EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: British Transport Police Authority

Record of an attended Hearing at the Employment Tribunal

Heard at: Nottingham

Heard on: Monday 21st July, Tuesday 22 July, Wednesday 23rd July, Thursday 24th July, Friday 25th July, Monday 28th July, Tuesday 29th July, Thursday 30th July 2025

Oral submissions: 27th August

Deliberations: 23 September 2025

Judgment delivered ex tempore on 18 November 2025.

Before: Employment Judge Broughton

Members: Ms J C Rawlins
Mr M Alibhai

Appearances:

Claimant: B, Lay Representative

Respondents: Charlotte Goodman, Counsel

JUDGMENT

The following claims are well founded and succeed:

1. The claim that C.I Gill told the claimant in an email on 12 June 2023, that he would discuss the role on her return from leave but then appointed someone into the role before she returned: [LOI 3.1.7]: a claim of direct disability discrimination pursuant to section 13 EqA.

2. Putting the claimant through the capability process between May 2023 to August 2023 [LOI 4.1.1]: a claim of disability discrimination pursuant to section 15 EqA

3. Denying the claimant the opportunity to apply for the new sergeant role because of her sickness absence and/or the request to remove her two early shifts in May 2023 [LOI 4.1.4]: a claim of disability discrimination pursuant to section 15 EqA

4. Failing to make a reasonable adjustment [LOI 5.2.1]: a breach of section 20 and 21 Equality Act 2010.

5. Faling to make a reasonable adjustment [LOI 5.2.3]: a breach of section 20 and 21 Equality Act 2010

6. The failure to provide an auxiliary aid/service [LOI 5.4.1]: a breach of section 20 and 21 Equality Act 2010

7. The failure to provide an auxiliary aid/service [LOI 5.4.2]: a breach of section 20 and 21 Equality Act 2010

8. The failure to provide an auxiliary aid/service [LOI 5.4.4]: a breach of section 20 and 21 Equality Act 2010

9. The claim of harassment [LOI 6.1.1]: A breach of section 26 EqA

10. The claim of harassment [LOI 6.1.4]: A breach of section 26 EqA

11. The claim of harassment [LOI 6.1.6]: A breach of section 26 EqA

The remaining claims are **not well** founded and are dismissed.

REASONS

Background

1. The claimant presented her claim on 8 November 2023 following a period of Acas early conciliation from 4 November 2023 to 6 November 2023.

Preliminary Matters

1. The claimant attended the hearing throughout with her wife who acted has her lay representative, B. The respondent was represented by Counsel, Miss Charlotte Goodman.

2. The Tribunal had received on the morning of the first day of the hearing a number of documents and applications that had been made by the parties. The Tribunal Panel had been allocated only the morning to read into the case, however, the witness statement bundle alone consisted of 191 pages and the joint document bundle 1172 pages. The allocated time was insufficient.

3. An application by the respondent to change the name of the respondent to British Transport Police Authority was agreed by the claimant.

4. There was reference within the documents to an amendment to the claim and a supplemental statement from the claimant, however, the claimant confirmed that she was not seeking to rely on a supplemental witness statement. An amendment to the list of issues (paragraph 6.1.1.1) to change the date from 24 March 2023 to 3 April 2023 was not opposed by the respondent.

5. The parties were in agreement that this hearing would address liability only. In any event it looked highly unlikely that there was going to be sufficient time to deal with evidence on both liability and remedy.

6. There then fell to be a number of other outstanding matters to be addressed.

7. The claimant made an application for an anonymity order under Rule 49.

Application for Anonymity

8. B confirmed that the claimant was not relying upon a letter from Dr Nixon dated the 11 July 2025 nor were they relying on an extract from the Occupational Health Report prepared by Dr Nixon (undated) in support of the application. The claimant confirmed that she had no medical evidence to submit in support of the application under Rule 49.

9. The claimant was not seeking to redact the content of the judgment or to restrict the reporting of the hearing but was seeking an order only for anonymisation of the Claimant.

