



EMPLOYMENT TRIBUNALS

Claimant: Mr M Mahoney-Stack

Respondent: The Chief Constable of Lancashire Constabulary

Heard at: Manchester

On: 24- 28 March 2025 and in chambers 3 and 27 June 2025

Before: Employment Judge Cookson
Mrs L Buxton
Dr B Tirohl

REPRESENTATION:

Claimant: Mr N Grundy (counsel)

Respondent: Ms V von Wachter (counsel)

JUDGMENT

It is the unanimous judgment of the Tribunal that

1. The complaints of unfavourable treatment because of something arising in consequence in disability in relation to
 - a. the Claimant being issued with a Written Improvement Notice on 10 December 2021 and
 - b. being told to amend his “Freda” (Flexible Work Pattern) on 1 February 2023 or he would be returned to full hours on the Response Team and that any hours not worked would go down as unauthorised absence, were not presented within the applicable time limit and it would not be just and equitable to extend time. The Tribunal therefore has no jurisdiction to determine them, and the complaints are dismissed.
2. The remaining complaints of being unfavourable treatment because of something arising in consequence of disability are not well-founded and are dismissed.
3. The complaints of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

Introduction

1. This claim concerns Mr Mahoney-Stack, referred to as “the Claimant” throughout this Judgment, who is a serving police constable. He has “long-covid” and says that he is disabled for the purposes of the Equality Act 2010 as a result. This claim is about whether the Respondent subjected him to unfavourable treatment because of something arising in consequence of that disability, or whether he failed to make reasonable adjustments for the Claimant between November 2021 and the submission of his claim.

2. The Claimant brought his claim on 29 September 2023 following early conciliation between 10 August 2023 and 21 September 2023. The Respondent conceded that the Claimant was disabled during the relevant period when he alleges that he was subject to discrimination. The Respondent concedes that he knew, or ought to have known, that the Claimant was disabled from 17 March 2022.

3. We had before us an agreed List of Issues which was discussed with the parties at the start of the hearing, enabling a refined version of that document to be prepared by counsel and that is attached to this Judgment. The Tribunal is grateful for the co-operation between the parties, and counsel in particular, and their assistance throughout this hearing.

4. The Employment Judge apologises for the delay in providing this reserved judgment. The Tribunal originally had a day set aside for deliberations at Manchester Employment Tribunal but that had to be adjourned after the Tribunal building was unexpectedly closed due to safety concerns during April. The Tribunal panel was unable to reconvene until June and then due to a variety of factors including leave over the summer, the Employment Judge was unable to prepare the reserved judgment for some time. She regrets any inconvenience this will have caused the parties, and the Claimant in particular.

5. In reaching our decision the Tribunal considered the following documents:

- a. An agreed bundle of documents running to some 840 pages, including an additional document added during the hearing.
- b. Oral and written evidence from the Claimant in his witness statement.
- c. Oral and written evidence from the Respondent’s witnesses in statements from
 - i. Sergeant M O’Regan
 - ii. Sergeant V Rose
 - iii. Chief Inspector Dave Hannan
 - iv. Chief Inspector John Jennings-Wharton
 - v. Inspector Louise Darcy

- d. The Tribunal also received written statements from the following Respondent witnesses for whom the Claimant had no questions on the basis that their evidence was not necessarily accepted, but was argued not to be relevant because it relates to things which happened after the relevant period
 - i. Sergeant Michelle Doughty
 - ii. Chief Inspector Mark Douglas
 - iii. Chief Inspector Chris Valentine
- e. The Tribunal also received a written statement from Louise Miller who is or was HR People Manager, but the Respondent did not call her to give oral evidence, so the Tribunal had to decide what weight to be given to her written evidence.
- f. We were also provided with a Chronology and Cast List. The Respondent had not agreed the Chronology with the Claimant and in any event, we found that it contained a number of significant apparent errors with dates cross-referencing and significant omissions and for that reason the Tribunal found it to be of limited value.
- g. Written and oral submissions from both Counsel.

Our Findings of Fact

6. We made our findings of fact in this case on the basis of the material before us taking into account contemporaneous documents where they exist. We have resolved conflicts of evidence on the balance of probabilities, based on our assessment of the credibility of witnesses and the consistency of their evidence with documents and the surrounding facts.

7. We have not made findings of fact about every matter referred to in evidence before us, but only those matters which we concluded were relevant to the legal issues to be determined.

8. The Claimant has been a police officer for 22 years, initially working for Nottinghamshire Police. He transferred to the Lancashire Force in October 2021; a move prompted at least in part by family reasons.

9. Following his move the Claimant joined Team 5, the Immediate Response Team and referred to generally as the Response Team or simply "Response" at West Division. His initial line manager was Sergeant O'Regan.

10. The Claimant has a young family. Following their move, he and his wife experienced childcare issues on a number of occasions resulting in the Claimant occasionally being late for work. The Tribunal accepted the Respondent's evidence that in the period before the Claimant caught covid, Sergeant O'Regan and others were concerned that the Claimant was using sick leave to cover occasions when the family had no childcare in place. The Tribunal accepted those concerns were not without foundation after dation as there did appear to be a coincidence of occasions

when the Claimant had identified childcare problems and had subsequently reported sick when he had been unable to take other leave. These concerns continued after the claimant had caught covid.

11. There were also occasions when the Claimant had been late for work after he had told Sergeant Rose that he would have to wait at home until his wife got home before he could set off to start work on a late shift. The Claimant was told that he could not simply arrive at work late because of childcare and to deal with these long-term problems he would have to submit a flexible working application, known as a Freda. This would result in permanent change to his contract. There is process to put a Freda in place which can take some time. Once in place an officer can apply to amend it but that too will take some time. The Claimant was granted some special leave to enable him to cover the period while he applied for a childcare Freda. This was eventually agreed.

12. The Respondent has in place a system of “compensatory time off” which is a system which allows officers to accrue overtime and then take time off in lieu. This provides officers with a certain amount of flexibility. It is possible for officers to have “negative CTO” which means compensatory time has been taken before the overtime has been worked. The Claimant used compensatory time off to cover childcare issues, but he quickly accrued significant “negative CTO”. In October 2020 Inspector Morley gave the Claimant a deadline to clear his negative CTO by Christmas which he was able to do.

13. On 3 January 2021 the Claimant contacted Sergeant O'Regan to explain that he would have childcare problems on 14 and 19 January due to an issue with his daughter's nursery which his wife could not cover, and he asked to book some unpaid leave on those dates.

14. On 13 January 2021 the Claimant reported that he was unwell and too sick to attend work until at least 20 January. He reported struggling to breathe, had fatigue and said that he thought it might be covid but that he had tested negative. Given the past history and the coincidence between these dates and the dates when the Claimant had already reported that he had childcare issues and had sought leave, it was clear there was some significant scepticism on Sergeant O'Regan's part about whether the reason he was being given for absence was genuine. This was not raised with the claimant directly but a text he sent at around that time referred to the Claimant as lazy and used highly abusive language which the Claimant was not aware of at the time, but he learned of later.

15. The Claimant provided a GP fit note for 12 January to 20 January 2021 which gave the reason for absence as shortness of breath/cough. The Claimant says that his GP told him that he had probably had covid, but that is not referred to on the sick note and the Tribunal accepted that as far as Sergeant O'Regan was aware the Claimant had tested negative for covid at the time.

16. In light of the concerns that Sergeant O'Regan had about the genuineness of the Claimant's absence and his suspicion that the Claimant was using sick leave to cover childcare needs, Sergeant O'Regan had discussions with HR about beginning the Respondent's processes for unacceptable attendance and performance. This would involve Sergeant O'Regan as the line manager preparing an internal report, but based

on a first draft prepared by HR. For reasons which were not explained to us, it took some considerable time for a draft internal decision report to be sent to Sergeant O'Regan by HR. The Claimant continued to be unaware that there were these potentially formal concerns about his attendance until much later in the year.

17. In the meantime, over the following months the Claimant began to experience a number of symptoms including fatigue and severe muscle and musculoskeletal pain and neck pain which he described as feeling like whiplash.

18. There was an embargo on officers taking leave on 17 April 2021. The day before, the Claimant reported that he had experienced a negative reaction to the covid vaccination. He did not arrive for work and when Sergeant O'Regan contacted him to find out why, the Claimant told him that he and his wife had had a row, and he was feeling unwell. Sergeant O'Regan recorded that the Claimant was off work due to illness and the following day he authorised annual leave at the Claimant's request, despite the leave embargo being in place. Although there was clearly a strained relationship between the two at times, this showed that Sergeant O'Regan was at times sympathetic to the Claimant's personal situation and we did not conclude that he was as biased and hostile towards the Claimant as was suggested to us.

19. In May 2021 the Claimant's wife had planned surgery which proved to be more debilitating than expected. On 2 May the Claimant sent a request to Inspector Walker apparently seeking authority to work from home for two weeks, despite having been warned the previous October that he would need to plan for the surgery in advance. Despite that the Claimant had not booked leave to cover any childcare issues arising from the surgery or put any other firm arrangements in place.

20. Inspector Walker told the Claimant on 3 May that working from home was not viable. The Claimant was told he could either take annual leave or apply for special leave, but he was warned that might not be granted because of the amount of special leave which had he been granted already. Special leave is intended to cover unexpected emergencies, and the surgery had been known about for a long time. The Claimant was also told that he could book his daughter into childcare for the week and his hours and adjustments to work location could be managed during that period. The following day the Claimant told Sergeant O'Regan that he was waiting to hear back from his daughter's nursery.

21. On 5 May the Claimant reported sick to Sergeant O'Regan informing him that he had been signed off sick due to vision loss and chest pain, that he had not felt right for some time and that he thought he might have possible covid or long-covid. The sick note from the GP covering 5 May to 26 May refers to vision loss. The following sick note, which ran to 28 May, refers to a stress reaction. A further sick note on 21 June 2021 for the period 3 June to 5 July refers to stress and anxiety.

22. The Claimant was referred to the Force Medical Adviser, referred to within the organisation as "the FMA". The FMAs provide occupational health advice. The claimant was assessed by telephone on 5 July 2021 by Dr Bayman.

23. Dr Bayman reported that the Claimant had identified that he was probably suffering from long-covid, that he had post-covid anxiety symptoms which had presented with vision loss (which an eye specialist thought was likely to be caused by

stress), migraine and high blood pressure. The Claimant had also reported symptoms of anxiety, irritability and tiredness. Dr Bayman identified the presenting medical condition was "anxiety" which she did not consider to fall within the definition of disability at that time, but she identified that the question would need to be readdressed if the symptoms were to become long-term. It was noted that the Claimant was to return to work on a phased basis with recuperative duties within the Crime Management Unit (CMU), an office-based role. Although Dr Bayman did not attach any particular significance in this report to the Claimant referring to long covid, the Tribunal found it significant that the FMA and the Respondent were aware that the Claimant had identified an underlying cause of his anxiety at this time. The Respondent failed to identify any need to explore that further with the FMA, the Claimant or his GP. Anxiety may be reaction to life events and short term stress and be expected to be short term. Here there was no consideration of whether an underlying cause like long covid would mean that the Claimant's reported anxiety would be likely to last longer and be likely to last more than 12 months.

