quite simply was never stated. There is no unfavourable treatment.
156. E: *Sergeant Vyse telling the Claimant that he was unconsciously incompetent in Week 70.*
157. Again, the Tribunal repeat what it has said in relation to direct discrimination and whilst the comment was made, it cannot be said to be unfavourable. In any event, the reason for the comment was the hierarchy of competency and the Claimant's comment, "I don't know what I don't know" which is a classic example of the unconscious incompetence stage of the Model. That is the "something because of something" element in



Section 15 and nothing whatsoever to do with the alleged “something arising” from disability.

158. Therefore that claim must fail.

159. *F: Inspector Lee, Sergeant Vyse and others drafting Intel Reports that breached confidentiality on 21 October 2021.*

160. We repeat our findings in respect of direct discrimination, the unfavourable treatment is premised on there being breach of confidentiality. There clearly was not.

161. Therefore this claim fails.

162. *G: Inspector Lee threatened the Claimant to keep quiet or face disciplinary action, on 13 December 2021.*

163. Again, the unfavourable treatment has not been shown. We repeat the comments made in respect of direct discrimination, there was simply no threat to keep quiet or face disciplinary action. The Claimant was simply told in effect to temper his response and in a second email that if he was unhappy with the process adopted by Norfolk Constabulary, there was a complaints procedure to follow.

164. Therefore this claim fails.

165. *H: Placement on restricted duties because of the suggestion he was violent and a danger to himself, colleagues and the public, on 1 September 2021.*

166. Inspector Lee had detailed a number of risks which were identified in the Personal Safety Plan (pages 1572 – 1578). It was these hazards that led to the placement on restricted duties, that being the “something because of something” element, however, the claim must fail because the conduct does not arise in consequence of the Claimant’s ADHD.

167. That claim must therefore fail.

168. *I: Chief Inspector Pine’s statement that the Claimant’s personality, including ADHD traits and associated behaviours is not compatible with being a Police Officer, on 26 July 2022.*

169. Again, the Tribunal repeats its comments in respect of direct discrimination. The fact is that the comments were not made as alleged, therefore the unfavourable treatment is not made out.

170. *J: Dismissing the Claimant*

171. We repeat our findings in respect of direct discrimination. The key aspects of the dismissal decision were not completing the Portfolio, the performance concerns and significant interpersonal difficulties with the Team, these are therefore because of “something arising”. However,

there was nothing to show that they arose in consequence of the Claimant's disability. There were clear findings why the Claimant was being dismissed, the fact acknowledged by the Claimant, if he was in the position of the Dismissing Officer he would have come to exactly the same conclusion.

172. Insofar as it would be necessary to deal with justification, there are three aims relied upon by the Respondent. They are:

172.1. Developing experienced Officers who have had the knowledge and skills required for the challenging but critical role they play in public safety and ultimately to ensure that the public are protected;

172.2. Police Constables to be able to carry out Constable's legal powers to enforce law and order and their responsibility for making autonomous decisions, exercising professional discretions as appropriate and in line with the legal frameworks and Policy guidelines; and

172.3. Police Constables to be able to make split second life or death decisions.

173. Clearly, all of those would be legitimate aims and any unfavourable treatment are a means of achieving those aims.

#### *Indirect Discrimination*

174. These are based on two separate PCPs. The first is merely a repetition of the reasonable adjustment claim, the Probationary Portfolio, the Tribunal repeats its position in relation to this not being established and there has not been any substantial disadvantage.

175. If the reasonable adjustment claim fails then the indirect discrimination claim is bound to fail. This is because there is no reasonable adjustment that is found lacking if the legitimate and proportionate aims relied upon must be made out as previously referred to in the Section 15 claim.

176. With regard to the second PCP, the use of classroom based theory and practical training. That claim, we understood was withdrawn at the commencement of cross examination on 5 November 2024.

#### *Harassment*

177. Finally turning to the harassment claim. Here the alleged unwanted conduct is:

"Orchestrating a situation whereby a third party Norfolk Police attended his home and duped him into voluntarily handing over his privately owned firearms" (page 407).

178. It is clear the Respondent did not orchestrate the situation. It did share intelligence and set out concerns as it is required to do and thereafter Norfolk Police attended the Claimant's home whereby the Claimant handed over his firearms.
179. The complaint therefore is against a party that the Respondents cannot be held liable for as it is against Norfolk Police. Clearly the Respondents, once they provided the information to Norfolk Police, had no influence or power to direct the decision over the Claimant's Firearms Licence.
180. Therefore the first ingredient of harassment is not made out, the alleged unwanted conduct.
181. In any event, the actions of the Respondent cannot be taken as violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The reason being the issue was not actually something that occurred at work, or prevented the Claimant from doing his job.

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Employment Judge Postle

Date: 10/12/2024

Sent to the parties on: 31/12/2024

For the Tribunal Office.

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