10. The Judge raised the issue of jigsaw identification. Miss Goodman raised the prospect of anonymising the respondent for that reason or at least the particular Police authority however the claimant made it clear that the claimant did not want the Tribunal to anonymise the respondent. The claimant accepted that there may be some risk of identifying her if the respondent were not anonymised however she was prepared to take that risk.

11. The claimant had prepared a brief witness statement which set out her concerns about the

impact on the claimant of the judgment being placed on the Public Register without anonymisation.

12. The statement did not however engage with the impact on the claimant in any detail however she was permitted to give oral evidence in support of her application, unopposed by the respondent.

13. The claimant gave evidence that there were two main parts to her application namely. The first is that the hearing will disclose information about her medical history which she did not want her young child to know about and was extremely fearful about the potential impact this may have on her child.

14. The claimant also gave evidence about the impact on her own mental health. The claimant spoke in some detail about her mental health and her fears of being identified in the judgment. The claimant remains unwell and is taking new type of medication. The claimant is still undergoing treatment and described how difficult it had been to regain a balance and the potential impact of being named in this judgment on her journey to recovery.

15. The claimant explained that she is not seeking anonymity during the proceedings, her concern is only about the documents that are put on the Public Register which will identify her.

Legal Principles

16. The Tribunal took into consideration Rule 49 which provides in summary that the Tribunal may, on its own initiative or on the application of a party, make an order with a view to preventing or restricting the public disclosure of any aspect of proceedings so far as it considers '*necessary in the interests of justice'* or in order to protect the Convention rights of any person.

17. Rule 49 (2) provides that:

> (2) In considering whether to make an order under this rule, the Tribunal must give full weight to the principle of open justice and to the Convention right to freedom of expression.

18. Rule 49 therefore identifies three grounds on which a derogation from open and public justice may be made:

    1) the interests of justice,
    2) the protection of a person's Convention rights, and
    3) the protection of confidentiality.

19. Clearly, more than one ground could apply in a particular case.

The European Convention on Human Rights ("the Convention").

20. The issues raised by the Claimant amount to an argument that the publication of the details about her mental health are incompatible with the Convention Rights of the Claimant under Article 8 and/or it would be in the interests of justice to make the order.

21. Article 8 provides as follows:

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence…*

22. The rights under Article 8 sit alongside the rights conferred by Article 6 and 10 of the Convention.

23. Article 10 provides that:

> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises…*

24. Article 6 entitles a person whose rights are at issue in civil proceedings to "*a fair and* public *hearing*" from which the press and public can only be excluded in certain prescribed and limited circumstances.

> *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and* ***public hearing*** *within a reasonable time by an independent and impartial Tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice...*
> *Tribunal's own stress*

25. The Convention rights, (including those under Articles 6, 8 and 10), are enforceable domestically by virtue of section 6 of the Human Rights Act 1998 ("HRA"), which prohibits a court or other public authority from acting incompatibly with the Convention.

26. Restrictions on open and public justice have come to be known as "derogations".

27. As the Court of Appeal has pointed out in **Clifford v Millicom Service UK Ltd & others [2023] EWCA Civ 500,** the first question is whether the public disclosure of the information in the proceedings in question would entail an interference with the applicant's Article 8 rights. If so, the second question is whether that interference would be justified in accordance with Article 8(2). The Tribunal also had regard to the guidance set out in **Ameyaw v PricewaterhouseCoopersServices Ltd [2019] IRLR 611, EAT.**

28. Where a party seeking to restrict the principle of open justice cannot show that their convention rights are infringed, the Tribunal may nonetheless make an order under Rule 49 where it is necessary in the interests of justice, which is a broader test and where the person's subjective concerns, even if not objectively considered to be well founded may mean that it would prejudice the administration of justice if the order sought was not made.

Decision

29. ***Would the public disclosure of the information in the proceedings in question entail an interference with Article 8 rights?***

30. The Tribunal concluded that Information which would be set out in a reserved judgment would involve an interference with Article 8 rights in that it will no doubt include detailed and sensitive information about the claimant's mental health.