24. On 6 July 2021 as planned, the Claimant began a phased return to the CMU working four hours per shift to be increased gradually. The Claimant did not return to duties involving contact with the public which was noted that as an adjustment requested by the Claimant's GP.

25. On 13 September 2021 the Claimant was again assessed by telephone by Dr Bayman. The Tribunal found it surprising that Dr Bayman did not refer to her previous advice that the issue of disability should be revisited if symptoms became long-term given that a further three months had passed since the previous assessment and the Claimant had now reported experiencing anxiety symptoms, which he linked to covid, for more than 4 months. It is noted that there is a continuation of anxiety symptoms disturbed sleep and feeling tired during the day and that the Claimant had been receiving psychologist support. It was recommended that the Claimant remain on recuperative duties for a period of 6 months to assist him to manage his anxiety symptoms. Dr Bayman asked for the Claimant to be referred back towards the end of the recuperative duty period. This advice was not queried despite some apart confusion about whether this report means the claimant needed 6 months on recuperative duties from July or he needed a further six-month period. Whichever was the case, this meant that the FMA and the Respondent were aware that the impact of the Claimant's condition at that time meant that he had been unable to work or needed or would need adjusted duties for a period of at least 8 months (that is counting the absence already taken and then the further 6 months recommended by the FMA) . Despite this, no consideration appears to have been given to whether the Claimant's ability to undertake day to day activities had lasted or was likely to last for 12 months.

26. There is also reference in the FMA report to the Claimant being aware that he was to be invited to a Stage 1 UPP meeting. The Claimant would not receive a formal invitation to that meeting until November, but it is clear that at the time of the assessment the decision had already been taken to progress that and the Claimant was aware that this was in prospect. The Claimant reported that this meeting was adding to his anxiety and the Claimant also referred to his difficult personal circumstances due to the problems of managing childcare with no extended family support.

27. It is relevant to note here that the terms UAP and UPP were used somewhat interchangeably in the documents. We understand the difference to be that UAP generally relates to attendance and UPP relates to performance but, for example, the written notice sent to the Claimant in due course in January 2022 refers to attendance/performance being unsatisfactory but is generally referred to as a UPP hearing. The appeal information form refers to notification of appeal against first stage UPP meeting but the first box the individual may tick is "the finding of unsatisfactory attendance was unreasonable". In the internal documents we have seen the Respondent's officers and staff tend to refer to UPP but in the list of issues references are made to UAP. We conclude there is no particular significance in terms of whether reference is made to UAP or UPP.

28. Notwithstanding that the Claimant was working reduced hours at this time, he was also working significant amounts of voluntary overtime but he told the Tribunal that was to cover administrative work which was straightforward and was not taxing.

29. Between 4 and 7 November 2021 the Claimant had a further period of absence due to migraine. No additional referral was made to FMA to identify if this was linked to the previous health issues. On 21 November 2021 the Claimant was formally informed he was to be subject to a Stage 1 UPP.

30. It is significant to note in the chronology of events that the Respondent had accepted for the purposes of this hearing that the Claimant was disabled by long covid from November 2021 onwards but not that he was disabled at an earlier time, and it was denied that it knew, or ought to have known, that the Claimant was disabled until the following March, when it would receive further advice from the FMA.

31. The Stage 1 UPP meeting was held on 10 December 2021 but the outcome from that meeting was not provided until the claimant was sent a letter dated 25 January 2022 containing a document dated 28 January 2022. This is the Written Improvement Notice or "WIN" issued under the Police (Performance) Regulations 2012.

32. The WIN states *"The finding of this meeting was that your performance/attendance was found to be unsatisfactory, and as a result a Written Improvement Notice will be implemented, which will be valid for a period of 3 months from 10 December 2021 until 9 March 2022 inclusive. Please note it may be appropriate to specify a longer specified period in relation to your return to your substantive duties, as we are awaiting FMA advice before the specified period can begin."*

33. The WIN identified that since the Claimant's transfer in October 2019 he had had six periods of absence totalling 111 days including rest days. The Tribunal were unable to reconcile that figure with the evidence presented to us but it does not seem to be in dispute that the sickness absence was significant. The WIN goes on to identify that an improvement in attendance is required to bring the Claimant to an acceptable standard because "current absence level is four occasions, 72 days, which is in breach of the Force Attendance Policy". The WIN goes on to say this

Taking this into account, the specified period within the Improvement Notice will run until 9 March 2021 inclusive. This will allow you time to improve your

attendance record and to work towards not having actionable attendance in accordance with Force Attendance Policy.

The improvement in performance required to bring you to an acceptable standard is: You will return to your substantive duties as a Response Officer and perform these duties to a satisfactory level. It has been agreed that a gradual return to these duties over a four-to-six week period will be provided to support you. FMA advice will also be sought to assist with this return, therefore there may be a requirement to extend the specified period within the Improvement Notice, in relation to performance. This will allow time for you to evidence and sustain the improvement once you return to your substantive role.

A “specified period” within such improvement is expected to be made: the specified period for attendance improvement will run until 9 March 2022 inclusive. The specified period for performance improvement will be agreed in due course.

The validity of the Written Improvement Notice: the validity period is for 12 months from the date of this Notice.”

34. The Notice also states that if sufficient improvement is not made within the specified timescales for improvement the Claimant may be required to attend a second stage meeting.

35. At this time the Claimant was working in the investigation management unit on a recuperative plan with no known timescale for return. The Claimant asked to stay in that unit. He was referred to the FMA again on 17 March 2022. The Respondent concedes that it had knowledge of his disability from this date.

36. The FMA report notes the Claimant had a covid infection in January 2021 and had experienced anxiety and fatigue and difficulty concentrating since then.

“Recommendations

Because of his ongoing reported symptoms including fatigue and poor concentration he is not fit to return to frontline duties.

I have advised PC Mahoney-Stack to encourage his GP to refer him to the long-covid clinic so that a diagnosis can be confirmed and further advice/treatment provided.

He is likely to benefit from a period of adjusted duties whilst he has further time to access the long-covid clinic. In this respect I would advise a period of adjusted duties for 12 months.”

37. The report goes on to identify work which the Claimant would be fit to undertake including: the ability to sit for reasonable periods of time, to write, read, use the telephone and to use IT; the ability to walk reasonable distances and to stand for a reasonable period; the ability to make decisions and report situations to others; the ability to evaluate information and to record details; the ability to understand, retain and explain facts and procedures and the ability to work the full range of shifts (early, late and nights), but identifies that the Claimant would not be fit to run or exercise reasonable physical force in restraint and retention in custody. The report notes that

as by this stage the Claimant had had symptoms for just over twelve months it may be reasonable to apply the principles of the Equality Act and states that he would benefit from continuing in an office-based role. It is noted that the Claimant already had a Freda in place in respect of shift working (that related to his childcare arrangements).

38. Chief Inspector Hannan assigned the Claimant to administrative duties in response to this report, which included some surgery work dealing with the public. However, the Claimant was unhappy with the report and asked to speak to Dr Bayman. In the meantime, between 19 and 21 March 2022, the Claimant had a bout of gastroenteritis which resulted in him being off work. The Claimant gave us evidence that this was related to covid, and we accepted that.

39. On 1 April 2022 the Claimant was invited to an “adjusted duties review” and was informed on 11 April that he would be issued with an Attendance Support Plan following the most recent absence which fell within the scope of the WIN because although he had sustained regular and consistent attendance at work during the three-month specified improvement period, since the specified improvement period had concluded he had reported sick on a further occasion which meant that his sickness record over a rolling twelve month period was now four occasions totalling 67 days, including rest days.

40. It is alleged that in a meeting on 20 April 2022 Sergeant O'Regan told him he needed to apply to amend his Freda to accommodate further adjustments required for his duties. If that was approved this would result in a long-term change to his duties and an adjustment to pay to reflect his adjusted hours. Sergeant O'Regan denies that and points out that he was on leave at that time. We find that is consistent with evidence in the bundle and conclude that this meeting could not have happened.

41. On 28 April 2022 the Claimant contacted Dr Bayman. As a result, Dr Bayman advised the HR team that the Claimant had raised concerns about surgeries, dealing with incidents, CCTV inquiries etc and the risk of confrontation and had expressed concern about his ability to deliver a professional service and document accounts and statements correctly feeling that this increased workload would be detrimental to his condition. Dr Bayman reported that the advice given to the Claimant with respect to going out of the station had been that he should undertake dynamic risk assessments and attend only situations where the risk of confrontation is low and that if the increased workload of five cases per day was detrimental to his condition the Claimant should discuss this with his supervisor so that his tasks could be varied. The Claimant accepted in cross examination that undertaking dynamic risk assessments – that is deciding on a continuous basis whether a situation presents an unacceptable risk is a part of day-to-day policing. The Tribunal understood this to be advice to do what an officer would always do in terms of deciding whether they could deal safely with a situation, it was just that the FMA was saying the claimant should only attend if the risk of confrontation was low, whereas perhaps most officers would be dealing with situations where the risk of confrontation was higher.

42. Sergeant O'Regan had prepared a draft ASP and there had been some discussions with the Claimant about the terms of that. The ASP sets out expectations for attendance but also outlines the support that will be provided. This included workplace support and adjustments to duties. A 20% uplift to tolerated absence was applied to any disability related absence for the trigger to further absence being

actionable under the UAP. We were told that this is standard approach which is applied to all disabilities rather than being informed by any advice about what higher absence might be expected to be caused by a particular disability. The finalised ASP was issued to the Claimant on 9 May 2022.

43. Dr Bayman also commented on a fit note which had been received from the Claimant's GP stating that adjustments should be made for the Claimant to be office-based with no public contact between 6 May 2022 and 30 June 2022 due to post-viral fatigue/long-covid. The fit note records "post viral faique?long covid" but it is not clear if that question mark is a question or a typographical error. Dr Bayman commented that as the Claimant had been suffering with fatigue for over twelve months and that his condition was unlikely to change significantly within the three weeks that his GP has advised away from public contact was not sure what benefit this would offer. We accept that both the Respondent and the FMA considered that the GP advice had not been properly considered.

44. On 13 May 2022 Sergeant O'Regan had a conversation with the Claimant and told him that he needed to provide a detailed explanation of what he could and could not do. The Claimant reiterated what he had said to Dr Bayman and that he was finding it difficult to deal with the public due to fatigue and difficulties being able to think on his feet and processing information.

45. On 13 May 2022 the Claimant contacted a Police Federation representative about the definition of "front-line policing" and the implications for his role and explained the difficulties he felt he was facing with his health and the impact that was having on him. The Claimant referred to having been diagnosed with non-alcoholic fatty liver disease which the Claimant linked to covid (although that is not something which seems to have been reported at the time to the Respondent). The Claimant requested a referral to an employment solicitor to review his case for possible discrimination and raising various concerns about "the UPP meeting".

46. On 29 June 2022 there was a further meeting to discuss the Claimant's working arrangements, and he began undertaking surgery work again. He also began working on working on the summer reduction team dealing with "grade 3 incidents". The Claimant had expressed concern about that, but his concerns relate to his family situation rather than being covid or disability related.

47. In his witness statement the Claimant says that he was struggling to work full time in July 2022, but we concluded that the Claimant only worked on a full time basis for a very limited time during July, much of it at home. The Claimant was 2 hours late for work on 8th July and finished work 7 hours early on 9th July. These absences were related to his wife's pregnancy and his daughter's illness. Sergeant O'Regan did not record them as being absence which would "breach" the ASP. Shortly after that the Claimant tested positive for covid and worked from home during the self-isolation period until the start of his paternity leave and also took a period of annual leave. The paternity and annual leave covered the period between 29 July and 21 August.

48. The ASP which had been finalised in May was due to expire on 9 August 2022 but was extended for a month by Sergeant O'Regan to take account of the annual and paternity leave. It subsequently lapsed without any further action being taken.

49. On 16 September 2022 the Claimant experienced musculoskeletal pain and left work during a shift. His subsequent fit note (which covered the period to 14 October) referred to the reason for the Claimant's absence as "long covid cervicgia" and he was referred to the FMA again. When the Claimant returned to work an adjustment was put in place for him to work 6-hour shifts.

50. At around this time the Claimant's line management was transferred to Sergeant Vicky Rose.

51. The Claimant had finally been able to attend an NHS long covid clinic. An assessment was undertaken of him on 26 November 2022 which resulted in a report covering the period from 26 November to 7 January 2023 which was provided to the Respondent. This refers to the Claimant gradually increasing his hours and suggests one hour per month.

52. The Claimant met his line manager Chief Inspector Hannan on 15 November and on 6 December 2022 Chief Inspector Hannan emailed the Claimant to follow up on that. The email makes it clear that at the meeting Chief Inspector Hannan had spoken to the Claimant about submitting a reduced hours "medical" Freda, that is a flexible arrangement to accommodate a medical condition. The email says *"can you please have a look at a reduced hours Freda? I know we agreed it after your FME but I would like to have a proposal in place to work from so that we do not delay the time You have been working for a while on reduced hours and whilst we will always support your welfare, we also need to ensure that we pay according to your duties, I have heard of some suggestion of phased return, increasing your return by 1 hour per month, I still think that is a long time to return to full time hours so this will still require a Freda for that increase or we discuss doing the phase quicker. I want to ensure that we have the right balance between supporting you though your current health challenges"*.

53. There was a further review of the Claimant by the FMA on 19 December 2022. The review was conducted by Dr Hameed. The report noted that there had been a slow improvement in the Claimant's symptoms, but he was still symptoms which presented an obstacle to his job-related fitness test and operational role. The notes that the claimant was working 6 hours per day and was *"happy to gradually increase them to full time over the following weeks"*.

54. The Claimant did not submit a Freda as requested by Chief Inspector Hannan.

55. The Claimant began to increase his working day over the next few weeks. There was some dispute between the witnesses about precisely what improvement was seen, but it is clear that the Claimant did begin to slowly increase his hours although he had not been able to return to full time hours and still working on adjusted duties.

56. In the background however Chief Inspector Hannan was clearly becoming frustrated by the fact that the Claimant had not returned to full time working and had not submitted the medical Freda that he had suggested in December. Chief Inspector Hannan was challenged about this in cross examination. It was put to him that his actions were unreasonable when the Claimant was in fact starting to increase his hours. Chief Inspector Hannan conceded there had been some improvement but maintained that he had no confidence that the Claimant would return to his full time

hours and told us that in light of the period of time which had lapsed during which the Claimant was being paid for working much longer hours than he was actually working, he had reached the view that the position was not sustainable, bearing in mind public funds.

57. An instruction was given to Sergeant Rose to speak to the Claimant to tell him that he either had to submit a Freda to vary his hours or he would be expected to return to full time working. Sergeant Rose spoke to the Claimant on 1 February 2023 as instructed. The Claimant had been told this would be an informal catch up. He had not been warned that this issue as to be discussed. The Claimant told Sergeant Rose that he felt he was being put in a “catch 22” situation – he did not think he could work full time, he could not afford a further Freda, and he was told that if he did not comply, any unworked hours would be treated as unauthorised absence.

58. Sergeant Rose told us that she had had not intended to upset the Claimant and did not think that he was upset at the time, but the Tribunal accepted that the Claimant was upset and worried by the instruction. He attended work the following day but felt increasingly anxious. He met his wife at lunchtime and, with her support, left work because he was feeling unwell. This began a further period of sickness absence.

59. The Claimant was referred to the FMA again on 13 March 2022. The report prepared by Dr Hameed noted that the Claimant was off work with stress caused by being told to increase his hours which he felt unable to do due to on-going long covid symptoms. The doctor commented that this was a subjective matter relating to stamina and that it would now be managerial matter on whether further adjustments could be made. The doctor was unable to provide a timeframe for a return to required hours and suggested an “open and frank discussion” regarding the best way forward.

60. On 17 April 2023 the Claimant raised a grievance.

61. In the meantime, the Claimant had applied for and been appointed to work in a new unit, FCMU, based in Preston. This was tied to the implementation of a new protocol and staff joining the new unit were required to attend a 2-week training course. The Claimant was asked to attend training between 16 May and 26 May 2023, but the new unit would not become operational until 12 June. The course was run on a full-time basis, and no part-time alternative could be offered due to the nature of the training. Although the Claimant had expressed a desire to attend the training part-time, he attended the course full time (with some time off allowed for childcare).

62. The Claimant was told that between the conclusion of the training and opening of the unit, he would have to return to Response at West Division due to operational needs. The Claimant was extremely reluctant do that. The Claimant wrote to his new line manager raising concerns and asked for alternatives but was told by his new line manager, that this was not up to her and what he requested as not possible. Chief Inspector Jennings-Wharton told us that the Claimant had valuable skills which were important for the Response team. He told us the Claimant was in a position to do assist West Division to prepare for the implementation of the new operating model during that short period of time by preparing team investigations, closing investigations with no further lines of enquiry, filing investigations as positive outcomes where appropriate and general housekeeping prior to transition. This was work the Claimant was good at.

63. The Claimant attended the training. He needed some time off for childcare reasons and that was allowed. The training was completed successfully.

64. The Claimant returned to Response at West Division on 27 May. He was due to work 6 shifts but took some leave and worked 4.5 shifts before beginning his new post with FCMU on 16 June 2023. The Claimant told us that on his return he was not offered a phased return or adjustments at all “I was just left to sit in the office and work” and he felt undervalued.

65. The Claimant raised no issue in his claim about the time from his move to FCMU and said that after a discussion with his line manager he concluded that he had been badly treated.

66. Early conciliation was initiated on 10 August and completed on 21 September. His Tribunal claim was submitted on 29 September.

The law

Disability discrimination

Disability

67. Section 4 EqA (Equality Act) identifies “disability” as a protected characteristic. Section 6(1) defines disability:

A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

68. Discrimination arising from disability

Section 15 EqA precludes discrimination arising from a 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 a disability.

69. Section 15 EqA is aimed at protecting against discrimination arising from or in consequence of the disability rather than the discrimination occurring because of the disability itself, which is covered under direct discrimination.

70. The first requirement under S.15(1) of the EqA is that the disabled employee must have been treated ‘unfavourably’. This term is not defined in the EqA. The Equality and Human Rights Commission’s Code of Practice on Employment (2011) (‘the EHRC Code’) states that it means that the disabled person ‘must have been put at a disadvantage’ (see para 5.7).

71. The EHRC Code states that the consequences of a disability ‘include anything which is the result, effect or outcome of a disabled person’s disability’ — para 5.9. Examples given include:

- the inability to walk unaided
- a need for regular rest breaks or lavatory breaks
- restricted diet
- slower typing speeds
- regular hospital appointments
- a need for specialist computer equipment.

72. The EHRC Code gives the further example of a woman who ‘is disciplined for losing her temper with a colleague. However, this behaviour was out of character and is a result of severe pain caused by her cancer, of which her employer is aware. This disciplinary action is unfavourable treatment. The treatment is because of something which arises in consequence of the worker’s disability’ — para 5.9. In practice, the most common consequence cited in S.15 claims as being something that arises as a consequence of disability is sickness absence, but what is important is that the claimant can show the connection between the “something” and disability.

73. In terms of the burden on a claimant to establish causation in a claim for discrimination arising from disability it is sufficient to show facts from which the tribunal could reasonably conclude that there is some causal link, and that the unfavourable treatment has been caused by an outcome or consequence of the disability. The employer’s motivation is irrelevant. s15 EqA requires unfavourable treatment to be because of something arising in consequence of the disabled person’s disability. If the something is an effective cause – an influence or cause that operated on the mind of the alleged discriminator to a sufficient extent (whether consciously or unconsciously), the causal test will be satisfied.

74. However, even if a claimant succeeds in establishing unfavourable treatment arising from disability, the employer can defend such a claim by showing either that the treatment was objectively justified, or that it did not know or could not reasonably have known that the employee was disabled. If the employer knows the claimant is disabled, the employer cannot defend the claim on the basis that it did not know or could not be expected to know that the “something arising” was in consequence of disability. The employer cannot defend a claim on the basis that it was not aware of the something arising if it had (or ought to have had) knowledge of disability.

75. The test of justification requires that the treatment complained of amounts to a proportionate means of achieving a legitimate aim. The test is an objective one for the

tribunal to determine, not a band of reasonable responses test. Furthermore, tribunals must engage in ‘critical scrutiny’ by weighing an employer’s justification against the discriminatory impact, considering whether the means correspond to a real need of the undertaking, are appropriate with a view to achieving the aim in question, and are necessary to that end.

Failure to make reasonable adjustments

76. The EqA imposes a duty on employers to make reasonable adjustments for disabled people. The duty comprises three requirements, in this case, the first requirement is relevant. This is set out in sub-section 20(3) and references to A are to an employer.

“(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.”

77. Paragraph 20(1)(b) of Part 3 of Schedule 8 of the EqA says that the duty to make reasonable adjustments does not arise if the employer: “does not know and could not reasonably be expected to know –

(b) ...that an interested person has a disability and is likely to be placed at the disadvantage referred to...

78. S21 of the EqA provides

“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.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

79. It is for the Claimant to show that the “provision, criterion or practice” it is alleged they have been subject to. The term is not defined in the EqA. However, some assistance as to the meaning of ‘PCP’ is afforded by the EHRC Code, which states that the term ‘should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A [PCP] may also include decisions to do something in the future — such as a policy or criterion that has not yet been applied — as well as a “one-off” or discretionary decision’ (para 4.5).

80. Where a disabled person claims that a practice (as opposed to a provision or criterion) puts him or her at a substantial disadvantage, the alleged practice must have an element of repetition about it and be applicable to both the disabled person and his

or her non-disabled comparators. It is common for complaints to be raised about decisions where it might not be clear whether this part of “practice”.

81. In terms of how we should assess whether an adjustment is reasonable for not the EHRC Code says this,

“What is meant by ‘reasonable steps’?”

6.23

The duty to make adjustments requires employers to take such steps as it is reasonable to have to take, in all the circumstances of the case, in order to make adjustments. The Act does not specify any particular factors that should be taken into account. What is a reasonable step for an employer to take will depend on all the circumstances of each individual case.