31. There is significant evidence presented as part of these proceedings about the history and severity of the claimant's mental health issues and the Tribunal accept that the Claimant remains vulnerable and that identifying her may well create significant risk to her mental health, taking into account the history of her health as evidenced by the documents and her own oral evidence.

32. ***What is the extent to which the derogation sought would interfere with the principle of open justice?***

33. The Tribunal accept on the evidence, that the information which is likely to be contained in the judgment puts A at serious risk in terms of the impact on her mental health and may well cause harm to her child as and when the child may be old enough to have access to the judgment or any reporting of it by any connection to the claimant's name.

34. ***What is the importance to the case of the information which the applicant seeks to protect?***

35. The details about A's health are highly relevant to the judgment however A is not seeking to redact the judgment and the respondent does not see to argue that the claimant's identity is important in terms of public interest.

36. The Claimant is not seeking to remove any information about the case from the public other than her identity.

37. The burden is on A to establish the derogation.

38. **What then should be the outcome of the "ultimate balancing test" with Convention rights?**

39. There will be a public hearing (the fairness of which should not be adversely impacted by anonymisation now of the parties), which accords with Article 6.

40. In terms of Article 10, the Tribunal did not consider that the identity of the Claimant is important to the understanding of the case, and anonymisation which although an interference with the principle of open justice, would be a relatively minor derogation in the circumstances of this case.

41. The Tribunal concluded that the principle of open justice is outweighed by the concerns of A where A has established a reasonable foundation for the fears that she will suffer real harm beyond mere embarrassment and a risk of harm to her young child. The information about the Claimant's mental health is very much at the core of this case, it is not something that can easily of itself be redacted and there are very sensitive matters that will be dealt with.

42. The Tribunal granted the application to identify the claimant as 'A' in the documents to be placed on the Public Register. The Tribunal also decided of its own volition, that given the risk of jigsaw identification, the claimant's representative being the claimant's wife and sharing her last name, the claimant's representative would be identified as B in the documents. The Tribunal considered that in balancing the convention rights, the identity of the claimant's representative is not of any material public interest in terms of Article 10 convention rights. The terms of the order were granted with the agreement of the parties and set out in a separate order.

43. The reasons for the decision were given orally to the parties at the hearing.

Reasonable Adjustments

44. At a preliminary hearing before Employment Judge McTigue it had been agreed with the parties that there would be breaks as and when required for the Claimant and he had suggested that any further reasonable adjustments could be discussed today.

45. The claimant had made a number of requests, one of which was that the Respondent's witnesses did not appear in Police uniform. That request was not opposed by the Respondent and all the witnesses who attended wore civilian clothing.

46. The claimant had also asked that B sit with her at the witness table, however, having seen the setup of the Tribunal room and the proximity of the table where B would be sitting to the witness table, A withdrew that request.

47. The claimant was also concerned about the time the Respondent would be permitted to cross examine the claimant, the Claimant wanted it to be limited to a day.

48. B was concerned about the 2½ days that the Respondent had timetabled for the cross examination of the Claimant. The Claimant was concerned that the evidence is very emotive and about the potential impact on her health. The Claimant referred to having PTSD and experiencing flash backs at night which have increased with the stress of the forthcoming Tribunal hearing and requested that cross examination is limited to a day.

49. The Claimant had referred in written submissions to the EAT case of ***Mr King v Thales DIS UK Ltd EAT [2024] EAT 34***, although not commented upon further in oral submissions, the Respondent made reference to it and submitted that the Tribunal should have regard to paragraphs 50 – 66 which sets out the guidance to ensure a fair hearing and the Tribunal had regard to those paragraphs and The Presidential Guidance (Employment tribunals: Vulnerable parties and witnesses) and guidance in The Equal Treatment Bench Book which suggests a number of adjustments that might be identified.

50. The Respondent submitted that the Claimant had included multiple complaints which they must be allowed to deal with in cross examination, the Claimant is the principal witness, and the Claimant's evidence is quite confusing in areas which it is accepted may be because of the impact of her health on her memory but it would be unfair to limit the Respondent's ability to deal with all the complaints. The only other witness for the Claimant is B however it is submitted that her evidence is of limited prohibitive value because she did not work for the Respondent and had no first-hand knowledge of a lot of matters, she comments.