6.24

There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask). However, where the disabled person does so, the employer should consider whether such adjustments would help overcome the substantial disadvantage, and whether they are reasonable.

6.25

Effective and practicable adjustments for disabled workers often involve little or no cost or disruption and are therefore very likely to be reasonable for an employer to have to make. Even if an adjustment has a significant cost associated with it, it may still be cost-effective in overall terms – for example, compared with the costs of recruiting and training a new member of staff –and so may still be a reasonable adjustment to have to make.

.....

6.28

The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

- whether taking any particular steps would be effective in preventing the substantial disadvantage;
- the practicability of the step;
- the financial and other costs of making the adjustment and the extent of any disruption caused;
- the extent of the employer’s financial or other resources;
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

- the type and size of the employer.

6.29

Ultimately the test of the ‘reasonableness’ of any step an employer may have to take is an objective one and will depend on the circumstances of the case.

Can failure to make a reasonable adjustment ever be justified?

6.30

The Act does not permit an employer to justify a failure to comply with a duty to make a reasonable adjustment. However, an employer will only breach such a duty if the adjustment in question is one which it is reasonable for the employer to have to make. So, where the duty applies, it is the question of ‘reasonableness’ which alone determines whether the adjustment has to be made.”

Burden of proof in discrimination complaints

82. The burden of proving a discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the “shifting burden of proof” was developed to deal with this. This concept is discussed in a number of cases and is set out in section 136 of the EqA. This is reflected in the statutory wording:

Section 136 burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
 - (a) an employment tribunal.

83. How the Tribunal should apply this test is explained in *Igen v Wong* [2005] IRLR (before the Equality Act 2010) and subsequently explained in cases including *Madarassay v Nomura International Plc* [2007] IRLR 246.

84. In *Laing v Manchester City Council* [2006] IRLR tribunals were cautioned against taking a mechanistic approach to the proof of discrimination in following the guidance set out above. In essence, the employee must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer had committed an unlawful act of discrimination against them. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a Claimant has made a prima facie case of discrimination (see also *Madarassay* referred to above).

85. In every case the tribunal has to determine the reason why the Claimant was treated as she was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 “this is the crucial question”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

86. In assessing the facts in this case, the tribunal has reminded itself that simply showing that conduct is unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof (*Bahl v The Law Society* [2003] IRLR 640). Unreasonable conduct is not always discriminatory.

87. As explained in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* 2006 IRLR 865, an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. However if unreasonable conduct occurs alongside other factors which suggest that there is or might be discrimination, then the tribunal should find that the Claimant had made a prima facie case and shift the burden on to the Respondent to show that its treatment of the Claimant had nothing to do with the Claimant’s gender or her status as a disabled person or the fact that she made protected disclosures (as applicable) and in so doing apply the burden of proof principle as set out above.

Submissions

88. We received helpful submissions from Mr Grundy and Ms von Wachter which are referred to in the discussions below.

Further findings, discussion and conclusions

89. The Respondent had conceded that the Claimant was disabled by long covid for the relevant period when the Claimant says he was subject to discrimination, that is between November 2021 to 16 June 2023. Mr Grundy argued that the Claimant had become disabled before November 2021.

90. We agreed with Ms von Vachter that the Claimant was not disabled from when he first caught covid or when he first began to experience post covid symptoms. There may have been a significant impact on day-to-day activities caused by the initial viral infection but that will have been true for many people who caught covid most of whom only experienced a relatively short period of illness or some post viral effect which nevertheless would resolve within months. Long covid became a disability when the

impact of long covid on day to activities had lasted for 12 months or was likely to last for more than 12 months.

91. We had limited evidence from the Claimant about when it became likely that his condition was such that it became likely to last more than 12 months. We based our decision taking into account Mr Grundy's submission in light of the FMA evidence. We concluded that the Claimant began to experience symptoms consistent with a more long term condition in May impacting on day-to-day activities when the Claimant was unable to work. This had continued until September and significantly the FMA advice demonstrated in our view the expectation of the doctor that this impact would continue to such an extent that some adjustment to duties was required for a further 6 months. In light of the length of time which had then passed and the severity of his condition in September 2021 we concluded that by then it was likely that the Claimant's condition would last for more than 12 months. For that reason, we concluded that the Claimant was disabled from September 2021.

Section 15 Equality Act 2010 Complaints

92. We first considered the complaints under s15 of the Equality Act 2010 – that is the complaint that the Respondent had treated the Claimant unfavourably because of something arising in consequence of the Claimant's disability of long covid. In the Agreed List of Issues these are set in paragraph 9 a to e.

93. It is a potential defence to a s15 complaint for the Respondent to show that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability. As this issue potential applies to all of the complaints in paragraph 9, we considered that first as we had been invited to by the order of the list of issues and the submissions we received.

The issue of knowledge

94. The Respondent argued that it did not know and could not reasonably know that the Claimant was disabled until 17 March 2022 when it received the FMA occupational health report of that date.

95. Mr Grundy argued that the Respondent had been aware of disability from the assessment on 13 September 2021 at the latest. He highlighted to us that it was striking that the Respondent had chosen not to call evidence from HR witnesses to address the application of the Respondent's policies to the Claimant, but that those handling the Claimant's absence had failed to consider the possibility of disability as they were required to do by the attendance policy.

96. The Claimant had been begun reporting intermittent health issues for some time. He had been unable to work from May because of anxiety issues and vision loss. In July the FMA noted that the impact was significant and recognised the possible link to covid. Although in September 2021 the FMA report did not refer at all to covid, Dr Bayman's advice was that the Claimant was continuing to experience anxiety and she expected the Claimant would continue to experience a significant impact on day-to-day activities and in particular his ability to work, for a further period of time.

97. In July 2021 the question Dr Bayman had addressed to herself was whether the Claimant had a long-term condition which had lasted for 12 months. That is the definition of disability in Sch 1 para 2(1) (a) of the Equality Act, but she did not consider the definition in para 2(1)(b) that is whether the impairment is likely to last for at least 12 months. She did not address this question at all in September.

98. Ms von Wachter argued that the Respondent could not be regarded as having “constructive” knowledge of disability until the report of March 2022 was received and points to the fact that from that date the Claimant was regarded as disabled.

99. However, the Tribunal panel preferred Mr Grundy’s submission that if the FMA had been asked to revisit the issue of disability in September on the basis of how long the Claimant’s physical and mental impairment had impacted on him at that time and how long it was likely to last, and bearing in mind that the Claimant himself had previously identified a possible underlying cause, covid, the advice would have been that the Claimant did meet the legal definition of disability at that time. Dr Bayman recognised a continuing effect of the impairment even if there appeared to be some improvement (with a return to contracted hours albeit on adjusted recuperative duties). The Tribunal concluded that by 13 September the Respondent ought reasonably to have known that the Claimant was disabled because the FMA could and should have been asked to apply the correct legal test at that time and from the evidence available to us we conclude that if they had they would have concluded that the Claimant was likely to continue to experience a significant impact on his ability to undertake day to day activities as result of long covid for more than 12 months.

100. We concluded that by the time the Unsatisfactory Performance and Attendance Procedure process was applied in November 2021 the Respondent knew or ought to have known that the Claimant was disabled.

First complaint: Para 9 (a) LOI: that the Claimant was subjected to a detriment by subjecting him to the Formal Stage 1 UAP process in November 2021, issuing a WIN on 10 December 2021 (dated 25 January 2022) that remained in place until 10 December 2022

101. This is disputed by the Respondent on the basis that at the time the Respondent did not have the requisite knowledge of disability. For the reasons explained above we did not accept that the Respondent had established this defence.

102. We are reminded by Mr Grundy of the guidance provided in **Pnaiser v NHS England** [2016] IRLR 170 in determining these complaints.

103. The Respondent’s documenting of this process to be poor and at times the sequence of events is rather hard to follow. There are unexplained inconsistencies in the documents. For example, the list of issues records the date that the written notice was issued on 25 January – that is the date of letter in the bundle which confirms the outcome of the First Stage meeting of the Unsatisfactory Performance and Attendance Procedure, but the actual written notice was signed by Sergeant O’Regan on 28 January 2022. Curiously the “written improvement notice” is recorded as having been issued on 10 December 2021, but the actual written notice was not issued until 6 weeks later. We had no explanation for that delay. That 6-week period accounted for almost half of the time during which the specified improvement was expected to be

made, despite the written details of that not having been provided. That delay is particularly difficult to understand when the Respondent had begun the process of considering applying this process to the Claimant in the previous February which is when Sergeant O'Regan told us he had first expected to be provided with advice from HR.

104. In terms of the substance of this complaint, what appears to be argued as a single act of discrimination is in our assessment a complaint about a series of different decisions. The first as pleaded is the decision to apply the Formal Stage 1 UAP process to the Claimant in November 2021, then there is the issuing of the WIN on 10 December 2021, notified in writing on 28 not 25 January. The panel concluded we could only sensibly examine this complaint by breaking it down into its component elements.

105. The first is the decision to subject the Claimant to the "UAP process" at all in November 2021. In fact it is clear that a decision about that had been taken much earlier and that the Claimant was aware that he would be subject to the UAP process before he became disabled and when the Respondent ought to have been aware he was disabled, in September.

106. Mr Grundy argued that all of the Claimant's absence from January 2021 was related to his disability because it was covid related. However, we did not accept that was correct. Based on the evidence we had, we concluded that the Claimant did not become disabled until September 2021. The claimant had some time off work because of a viral infection which would eventually trigger a post viral condition which caused him to become disabled in September but we did not accept that this meant any absence which the claimant attributed to covid before then was absence caused by disability.

107. We do accept that in November when the Respondent issued the invitation letter there would have been an opportunity to decide not to proceed with the UAP/UPP process.

108. The decision to proceed was based on the Claimant's sickness absence and the fact that he had not been undertaking the full range of his duties. The absence had predated the Claimant becoming disabled. However, in terms of the capability process there was risk that the future absence would be caused by the same underlying condition that had caused some of the actionable absence and the was unable undertake his full duties due to the continuing impact of anxiety, pain and fatigue which the Respondent ought to have known was caused by or arising out of his disability.

109. Ms von Wachter primarily relied on the Respondent's lack of knowledge of disability in her submissions on this issues and particularly relied on Sergeant O'Regan's lack of knowledge based on information in the Respondent's medical records for the Claimant when Sergeant O'Regan took the decision to proceed with the UAP. However Sergeant O'Regan did not need to have knowledge of the "something arising". What was material is that by that time the Respondent knew, or ought to have known, that the Claimant was disabled. Once the Respondent had knowledge of disability that should have informed how it managed the Claimant's sickness absence and performance concerns.

110. We accept that the Claimant was entitled to regard the decision to proceed in November with a decision taken in September was unfavourable treatment which had implications for his future employment and we concluded that it was by reason of something arising from his disability.

111. There are two potential defences for the Respondent which would mean this complaint would not be well founded under the EqA. The first we have already considered above and has fallen away– that the Respondent did not know or could not reasonably be expected to know that that the Claimant was disabled. The second potential defence is for the Respondent to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

112. The Respondent relied on the legitimate aim of providing an effective and efficient Police Force. Mr Grundy argued that this was drawn too widely and did not focus upon whether putting an officer through the formal Stage 1 Process in the circumstances was legitimate.

113. Ms von Wachter pointed us to the evidence of Chief Inspector Hannan and Jennings-Wharton about the changes faced by the Respondent in terms of policing resources.

114. The Tribunal also took into account the evidence of Sergeant O'Regan in relation to the reasons for the UAP process. We accept that although the Claimant has established that his performance issues were something arising from his disability and it should have been recognised that future absence might be disability related given the Claimant was experiencing disability related anxiety and fatigue which had caused absence in the past, we also accept that Sergeant O'Regan had reason to believe that a formal review of the Claimant's absence was appropriate. The Claimant had high levels of sickness absence and was not performing his substantive role for which he was being paid. There did appear to be a pattern of the Claimant requiring time away from work to cover childcare issues and the Claimant reported sick when he was unable to take leave for to cover those absences which could have suggested some underlying issue. Indeed, at the UAP meeting the Claimant himself raised that some of his unacceptable absence was due to caring responsibilities which he thought justified him taking absence (he had referred to being entitled to take leave under the "Care Act").

115. In addition, although the Claimant had reported that he was unable to work full time shifts and had been placed in reduced shifts but at the same time was working significant amounts of voluntary overtime. The Claimant told us that he was undertaking work that he found straightforward and it was not tiring but it was an apparent contradiction to what he had reported to the FMA.

116. We concluded that there were legitimate issues for the Respondent to explore under the formal process, and we do not accept that the fact that the Claimant was disabled meant it was not appropriate to do so. The application of the process is an initial stage which enables the reason for absence to be formally raised and discussed with an employee. It does not mean there will inevitably be a particular outcome.

117. We concluded that it was proportionate for the Respondent to apply its UAP/UPP policy in those circumstances. Although the Claimant could reasonably regard it as a

unfavourable treatment, it was not a process which would necessarily result in an adverse outcome. In terms of the Respondent's legitimate aim, the need to provide an effective and efficient Police Force, agreed with Mr Grundy this was broadly drawn aim, but the provision of an effective police force requires the Respondent to have officers available and that means managing sickness absence. In circumstances where the Claimant's absence was significantly beyond the Respondent's trigger levels we concluded that considering action under the UAP or as in the words in the list of issues, subjecting the Claimant to the UAP process, was a proportionate means of achieving a legitimate aim.

118. We concluded that this aspect of the complaint in para 9 (a) was not well founded.

119. The second element of para 9(a) is the issuing of the written improvement notice("WIN") on 10 December 2021, confirmed in writing on (based on our factual findings) on 28 January 2022 which was to remain in place until 10 December 2021.

120. The application of a WIN (without the improvement notice actually being issued in writing for another 6 weeks) was a detriment. It is the equivalent of a disciplinary warning. It was unfavourable treatment for something arising out of disability for the same reasons as set out above.

121. We then asked ourselves if the WIN was a proportionate means of pursuing a legitimate aim.

122. Although we had accepted that when the process was initiated the Respondent the Respondent had legitimate concerns about the amount of absence, the pattern of absence and the reasons for it, in the meeting on 22 November the Claimant was explicit that his absence arose from a combination of caring responsibilities and covid. The information from the FMA in July 2021 recognised that the Claimant had identified that he was suffering from post-covid anxiety symptoms and that the condition might be long term, and the report in September identifies that anxiety symptoms are continuing with a continuing need for stability and adjusted duties. At the meeting in November, although the possibility of long covid as a long-term condition seems to have been in the mind of the Respondent's HR advisor because she referred to that, it was rejected by Sargeant O'Regan simply on the basis that the FMA had not diagnosed long covid. However, the FMA had not been asked to comment on that. The FMA had previously acknowledged that the Claimant had reported covid related anxiety. If Sargeant O'Regan had reason to doubt the issue of long covid the proportionate thing would have been to seek further medical advice.

123. The Respondent applied the WIN, which raised the possibility of action being escalated through the procedure, and rejected what the Claimant said about a covid link without seeking further medical advice, and proceeded to set expectations in terms of a return to full time duties despite the FMA having advised that the Claimant would need to remain on recuperative duties for a period of time. He did so without seeking updated medical advice. The WIN recognised that further FMA advice would be required to help the Claimant to fully return to his duties, unfavourable treatment nevertheless set a firm timescale. That was contradictory. The Respondent could not fairly set a realistic expectation of further absence without seeking further FMA advice because it would be impossible to say if the timescale for improvement was achievable

or appropriate. That was not a proportionate approach when, by the time the WIN was actually provided to the Claimant in writing, four months had passed since the last FMA advice. Although the aim of managing absence to provide an efficient Police Force was legitimate, the Respondent had not shown that the issuing of the WIN was a proportionate means of achieving that aim.

124. We accepted the Claimant has established that he had been treated unfavourably because of something arising in consequence of disability which was not a proportionate means of achieving a legitimate aim when he was issued with the WIN but there were further issues in relation to jurisdiction to consider before we could determine that this complaint of discrimination was well founded. Our conclusions about the jurisdiction are set out below.

Second Complaint Para 9 (b) of the LOI: that the Respondent subjected the Claimant unfavourable treatment by subject him to an Attendance Support Plan (ASP) on or about 11 April 2022.

125. It was not conceded that this was unfavourable treatment.

126. However we accepted Mr Grundy's submission that this was a step which had implications for the Claimant's future employment because it could be taken into account in future UAP procedures. It arose in consequence of the terms of the WIN which had been materially influenced by disability-related performance issues. It was triggered because the Claimant had further covid related absence. We concluded that it was unfavourable treatment because of something arising in consequence of disability.

127. The list of issues and the chronology refer to date of the unfavourable treatment as being when the claimant was subject to the plan on 11 April 2022. We again found the documents rather difficult. Mr Grundy referred us to an email dated 11 April as being the date when the ASP was sent to the Claimant, but that email does not attach the plan and instead says "an attendance plan will be issued under a separate cover".

128. The document we were taken to in the bundle as the ASP is clearly a later document because it refers to discussions during May. The entry on 9 May is stated to be the date of issue. From the documents before us it appears that the plan was initially prepared as a draft for comments by the Claimant and also issued to him after a process which allowed him to make comments on it. We conclude that the Claimant was told that an ASP would be put in place in April, but he was not subject to ASP until 9 May when the plan was formally put into place.

129. Mr Grundy submitted that the ASP did not support the recommendations made by the FMA and was not designed to assist the Claimant to continue with his adjusted duties but to penalise him for further sickness absence. He pointed out that the 20% absence uplift was a blanket approach not undermined by any medical evidence.

130. Ms von Wachter argued that the ASP was supportive in nature, and she relied on a concession made by the Claimant in cross examination that this was intended to be supportive process. She also pointed out that the Claimant's absence was such that he would have required a 90% uplift for his absence not to be regarded as actionable.

131. In terms of the ASP itself, we concluded that the discussions with the Claimant about the terms of the ASP document was consistent with the document being supportive in nature, so although we accepted that it was unfavourable treatment in that it would be taken into account if attendance remained unsatisfactory (and this is referred to in the plan itself), we also accepted Ms Von Wachter's submissions that this was a process intended to be supportive to material extent in that it was intended to be an alternative to considering further absence at the next stage of the UAP procedure which could lead to dismissal. We accepted her submission that it was hoped this plan would avoid further action and would improve attendance. That is consistent with stated aim of the document which was "the support plan is for you to improve your attendance so that it is no longer deemed actionable". The plan goes on to record steps which had been taken to support the Claimant through flexible working and additional leave, and records additional support such as allowing time away from duties to facilitate medical appointments and allowing the Claimant to take additional short breaks if required, and that the Claimant was to receive input from a colleague who supports colleagues experiencing fatigue.

132. The ASP notes that the Claimant had stated that he felt because of the "UPP" he had come to work even when he felt too unwell to work but had been forced by pain to take a further day's absence on 10 March. Sergeant O'Regan had put in place the attendance support plan as an alternative to escalating further action under the UAP, for example by escalating to stage 2 which the terms of the WIN would have allowed, and we also accepted Ms von Wachter's submission that the ASP did not in fact have any negative consequences for the Claimant. It eventually expired without any further action.

133. As previously explained, we accepted that that the Respondent had a legitimate aim to maintain and manage police resources. Although the ASP had potential implications for the Claimant's employment, it also recorded and formalised the support he would be provided with. The Tribunal was concerned that the attendance uplift was not supported by medical evidence, but we accept that it was an approach which sought to take into account that a disabled officer may well have higher absence and sought to balance the needs to the Force and the position of a disabled officer. We accept that it was an alternative to the escalation of the UAP procedure when the Claimant had had further absence and we accepted that it was intended to be supportive. On balance we accepted that the ASP was a proportionate means of achieving the Respondent's legitimate aim. This complaint is not well founded.

Third Complaint: Para 9(c) of the LOI: that the Claimant was subject to unfavourable treatment when he was asked "to amend his Freda (Flexible Work Pattern) to go onto reduced hours with a reduction in pay reflective of actual hours worked between April 2022 and February 2023".

134. This was a curiously worded complaint. We were not given any evidence of the Claimant having being told to submit a Freda to reflect the hours he worked between April 2022 and February 2023 and he alleged that he complained that he had first been told to submit a medical Freda in April 2022 so that could not be the case. This seemed to be complaint that he had been told to apply for a Freda on three occasions between April 2022 and 1 February 2023 to reduce his hours of work and therefore his pay to reflect the reduced shift pattern he worked for much of that on a recuperative basis.

135. We understood the basis of complaint to be that the Claimant was asked on three occasions to amend the childcare Freda he already had in place to amend his terms of appointment in light of his continued inability to perform his duties in full.

136. The Claimant says that the first occasion was on 20 April 2021. He did not give a detailed account of what happened in his statement but alleges that he was told this by Sergeant O'Regan on 20 April. Sergeant O'Regan denies this happened and told us that he was on leave on that day. That is consistent with the documents, and we accept his evidence about that. We concluded that the Claimant had not proven that he was told to amend his Freda on 20 April 2022.

137. It is not in dispute that the Claimant was told to amend his Freda during a meeting with Chief Inspector Hannan on 15 November 2022 which resulted in the email of 6 December 2022, and Sergeant Rose accepts that it was raised with the Claimant on 1 February 2023. We considered whether those events in November and December 2022 and December 2022 were unfavourable treatment because of something arising in consequence of the Claimant's disability.

138. It was accepted by Ms von Wachter that the Respondent did "steer" the Claimant towards adopting a "medical Freda" and that would have resulted in the Claimant hours of work under his contract of employment being adjusted with a reduction in pay to reflect the actual hours of work the Claimant was working. She pointed to the fact that this was in the context of the Claimant working 60% of full time since 16 September 2022, which followed adjusted duties from 30 June 2022 recommended by a GP which meant not public contact and the fact that the Claimant had only been able to partly increase his hours by February 2023. She also pointed out that Chief Inspector Hannan thought a Freda was a way to reduce the pressure on the Claimant to increase his hours back to full time. It was argued this was not unfavourable treatment.