51. The claimant's witness statement is 30 pages long and there are a significant number of documents that the Claimant needs to be taken to and while the Respondent accepts that the Claimant needs a 'soft approach' during cross examination it will necessarily, take longer to cross examine because there will be regular breaks as and when the Claimant needs them during the hearing.

Decision

52. The Claimant had reflected in terms of the adjustments required overnight and on the second day, when we reconvened to discuss the various applications, expressed an appreciation that that given the breaks she may require during the hearing cross examination may extend beyond 2 days but asked merely that in terms of further adjustments the Respondent try to cap the cross examination, if possible, to 2 days. In further discussion the Respondent confirmed that it would attempt to do so but could give no guarantee that this would be possible. In the event the Claimant was cross examined for almost 3 days, however she became too tired to continue and the remaining few points of cross examination were dealt with in submissions with references to the documents which the claimant had confirmed she was content with.

Attendance of Witness by CVP

53. The Respondent made an application pursuant to Rule 46 for a witness, Mr Drummond-Smith, to attend by CVP if he was to give evidence on a date other than 29 July because of

work commitments (evidenced by a letter produced by the Respondent). While there was some discussion about this application and an initial objection by the Claimant, the Claimant later agreed and he was allowed to give his evidence by CVP. His evidence was a high-level account of the Respondent's operational needs and resources.

Resiling from Admission of Fact

54. The Respondent made an application that the grounds of resistance state that the Claimant was not sent a letter making her aware that she could put in an expression of interest in relation to the newly created 6th Sergeant role on 31 May [p.718]. The Respondent now seeks to resile from that admission because the documentary evidence shows that they did send an email. Following case management orders dated August 2024 a new draft list of issues had been prepared (p.66 and 67), with the relevant issue at paragraph 3.1.5. Prior to that the Respondent had filed a response which made no mention of the May email because it had not been raised in the Claimant's claim form.

55. The Respondent submits that after the list of issues had been clarified the Respondent made enquiries and they set out their position then in the amended grounds of resistance (p.109 of the bundle paragraph 81, paragraph 106.5 and paragraph 112.1) on the basis that the Claimant had not been sent the email. The 31 May email however was later included in the Respondent's disclosure list and the Claimant was sent copy on 9 April 2025. Witness statements were then exchanged in June and the Claimant dealt with this email in her statement.

56. The Respondent, only on cross referencing the amended grounds of resistance on 16 July, realised that this admission was inconsistent with the evidence in the witness statements and the documents and made an application on 17 July 2025.

57. In terms of why this 31 May email had been originally overlooked the Respondent could not explain other than to say that Inspector Ellis-Turner sent the email and he had not given instructions about the drafting of the ET3 because in June 2023 he had left the Respondent's employment.

58. The Respondent refers to conflicting authorities on how to deal with this application. ***Centrica Storage v Tennison [2008] UKEAT 0336/0RN*** seems to suggest that it should be deal with as an application to resile from a fact in accordance with the Selkent principles but there is another EAT decision which the Respondent relies upon which provides that it should be dealt with under the CPR Rules|:***Price v Constable of Gwent Constabulary UK EAT 0268/09*** where Judge McCullen QC held that a Tribunal should be guided by the dicta of Summer J, in the case of ***Brayrook v Basildon and Thurrocenk University NHS Trust [2004] EWHC 3436*** and in the accordance with the factors in CPR Rule 14.

59. The Respondent submits either approach is equally persuasive because they are both EAT decisions however, the same fundamental principle applies, namely whether it is in the interests of the overriding objective. The Respondent submitted that it is not in the interest of the overriding objective for the Tribunal to adjudicate on facts known to be incorrect and there is a duty on the parties to correct facts when they know them to be wrong.

60. The Respondent submitted that it does not really strengthen their case because the Respondent's position remains that they did not consider the Claimant was appropriate for the role.