139. In terms of the discussion with Chief Inspector Hannan on 15 November 2022 which resulted in the email of 6 December 2022, we do not doubt that the Claimant was unhappy about being asked to submit a Freda, but we did not accept that the Claimant could reasonably believe that being asked to look at this in the circumstances was a detriment to him. Chief Inspector Hannan asked the Claimant to look at this and explained why he wanted the Claimant to do that. The Claimant was not told that he had to apply, and he was not subject to any threat about what would happen if he did not comply with the request, he was simply asked to consider this. In circumstances where the Claimant knew he was being more than part time officer would be who was working the same hours he was, he knew he was working fewer hours and on adjusted hours compared to his full-time colleagues and he knew this was a state of affairs which had continued for some considerable time. The Claimant could not reasonably regard that as unfavourable treatment

140. The issue of a medical Freda was raised for the last occasion on 1 February 2023 by Sergeant Rose. The complaint in para 9(d) of the LOI is that the Claimant was informed that he would be returned to full hours on Response on 1 February 2023 and that any hours not worked would go down as unauthorised absence.

141. Sergeant Rose told us that she had been instructed by the senior management team to speak to the Claimant about his contracted hours after she took over his line

management. Sergeant Rose's evidence was that she told the Claimant that following his phased return to work he would need to return to full time hours or apply for a medical Freda.

142. Ms von Wachter submitted that this was the Respondent taking a decision that it would be "kinder" to regularise the reality of shortened shift pattern and it was not unfavourable treatment.

143. It is noted here that we found it somewhat odd that the issue of the Freda being raised is put as part of allegations running from April 2022 under 9(c) and the return to full time working is alleged as separate free-standing incident of discrimination when these complaints arise from a single comment. They are clearly intrinsically linked.

144. In cross examination Sergeant Rose accepted that she had told the Claimant that if he did not either return to his contracted hours or submit a medical Freda any contracted hours not worked would be recorded as unauthorised absence. She did not accept that she said expressly this would be misconduct, but this must have been the implication of the reference to unauthorised absence. The Claimant told Sergeant Rose that this put him in a catch 22 situation and he was not physically able to meet this expectation. Sergeant Rose's evidence was that she did not realise he was upset by what had been said, but we have no doubt that the Claimant was shocked and upset.

145. We concluded that the Claimant was subject to unfavourable treatment by being asked to either submit the Freda or return to full time duties on 1 February. The instruction to make a Freda application was given without the Respondent having allowed the Claimant the time to return to full time duties as recommended by the long covid clinic, or without seeking further medical advice to understand when he might be able to return to full time working. Given a Freda takes some time to put into place, it was unreasonable to require a Claimant to apply to change his hours of work when he might in fact be able to return to full time working in the meantime. More particularly though, and in contrast to what had happened in November and December, this was not a request. The instruction to apply for a Freda was given in the context of a threat of possibly significant adverse consequences for the continuation of the Claimant's employment if he did not do this.

146. This reason for this treatment was the Claimant's continued inability to return to his full-time hours which arose from his disability of long covid. It was unfavourable treatment because of something arising in consequence of his disability.

147. This complaint is so closely linked to the following complaint in the list of issue that we concluded it was sensible to consider the issues of possible justification for both complaints together.

Fourth Complaint: Issue 9(d) Inform the Claimant that he would be returned to full time hours on Response and that any hours not worked would go down as unauthorised absence.

148. As noted above this complaint arises out of the meeting with Sargeant Rose. As noted, what actually happened (and is not in dispute) is that the Claimant was told that

he would be returned to full time hours if he did not submit a medical Fredda. This does put the complaint in slightly different terms.

149. However, even as an ultimatum rather than a simple statement of intention, the Claimant was reasonable in believing this was unfavourable treatment. If the Claimant was not fit to work, that was a capability issue which should be dealt with accordingly. The approach adopted by Sergeant Rose turned it into a potential gross misconduct issue where, if the Claimant was unable to work full time, the only way to avoid the risk of disciplinary action was to apply for a contract variation which would result in his pay being reduced.

150. The reason the Claimant was given this ultimatum was that he could not work full-time for reasons related to his disability. It was unfavourable treatment because of something arising in consequence of his disability.

151. The Tribunal accepted that the Respondent was entitled to consider whether it was reasonable to continue paying the Claimant a full time salary when he was not working full time hours, and had not been working full time hours or performing his full duties or both for some time, but the presentation of this as an ultimatum, without warning, without seeking an update understanding of the medical position and in circumstances where the Respondent was aware of medical advice (from the long covid clinic) that the Claimant should only gradually increase his hours was disproportionate and unreasonable. The Tribunal concluded that the Respondent approached this matter in a disproportionate manner.

152. We accepted the Claimant has established that he had been treated unfavourably because of something arising in consequence of disability which was not a proportionate means of achieving a legitimate aim when he was told to amend his Fredda (Flexible Work Pattern) to go onto reduced hours with a reduction in pay reflective of actual hours worked in February 2023 and that if he did not he would be returned to full time hours on Response and any hours not worked would go down as unauthorised absence. However, there were further issues in relation to jurisdiction to consider before we could determine that this complaint was well founded. Our conclusions about the jurisdiction are set out below.

Fifth Complaint: Para 9 (e) in the LOI that the Claimant was informed on 22 May 2023 that he could not move across to FCMU without completing a final set on Response between 27 May 2023 and 15 June 2023.

153. We accepted the evidence of Inspector Louise Darcy about the FCMU. The FCMU was a new unit. Officers and staff joining the unit underwent a period of training before the implementation of a new target Operating Model and the launch of the unit on 12 June 2023. The Claimant was one of the officers who had been selected to transfer to the new unit. Training was offered on a full-time basis and due to the timing of the training courses and the content it was not possible to attend part time.

154. Before he joined FCMU, the Claimant made Inspector Darcy aware of his circumstances including that he had had a grievance about his treatment in the West Division, his childcare difficulties and his long covid diagnosis. He asked that he should not be required to return to West Division for the period between completing the training and the launch of the new unit because he said he could not

work back at West “due to the issues they have caused me”. He also explained various time off requirements he would have as he began working in the new unit, including for rehabilitation treatment from the long covid clinic.

155. The Claimant told Inspector Darcy that his family faced childcare issues for one afternoon during the training and he was allowed leave for that. The Claimant attended the rest of the training which was completed on 26 May 2023.

156. The Claimant was told that he would have to return to West Division for the period between the completion of training and the launch of the new unit for operational reasons. The new unit did not become operational until 12 June so until then 12 June there was no unit for him to move to after the Claimant completed his training. He did return to West Division, working 4.5 rather than 6 shifts during the relevant period. Chief Inspector Jenings-Wharton told us that he needed as many officers as possible in Response to meet operational demands and the Claimant had useful skills and experience in particular to assist to the transition to a new operating model which was related to the opening of the new FCMU.

157. Further the move to the new unit was not *dependent* on the Claimant completing a final set of shifts at West Division as suggested by the terms of the complaint. The Claimant could not move to the new unit until there was work there for him to do and, like the other new members of the team, he was simply expected to continue in his operational role until the new unit became operational. It was not that he was told he had to complete a certain amount of work at West Division before his move.

158. Working in the Response Team at West Division was the Claimant’s contractual role and we accept the Respondent’s argument that the Claimant could not reasonably regard being expected to return to his substantive role when he had returned to work as unfavourable treatment. It was not unfavourable treatment, but even if we are wrong about that, we accept the evidence of Inspector Darcy and Chief Inspector Jenings-Wharton and the submissions of Ms von Wachter, that the reason why the Claimant was informed that he had to return to Response at West Division was not his sickness absence, or his inability work full-time hours on Response. We accept that this was an operational matter. The complaint in this instance appears to be argued on the basis that the effect of working back at West Division was averse to the Claimant and was therefore unfavourable treatment because of something arising in consequence of disability. That is not the correct test. For the decision to require the Claimant to return to West Division to complete shifts before moving to FCMU to be unlawful under s15 the something arising would have to be that a material influence on the reason for requiring the Claimant to return to West Division. We accept that was not the case.

159. This complaint was not well founded.

Failure to make reasonable adjustments: ss.20 & 21 Equality Act 201

Sixth Complaint: Para 15 of the Lol As to UAP: Stage 1 and WIN (para 64a – page 57 of the bundle):

- a. **Are the provisions of the UAP, under the Police (Performance) Regulations 2020, which includes attendance criteria a PCP? This is admitted by the Respondent**
- b. **If so, did these place the Claimant at a substantial disadvantage, because of his disability of Long Covid?**
- c. **The substantial disadvantage relied upon by the Claimant is that he would be more likely to be absent through sickness and therefore fall below the permitted attendance criteria**
- d. **Did the Respondent make any reasonable adjustments to this PCP for the Claimant?**
- e. **The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to delay the start of the UAP process and/or not apply the UAP process at all.**

160. It is accepted by the Respondent that the provisions of the UAP under the Police (Performance) Regulations 2020, which includes attendance criteria amount to a provision, criteria or practice.

161. It is also accepted by the Respondent that the Claimant's disability of long covid meant he was more likely to be absent through sickness and therefore fall below the permitted attendance criteria. This meant that the duty to make reasonable adjustments was triggered under sections 20 and 21 of the EqA in relation to the UAP process itself.

162. In relation to the WIN no concession has been made.

163. It was the practice of the Respondent that employees attend work, that strictly is the provision criteria or practice. The application of the UAP and the issuing of the WIN were the consequences of the Claimant not complying that PCP and were the consequences of the Claimant's inability to meet the attendance requirements.

164. We accept that once the Respondent knew (or ought to have known about) the Claimant's disability it was also aware of the substantial disadvantage the PCP would cause given the Claimant's sickness absence history which was related to disability and his difficulty undertaking his full duties and maintain full time working.

165. The Respondent knew or ought to have been aware that the Claimant was disabled (see findings above) from 13 September 2022. However, as the evidence of the FMA report demonstrates the decision to apply the UAP process to the Claimant in light of his absence levels had already been taken – we know that because the Claimant told the FMA this was increasing his anxiety in September 2022.

166. We did not accept that it would have been a reasonable adjustment for a decision to have taken not to apply the UAP process at all once the Respondent ought to have known about disability. As explained above, we accept that the Respondent had legitimate reasons to consider whether action should be considered in relation to the Claimant's absence because of what the Tribunal accepted were legitimate concerns about the levels and patterns of his absence.

167. The Tribunal concluded that the issuing of the WIN was unfavourable treatment. Consideration should have been given to adjusting the requirement to attend work to take account of the claimant's disability. In practical terms that would have meant seeking appropriate medical advice on what higher levels of absence might be expected in light of the Claimant's disability following the Stage One UAP meeting and then in what terms the WIN should be issued. We accepted that the duty to make reasonable adjustments and reasonable adjustments should have been considered at that stage, but in terms of this legal complaint we had to consider whether the respondent had failed in its duty to make reasonable adjustments by failing to make the pleaded reasonable adjustments.

168. The pleaded adjustments are that once the Respondent knew the Claimant was disabled it should not have initiated the UAP process at all or to delay the start. This therefore is an adjustment to the decision taken in November 2022.