61. The Claimant argued against the application on the basis that she will be prejudiced because it will be used to attack her credibility. The Claimant had made an application for costs against the Respondent but decided not to pursue that application.

62. Miss Goodman submitted that there will be no suggestion by the Respondent that the Claimant's lack of recollection of receiving an email is a false claim.

63. The Claimant also argued that this has been clarified earlier she would have made enquiries into to whether she had received the email. The Respondent submits that as she was not employed by the Respondent when the ET3 was filed she could have requested that the Respondent search its emails to check her inbox account and the Respondent had done that and produced a witness statement from Ms Colette Osborne addressing that point.

Decision

64. The decision was given orally to the parties. In summary, the Tribunal took into account that this issue is dealt with in the witness statements including the Claimant's own statement and Inspector Turner (paragraph 133) refers to the sending of the email on 31 May and concedes in his statement that the Claimant had discussed with him the role on 2 June 2023.

65. There seems to be no dispute that the Claimant did make the Respondent aware of her interest in the role.

66. The Claimant had not objected to the email being included within the bundle.

67. The Tribunal considered Part 14 of the CPR Rules which provides that
In deciding whether to give permission for an admission to be withdrawn, the court shall consider all the circumstances of the case, including—
(a) the grounds for seeking to withdraw the admission.
(b) whether there is new evidence that was not available when the admission was made.
(c) the conduct of the parties.
(d) any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn.
(e) what stage the proceedings have reached; in particular, whether a date or period has been fixed for the trial.
(f) the prospects of success of the claim or of the part of it to which the admission relates; and
(g) the interests of the administration of justice.

68. The Employment Tribunal is not bound by the CPR Rules and Rule 41 provides that the Tribunal may regulate its own procedure and must conduct any hearing in the manner it considers fair having regard to the overriding objective. The Tribunal must seek to avoid undue formality and may itself question the parties and any witnesses so far as it is appropriate in order to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating the admissibility of evidence in proceedings before the Courts.

69. The Tribunal considered that the most appropriate approach is that set out in Selkent but in any event considered the criteria set out at Part 14 of the CPR as relevant considerations and the Tribunal had regard to those.

70. In terms of the grounds for seeking to withdraw the admission, the Tribunal considered the evolution of the claim and it is not being asserted by the Claimant that there has been any dishonest conduct by the Respondent on this issue and on balance the Tribunal accept that the email was overlooked. In terms of the nature of the amendment, and the Tribunal did not consider that it materially changes the Respondent's position which is that they accept that an informal expression of interest was made for the post but they did not consider that the Claimant was suitable.

71. The Tribunal did not consider that time limits were engaged.

72. The Respondent has produced a witness statement in support of its investigations into the sending of the email and the Claimant makes no comment on that statement and does not in submissions challenge that those investigations had taken place. The Claimant has not sought any adjournment of these proceedings in order to take any other steps to verify whether or not that email was actually sent to the Claimant or recalled, or whatever else may have happened to it.

73. The list of issues includes as a specific issue at 3.15 whether or not the email was sent to the Claimant and states that this was in May or June but the Claimant believes it is more likely the latter. The disclosure of this document does create some prejudice to the Claimant in being able to establish that specific part of her claim, however, the Claimant has not opposed the disclosure of the document and has referred to it in her oral evidence. However, she did receive the email in June and therefore the more serious and substantive part of her case is clearly around the Respondent's response to the Claimant's interest in the role when they became aware of it and there seems from the witness statements no rebuttal by the Respondent that they were aware that she expressed interest in June.

74. Further, the Tribunal considered that in terms of the overriding objective, where a document has been disclosed and both parties accept that the document exists and the Tribunal will need to make findings as to whether or not this claim is made out and engage with that document and the evidence in relation to it, in those circumstances it is in the interests of justice to grant the application.

75. If the Respondent was not allowed to resile from this admission it would mean that the Tribunal would be in the position of adjudicating on facts which the Respondent now says are incorrect with evidence including a contemporaneous document.