169. We did not accept that the pleaded adjustments were reasonable. We accept Ms von Wachter's submission that the Claimant's attendance levels were significantly in excess of the Respondent's attendance requirements. We accept that it was reasonable for the Respondent to apply a process where high levels of intermittent absence are reviewed nor do we accept it would have been reasonable to delay that. We concluded that in the case of the Claimant, the Respondent failed to consider how the attendance requirements should have been adjusted to take account of the Claimant's absence levels, but we accept that the Claimant's intermittent absence levels (including non-disability absence) were such that it was reasonable for the Respondent to apply its policy to the Claimant when it did. We concluded on this basis that the complaint as pleaded was not well founded.

Seventh Complaint: Para 16.LOI As to Full Time working (para 64b – page 57 of the bundle)

- a. Does the Force require its full-time officers to work full shifts of 40 hours/week?**
- b. Is this a PCP? The Respondent admits this is a PCP.**
- c. If so, did this place the Claimant at a substantial disadvantage, because of his disability of Long Covid?**
- d. The substantial disadvantage relied upon by the Claimant is his inability to work upon Response full time because it exacerbated his long covid symptoms of fatigue and/or exhaustion and/or difficulties in concentration,**
- e. Did the Respondent make any reasonable adjustments to this PCP for the Claimant?**
- f. The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to remove him from front line duties and/or to be allowed home working and/or to be allowed reduced working hours or split shifts without amending his FREDA (flexible working pattern).**

170. The Respondent accepts that the requirement for full-time officers to work full shifts of 40 hours per week was a PCP.

171. The substantial disadvantage relied upon by the Claimant is his inability to work upon Response full time because it exacerbated his long covid symptoms of fatigue and/or exhaustion and/or difficulties in concentration.

172. This has not been conceded by the Respondent.

173. The FMA advice received by the Respondent acknowledged that at times during the relevant period the Claimant would be unable to work full time hours. Even before the Claimant became disabled in the sense of it being likely his condition was long term, the fact that the Claimant was unable to work full time because of the symptoms of long-covid, resulted in adjustments allowing him to work shorter shifts and undertake recuperative duties (from July 2021).

174. We note that, as to be expected with a condition like long covid, the impact of the impairment was not constant, and it had something of an intermittent impact on the Claimant's ability to undertake full time and the Claimant's ability to work full time hours did vary over time. We found that there were some more constant impacts in terms of the Claimant's ability to meet the requirement to perform the full range of duties of a police officer, in particular in relation to the most physical aspects of the job, but the Claimant was not required to undertake those duties at any time during the relevant period. However, based on the FMA advice, we accepted that at times because of the impact of long covid the Claimant would be subject to a substantial disadvantage by the PCP if he was required to work full time and this was known by the Respondent.

175. In relation to the extent that the Respondent subjected the Claimant to the requirement to work full time and therefore subject him to the substantial disadvantage, the Tribunal accepted Ms von Wachter submission that the Respondent followed medical evidence, albeit at time the Respondent's senior officers were somewhat sceptical about some of the advice from the Claimant's GP. Nevertheless, it was acted upon. That is significant because the consequence was that the Claimant was not required to work full time when he reported being unable to and other adjustments were put into place in terms of duties rather than him being required to undertake the same duties as his colleagues working full time.

176. One of the issues of concern around the UAP was that at the time when the Claimant was working reduced hours shifts on a recuperative basis, he was also working significant amounts of voluntary overtime (67 hours over a 2-month period between 7 October and 10 December 2021). At the time he was saying that he could not work full time shifts and was working on a reduced hours basis, he was working significant amounts of overtime. The Claimant told us that this was because the work done during overtime was work he found straightforward and it was less tiring than looking for a small child which is what he would have been doing at home. However this does demonstrate that the Claimant's difficulty with working full time hours was not simply about the hours of work – if it was, working overtime would be wholly inconsistent with his case. Clearly his situation was more nuanced, and he struggled with a combination of certain hours of work and duties. That is significant because we accept that the Respondent not only followed advice to place the Claimant on shorter shifts it also adjusted his duties.

177. The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to remove him from front line duties and/or to be allowed home working and/or to be allowed reduced working hours or split shifts without amending his FREDA (flexible working pattern).

178. The Tribunal accepted the submissions of Ms von Watcher about this complaint. In straightforward terms we concluded from the evidence that the Respondent had taken steps which meant the Claimant was not caused the pleaded substantial disadvantage during the relevant period. The Respondent took regular advice from the FMA, including from before the point when the Claimant was disabled in July 2021 and adjustments were made to the Claimant's hours. The Respondent also put in place adjustments recommended by the Claimant's GP even when the Respondent disagreed with the recommendations.

179. The Respondent argued that homeworking was not suitable because it would make supervision difficult and that was not challenged. The Claimant had not explained in his evidence how split shifts would address the disadvantage, and we were not satisfied that this would obviously do so, given working days on split shifts would be longer overall and this would have involved significant commuting. The Claimant did not persuade us that this would have mitigated the substantial disadvantage.

180. The steps which had been taken by the Respondent are significant. From July 2021 the Claimant was allowed to work on a recuperative basis within the CMU and began working on a phased return in July 2021. The Claimant asserts that it would have been a reasonable adjustment to remove him from front line duties. From the evidence we received the Claimant did not in fact undertake the full range of front-line police duties at any time during the relevant period. He was removed from front line duties in August 2021 and was working on recuperative duties for 6 months from 13 September as advised by Dr Bayman. The WIN required the Claimant to return to full front-line duties by 9 March 2022, but that did not happen. The Claimant was working in the investigation unit and was assigned recuperative duties in line with the recommendations of Dr Bayman from March 2022. The Claimant was assigned administrative duties which did include surgeries with the public, but after concerns were raised by his GP, he stopped having any contact with the public for period of time in line with that advice, despite doubts about the extent that advice had been fully considered by the GP. The Claimant began working on surgery work again including some contact with the public in late June 2022, but this was not a return to full front-line work on a full-time basis. In mid July he had tested positive for covid and was working from home for two weeks followed by paternity leave and annual leave which he took him until 21 August 2022. After a period of further sickness absence in September and October 2022, the Claimant began working reduced 6-hour shifts. On 19 December 2022 the Claimant told Dr Hameed that he would be happy to return to full time hours over the following weeks which was consistent with advice received from the NHS long covid clinic suggesting an increase of 10% (one hour per day) every 4 weeks would be reasonable. The hours increased slightly but the Claimant did not achieve the goal.

181. The Tribunal is satisfied that this timeline demonstrate that the in light of the steps taken the Claimant was not in fact subject to the substantial disadvantage he would have been caused if he had been required to work on full time basis.

182. . The Claimant had been asked to look at amending his childcare Freda in consequence of the discussion with Chief Inspector Hannan in November 2022, but at no point was he required to actually amend that Freda to work reduced hours nor was his pay reduced during this time. This state of affairs existed until February 2023.

183. As discussed above, in February 2023 there was the meeting with Sergeant Rose when the Claimant was told that he either needed to return to full time duties or complete a medical Freda. By this stage the Claimant had been receiving the same pay as a full-time officer undertaking full duties for some 17 months but for much of that time, he had been working either on reduced duties, reduced hours or both. The meeting was handled inappropriately by Sergeant Rose. The Tribunal accepts that this was unfavourable treatment (as above). However, the Claimant then began a further period of sick leave and was not in fact subject to the disadvantage of having to return to full time hours.

184. The Claimant did not return to work until May 2023 when he undertook the FCMU training course. That was a full-time course, but the Claimant was able to complete that training successfully and we are not satisfied that the Claimant has shown that subjected him to a substantial disadvantage during that training period. He was allowed some time off during the training by Inspector Darcy. Even on the brief return to duties at West Division before the move to FCMU from June 2022, the Claimant did not work a full set of shifts and did not undertake the full range of officer duties. We did not find that the Claimant was subject to the pleaded substantial disadvantage during the 4.5 shifts that he worked.

185. On the issue of the relevance of the medical Freda, the Tribunal preferred the submissions of Ms von Wachter. It can be a reasonable adjustment for an employer to pay an employee in full while they are working on reduced hours or restricted duties as a reasonable adjustment, but the Tribunal also accepts it is reasonable for an employer to limit the period of time during which this is considered to be a reasonable adjustment. Chief Inspector Hannan had raised that with the Claimant in November and December 2022, in a reasonable way. We accept that it was appropriate and reasonable for Chief Inspector Hannan to consider the appropriateness of continuing to pay the Claimant as if he was working full time hours over what was a considerable period of time and to conclude that this could not continue indefinitely in light of doubts he held that the Claimant would be able to sustain a return to full time, full duties.

186. It may be a reasonable adjustment for an employer to pay a disabled employee who is unable to work full time hours their full rate of pay for a period of time, but we accept that eventually an employer may be entitled to conclude at some stage that will become an unreasonable adjustment to make, perhaps particularly so when for much of the period of the time the employee in question has also not been undertaking the full range of their duties. The meeting on 1 February was handled by Sergeant Rose in a clumsy and unreasonable way, but we accept the principle that it was reasonable for an employer which is publicly funded and with finite resources to seek to place a limit on the period of time during which an employee who is effectively receiving more pay than the hours worked would usually entitle them to, to say would continue given the period of time when the Claimant had been paid without reduction. Whenever that was raised was likely to be difficult, but that does not mean that the principle of raising it was unreasonable.

187. We conclude that this complaint was not well founded.

Eighth Complaint Para 17 in the LOI As to preventing his immediate move to FCMU (para 64c- page 57 -58 of the bundle)

- a. Did the Force require officers to attend a full time course and complete full set of shifts prior to moving roles, to FCMU?**
- b. Is this a PCP? The Respondent accepts the first part is a PCP.**
- c. If so, did this place the Claimant at a substantial disadvantage, because of his disability of Long Covid?**
- d. The substantial disadvantage relied upon by the Claimant is that he struggled to work full time hours (required for the full time course and/or the full set of shifts) and/or it was likely to cause an exacerbation of his stress and anxiety.**
- e. Did the Respondent make any reasonable adjustments to this PCP for the Claimant?**
- f. The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to allow him to move to the FCMU straight after completing the course and/or releasing him early from the West Division and/or allowing him to work reduced hours and/or a phased return to full hours before moving to FCMU.**

188. The agreed list of issues required us to determine if the Respondent required officers to attend a full-time course and complete full set of shifts prior to moving roles, to FCMU. The Respondent accepted that the first part of this is a PCP.

189. If so, did this place the Claimant asserts that this placed him at a substantial disadvantage, because of his disability of Long Covid in that he struggled to work full time hours (required for the full-time course and/or the full set of shifts) and/or it was likely to cause an exacerbation of his stress and anxiety.

190. In essence the complaint about this is a repetition of the previous complaint and our previous findings apply. The pleaded reasonable adjustments of allowing him to work reduced hours and/or a phased return to full hours before moving to FCMU have also already been dealt with.

191. In this complaint there are however pleaded additional reasonable adjustments – that it would be a reasonable adjustment to allow the Claimant to move to the FCMU straight after completing the course and/or releasing him early from the West Division.