Case Authorities - AI

76. Miss Goodman raised an issue about the claimant citing cases which are not genuine. The claimant was being assisted in the background by someone called John Barwell who works for a business called Legal Lens who had cited, in documents sent to the respondent, cases which appear to be the result of AI 'hallucinations. Mr Barwell later removed those cases but had not explained why they were cited in the first place and the respondent complains that it has been put to the time and cost of checking the citations. The Respondent was not making an application for costs based on the Claimant's conduct thus far.

77. The Tribunal have not set out the citations in this judgment because doing so may itself generate further 'hallucinations.

78. The claimant was not represented by Mr Barwell during the hearing itself and apologised for the citations and on the second day informed the Tribunal that the claimant was no longer being assisted by Mr Barwell. The judge explained to the claimant the danger of relying upon AI to source case authorities and the steps which must be taken to check that they are genuine. It was clear that the claimant and B appreciated the situation and the Tribunal did not consider that any further action was necessary.

List of issues

79. There was discussion about the list of issues throughout the hearing. The parties produced a final agreed list of issues which are attached as Appendix 1 to this judgment.

Findings of Fact

80. All findings of fact are based on a balance of probabilities. While all the evidence has been considered, the Tribunal set out in this judgment only the evidence relevant to its

determination of the issues.

Disability

81. It is not in dispute that the claimant was disabled as defined by section Equality Act 2010 (EqA) during the relevant period because of a major depressive disorder, post-traumatic stress disorder (PTSD) and fibromyalgia. The respondent does not take any issue with the putative discriminators' knowledge of disability.

Employment Background

82. The claimant joined the respondent in 2012, initially she held the position of police community support officer. She later applied for the role of police constable and took up this position on 10 February 2014. The claimant was conscientious and ambitious and successful in the sergeants' examinations, attaining the office of acting police sergeant in 2017. The claimant moved from London to Nottingham when an acting police sergeant post became available with the respondent.

83. It is not in dispute that the claimant had an exemplary performance record and in 2017 was awarded a commendation for her part in saving the life of a member of the public.

84. The claimant had some history prior to 2023 of experiencing pain and was diagnosed with fibromyalgia in July 2023 however, the Tribunal accept her undisputed evidence that the claimant did not allow this pain to affect her work and there was no request by her for adjustments.

September 2020: flexible working request

85. Following the birth of the claimant's child in June 2020, she submitted a flexible working request in September 2020 [page 306] to start in May 2021. The request was for part time working, reducing her hours from 40 hours per week to 31.

2020- March 2021

86. The claimant developed symptoms of postnatal depression following the birth of her child and unfortunately in March 2021 suffered a serious mental health breakdown.

87. The claimant was admitted to a mother and baby unit where she was detained for five months under the Mental Health Act.

88. Whilst detained the claimant was diagnosed with post-traumatic stress disorder and suffered flashbacks including of the fatalities she had dealt with in her job.

89. From March 2021 the claimant was too unwell to communicate with the respondent and gave permission for her wife have contact with the respondent on her behalf. During this period the claimant was taking prescribed medication and having other treatments including electroconvulsive therapy and has very little memory of this period

April 2021

90. On 28 April 2021 [page 327] the respondent wrote to the claimant to confirm that her flexible working application had been agreed subject to a 3-month trial period and confirmed that her hours had reduced to 31 hours with effect from 28 July 2021 with the letter stating:

"Please note that in order to meet operational demand or exigencies of service, it may be necessary for BTP to vary the number of hours or the day on which you are required to work. If your working

pattern is due to vary in some way there will be a period of consultation with your manager prior to the changes taking effect."