192. It was clear to the Tribunal that the Claimant was keen to move on from the West Division. However, in terms of these adjustments we concluded that neither was reasonable. It was not reasonable for the Respondent to move the Claimant to the new unit before it was operational and before there was work for the Claimant to do. An early release from West Division is essentially the same adjustment. There was only a short period of time between the completion of the training course and the opening of the FCMU. An early release from West Division would mean either the

Claimant simply being given a period of additional leave which we do not find to be reasonable, or a temporary role would have had to be found for the Claimant for the interim period before the new unit opened. The Claimant told us that that another colleague was able to work elsewhere for a period of time before the move, but we accepted the Respondent evidence that there was no such role for the Claimant. It was not a reasonable adjustment for the Respondent to create a role which did not exist for such a short period of time.

193. This complaint is not well founded.

Jurisdictional Issue

194. The Tribunal had found that the Claimant had been subject to unfavourable treatment because of something arising from his disability through the decision to issue the written improvement notice on 10 December 2021 (which ceased to have any effect on 10 December 2022). That was decision by Sergeant O Regan. He was then subject to further unfavourable treatment because of something arising from his disability by Sergeant Rose when she gave him the ultimatum to return to full time hours or to seek a medical FREDA on 1 February 2023. We concluded that he was not subject to any discrimination after that date. This meant that in accordance with primary limitation period, early conciliation would have to have been started by 30 April 2023, but it was not started until August. Accordingly, the complaint even in relation to the second act of discrimination was made some 5 months outside the primary time limit.

195. That meant the tribunal could only uphold these complaints if we concluded that it would be just and equitable to extend time in accordance with s123 of the Equality Act 2010.

196. In terms of how we approach the question of whether we should extend time on the basis that it is just and equitable, we have taken into account the guidance in *Abertawe Bro Morgannwg University Local Health Board v Morgan* in which Lord Justice Leggatt identified potentially relevant issues for us to take into account. However strict adherence to the list is not required. We also recognise that, as submitted by Ms von Wachter, we have a broad discretion in terms of applying our discretion and we can take into account any factor provided we are satisfied it is relevant, in deciding whether or not to exercise our ability to extend time.

197. The factors which are almost always relevant to consider when exercising our discretion are the length of the delay, the promptness with which the Claimant has acted once they knew of the possibility of taking action and the steps taken by the Claimant to obtain to obtain advice, the reasons for delay and the extent to which the cogency of evidence is likely to be affected by that delay including whether the delay has prejudiced the Respondent, for example by preventing or inhibiting it from investigating the claim while matters are still fresh.

198. The Respondent drew our attention to the judgment of the Court of Appeal in *Robertson v Bexley Community Centre*. However, we have reminded ourselves this case informs us how to approach in the context of the wide statutory discretion which has been granted by Parliament which allows this tribunal to extend time where it is just and equitable to do so. The judgment in the Robertson case does not mean that

exceptional circumstances are required in order for time to be extended. The law does not require that – it simply requires that an extension of time should be just and equitable in the circumstances of the case.

199. What that judgment does remind us of is that this requires a positive exercise of a judicial discretion exercised by this Tribunal. It is for the Claimant to establish that that discretion should be exercised in his favour. It is not for the Respondent to persuade us that it should not. We have to determine whether we should exercise our discretion to extend time on the basis of the evidence before us, including any evidence the Claimant has chosen to provide us with about the reasons for delay.

200. The issue of time is not addressed explicitly in the Claimant's witness statement, but it is clear from his evidence that that he raised a grievance, and he does say that he felt no alternative but to start early conciliation because of the response to that grievance. The Claimant has expressed some understandable reluctance to take legal action against his employer. There is some inconsistency in his evidence. In his statement the Claimant says that in June 2023 meeting with his new line manager "highlighted to me that I had not been correctly treated on West". However, the Claimant has had the benefit of Police Federation representation since the UAP process and had indicated that he considered he had been subject to discrimination and was seeking legal advice in the email of May 2022.

201. Mr Grundy argued that the case was well documented and the Respondent faced no prejudice from any late presentation of a claim but it was clear to us that at times the witnesses struggled to recall events in clear terms, particularly in relation to events in 2021, and delay had impacted on the cogency of the evidence before us.

202. We recognise that if we do not extend time the consequence is that the Claimant is left without a claim but that in itself is not a valid reason to grant an extension. If it were, the time limits would become otiose.

203. We recognise that the Claimant is disabled and has been unwell, but he has been able express himself in forceful and clear terms in correspondence and meetings. He had identified a need to explore his rights in May 2022 and we did not conclude that he faced any impediment in bringing his complaints about the UAP process and the meeting on 1 February 2023 in time. Further we observed in the evidence that the passage of time in this case had impacted adversely on the recollection of witnesses. Whilst Tribunals have a broad discretion to extend time in discrimination cases, nevertheless it was clearly the intention of Parliament that claims should be brought promptly. We were not satisfied that the Claimant had shown that in this case that balance of equity fell in his favour so that discretion should be exercised in his favour. On that basis the Tribunal had no jurisdiction to determine that the complaints were well founded. For that reason, they are dismissed.

Approved by:

Employment Judge Cookson

Date 5 October 2025

Judgment sent to the parties on:

Date: 15 October 2025

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For the Tribunal:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the Claimants and Respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

**IN THE MANCHESTER EMPLOYMENT TRIBUNAL
BETWEEN**

MR M MAHONEY-STACK

Claimant

-v-

CHIEF CONSTABLE OF LANCASHIRE CONSTABULARY

Respondent

AMENDED LIST OF ISSUES

Introduction

- A. The Claimant sets out his claims in an ET1 issued in the Manchester Employment Tribunal on 29 September 2023, clarified in his Further & Better Particulars ('FBP') on 29 February 2024, bringing complaints of:
- a. Discrimination arising, contrary to s.15 Equality Act 2010;
 - b. Failure to make reasonable adjustment, contrary to ss.20, 21 Equality Act 2010.
- B. The Respondent set out his resistance to the Claimants' allegations in its Notice of Appearance dated 2 November 2023.
- C. The Respondent denies that the Claimant was subject to the prohibited conduct and unlawful discrimination as alleged. All the allegations are denied by the Respondent.

Preliminary Issue:

Disability

1. Is the Claimant disabled? The Claimant relies on the disability of Long Covid.
2. The Respondent concedes the Claimant was disabled within the meaning of s.6 Equality Act 2010 during the relevant period November 2021 - 16 June 2023.

Issues:

Jurisdiction – time limits

3. Any complaint which took place on or before 11 May 2023 (being three months before the date the Claimant contacted ACAS for mandatory early conciliation) is prima facie out of time.
4. In respect of any complaints which are out of time, do they form part of a continuing act, taken together with acts which are in time?
5. If the complaints were not submitted in time, would it be just and equitable to extend time?

Disability:

6. The Respondent accepts that it had actual and/or constructive knowledge of the disability as from 17 March 2022.
7. The Claimant alleges that the Respondent had actual and/or constructive knowledge of the disability as from 13 September 2021.

A: Discrimination arising in consequence: s.15 Equality Act 2010

8. Did the Respondent treat the Claimant unfavourably because of something arising in consequence of the Claimant's disability?
9. Did the Respondent:
 - a. Subject the Claimant to the Formal Stage 1 UAP process in November 2021, issuing a WIN on 10 December 2021 (dated 25 January 2022) that remained in place until 10 December 2022
 - b. Subject the Claimant to an Attendance Support Plan on or about 11 April 2022.
 - c. Ask the Claimant to amend his Freda(Flexible Work Pattern) to go onto reduced hours with a reduction in pay reflective of actual hours worked between April 2022 and February 2023;
 - d. Inform the Claimant that he would be returned to full hours on Response on 1 February 2023 and that any hours not worked would go down as unauthorised absence;
 - e. Informed the Claimant on 22 May 2023 that he could not move across to FCMU without completing a final set on Response between 27 May 2023 and 15 June 2023.

10. If so, was this unfavourable treatment because of something arising in consequence of the Claimant's disability?
11. Was the something arising:
 - the Claimant's sickness absence and/or
 - the inability to work full time hours [upon Response duties]
12. Was the need to provide an effective and efficient Police Force a legitimate aim
13. Was the treatment aforementioned treatment a proportionate means of achieving a legitimate aim?

B: Failure to make reasonable adjustments: ss.20 & 21 Equality Act 2010

14. Was the Respondent under a duty to make reasonable adjustments?
15. As to UAP: Stage 1 and WIN (para 64a – page 57 of the bundle):
 - a. Are the provisions of the UAP, under the Police (Performance) Regulations 2020, which includes attendance criteria a PCP? This is admitted by the Respondent.
 - b. If so, did these place the Claimant at a substantial disadvantage, because of his disability of Long Covid?
 - c. The substantial disadvantage relied upon by the Claimant is that he would be more likely to be absent through sickness and therefore fall below the permitted attendance criteria
 - d. Did the Respondent make any reasonable adjustments to this PCP for the Claimant?
 - e. The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to delay the start of the UAP process and/or not apply the UAP process at all.
16. As to Full Time working (para 64b – page 57 of the bundle)
 - a. Does the Force require its full time officers to work full shifts of 40 hours/week?
 - b. Is this a PCP? The Respondent admits this is a PCP.
 - c. If so, did this place the Claimant at a substantial disadvantage, because of his disability of Long Covid?
 - d. The substantial disadvantage relied upon by the Claimant is his inability to work upon Response full time because it exacerbated his long covid symptoms of fatigue and/or exhaustion and/or difficulties in concentration,

- e. Did the Respondent make any reasonable adjustments to this PCP for the Claimant?
 - f. The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to remove him from front line duties and/or to be allowed home working and/or to be allowed reduced working hours or split shifts without amending his FREDA (flexible working pattern) .
17. As to preventing his immediate move to CMU (para 64c- page 57 -58 of the bundle)
- a. Did the Force require officers to attend a full time course and complete full set of shifts prior to moving roles, to FCMU?
 - b. Is this a PCP? The Respondent accepts the first part is a PCP.
 - c. If so, did this place the Claimant at a substantial disadvantage, because of his disability of Long Covid?
 - d. The substantial disadvantage relied upon by the Claimant is that he struggled to work full time hours (required for the full time course and/or the full set of shifts) and/or it was likely to cause an exacerbation of his stress and anxiety.
 - e. Did the Respondent make any reasonable adjustments to this PCP for the Claimant?
 - f. The Claimant alleges that reasonable adjustments to remove the substantial disadvantage would have been to allow him to move to the FCMU straight after completing the course and/or releasing him early from the West Division and/or allowing him to work reduced hours and/or a phased return to full hours before moving to FCMU.

Remedy

18. What remedy, if any, should the Employment Tribunal award?
19. Has discrimination occurred and if so should the Employment Tribunal make a declaration to that effect?
20. Should the Employment Tribunal make a recommendation and if so, what would be appropriate?
21. Should the Employment Tribunal make an award for injury to feelings:
- g. What band should any award fall into?
 - h. What award would be just and equitable in the circumstances?

22. Has the Claimant suffered a loss of earnings or any other pecuniary losses as a result of the alleged discriminatory conduct? If so, would it be just and equitable to make an award in respect of that?