91. The proposed new working pattern was to be [pages 327-328]:

Days	Week 1	Week 2	Week 3	Week 4	Week 5
Sunday	07- 15	RD	RD	FD/Off	22-07
Monday	FD/Off	FD/Off	RD	RD	FD/Off
Tuesday	14- 23	20-05 FD	FD/Off [*full day off*]	RD	RD
Wednesday	14-00	20- 5 FD	07 -15	07 - 15	RD
Thursday	RD [*rest day*]	20 -05 FD	14 - 00	07 - 16	RD
Friday	RD	RD	14 - 00	21 - 07	07 -17
Saturday	RD	RD	16 - 2300	21 - 07	07 -17

92. There was some discussion about whether the claimant's sick pay (at the end of her maternity leave) [page 325] should be paid at the reduced rate of 31 hours rather than full time in light of the agreement to her flexible working application however, because the trial period of 3 months had not taken place, it was agreed (following representations made by B and a union representative) that the claimant would remain on full time hours for the purposes of her sick pay until she was able to return to work and start the trial period [page 318].

July 2021

93. The claimant was discharged from the mother and baby unit in July 2021.The claimant had been due to return work in July 2021 but was not in the event well enough to do so. She was issued with a sick note for the period 25th of June 2021 to 24 September 2021 [page 340].

94. After the postnatal period the diagnosis changed to a major depressive disorder.

November 2021

95. Unfortunately, the claimant's mental health deteriorated and in November 2021 she was admitted to an acute psychiatric ward. An OH assessment on 6 January 2022 reported that the claimant was unfit for work, with no timeframe for a return date,

Step 1 capability meeting

96. The respondent's capability process [page 238] applies to all police officers and includes three steps: step one is a first review meeting; step two is a second review meeting and step three is a capability hearing which may result in termination of employment.

97. The policy sets out the process dealing with step one and step two together in the policy:

"*During the meeting the Chair will:*

- *Discuss the specific circumstances of your case, including medical evidence, prognosis, potential restrictions, disabled date of return on progress/support and your welfare.*

- *Discuss reasonable adjustments and /or redeployment options for further consideration /investigation*
- *Determine whether further medical evidence through occupational health will prove useful and, if so, adjourn the meeting until further medical evidence is available*
- *Outline the capability procedure, including making you aware that one of the possible outcomes of the procedure should this reach step three may be the ending of your employment with be BTP due to ill health and/or no longer capable of fulfilling any BTP role*
- *A record of the meeting, the outcome and all decisions will be summarised and sent you by email and/or post.*

Step one actions

Following the step one meeting possible actions are:

- *Seek further medical evidence*

  Consider range of options available (adjustments/redeployment) whilst taking into [sic] requirements and operational resilience of the force
- *Proceed to step two as per above"*

Step 1 Meeting

98. The claimant was sent notice of a step one meeting on 2 February 2022 [page 363]. This letter was sent by Inspector Ellis Turner who chaired the meeting supported by an HR People Adviser. The letter stated that the process had been initiated because there were no timescales for return to full operational duties at this time; "*You have been signed off until 9 March 2022*."

99. In his evidence in chief Inspector Turner set out the reasons why this meeting was held (w/s para 17 and 18):

"*The BTP Sickness Absence Policy outlines that* ***excessive sickness*** *impacts the Force's operational effectiveness, incurs* significant *costs and shifts the burden of work onto others [197]. It defines 'long term sickness absence' as any sickness absence exceeding 28 calendar days and/or where the medical prognosis suggests long term absence [212]. It outlines the sickness absence formal procedure [218] which we can follow when sickness absences can no longer be supported but it also provides that the Capability Policy applies for periods of ill health capability [218].*

In early 2022 ***because the Claimant had been off sick for seven months <u>and</u> there was no timeframe for when or if she may be fit to return to work****, it appeared that the Capability Policy applied [238- 248]. That policy provides a framework for assessing whether someone can remain within their substantive role. This assessment is about providing support to those who may no longer be able to fulfil their substantive role due to ill health or for any other reason and ensuring that the needs of the force are also me…" Tribunal stress*

100. The Tribunal find that a significant part of the reason why the step 1 meeting was arranged at this stage was because of the amount of time the claimant had been off work sick. That sickness absence was connected to her disability.

101. The meeting took place on **23 March 2022**. The claimant at this point had been admitted under the Mental Health Act to an acute inpatient ward. Nonetheless the respondent informed the claimant's wife that the step one meeting would proceed.

102. The claimant's wife [B] attended this meeting with the claimant's perinatal consultant Dr Au –Young. The meeting was minuted [page 377 -381].

103. B had been provided with a copy of the capability policy and Inspector Turner checked with B at the meeting whether she required any further information about the capability process and she confirmed that she did not. There is no dispute that the claimant had authorised B to represent her at this meeting.

104. A further occupational health assessment had taken place on 18 February 2022 which reported that the claimant was making good progress with treatment and was keen to return to work and [page 368]:

"…*The report stated that [the claimant] was keen to return to work and this may be likely with a return to more general duties before July, however t it was not clear when exactly [the claimant] would be fit to return to work. It is hoped this will be clearer once sessions with the Occupational Therapist take place.*

It has been advised that once [the claimant] is fit to return to work, a ***slow phased return to work plan*** *would be necessary, in addition, (due to the length of her absence) a phased RTW* ***of at least 3 months*** *would be required…" Tribunal stress*

105. The notes record the following observation of Dr Au – Young at this step meeting:

"*Dr Young stated that she would be facilitating a return to work as [the claimant] was keen to return to work however the return period was likely to be in a* ***minimum of three months****…" Tribunal stress*

106. Dr Young also reported that the claimant was compliant with whatever was being asked of her.

107. The notes record Inspector Turner making the following comments:

"*ET stated the points for [the claimant] to consider as part of the capability process were, to return to a substantive role which would be the hopeful result for all, and if this were to be taken into consideration it would be likely that this would* ***take significant time. ET explained [the claimant] would have to take time to get back into practice of learning how to use new systems and technology that have been introduced within the workplace along with new ways of working***…" [page 379] Tribunal's stress

108. It is clear from the notes of the meeting that B was confused about the purpose of the meeting and had thought that the process that was to be discussed was the sickness policy, she asked if there was to be progression to the next stage of the capability process what the timescales would be and was conscious that the claimant was doing well in her recovery and this may set her back [page 380]. Inspector Turner explained that the sickness policy was a separate policy and in terms of the next stage of the capability process, there were no specific timescales but that:

"… *The policy stated progression may be considered within reasonable timeframes as it was dependent on what the medical evidence suggested at the time of consideration*."

109. A letter dated 30 March 2022 was sent to the claimant outlining the outcome of the step one meeting [page 382].

Return to work: June 2022

110. The claimant was discharged from hospital in April 2022.An occupational health review took place on 17 May 2022 [page 387 – 389]. The claimant had by this stage been absent from work for almost 2 years.

111. The occupational health report included the following advice.

"***Current capacity for work***

In my opinion [the claimant] ***should be fit to return to work in June****, as planned.*

Given the complexity of a psychological condition, it is recommended to allow her phased ***and very gradual return****, in terms of hours and duties, over* ***at least three months****. Her hours should be reduced (e.g. to ¼ of normal) and she should initially undertake* ***low demanding office-based duties****…*

She is likely to require ***at least three months*** *to gradually progress to her full duties…*

She should start from undertaking less demanding, preferably, admin duties on her return. ***She will require retraining, re-familiarisation with any changes*** *and most likely mentoring with shadowing colleagues,* ***to help her regain confidence****…" Tribunal's own stress.*

112. On 18 May 202 the claimant contacted Inspector Turner to say that she wanted to return at the end of her fit note [page 395] and her return to work would therefore be the first week of **June 2022.** The above OH report from 17 May 2022 had not yet been received by the respondent at this time. When it was received it would support a return in June.

113. The Tribunal find that there was a note of cynicism in Inspector Turner's witness statement when he refers to his impression at the time being that the claimant had expedited her return because her sick pay was shortly to reduce to half pay (w/s para 30). He mentions this within his evidence in chief before this Tribunal even though the OH report he later received supported a return date of June. The Tribunal consider that it is more likely than not something Inspector Turner mentioned in his statement because he still remains cynical about her motivation in returning and intended this to cast some doubt in the Tribunal's mind as to her reasons and/or own confidence in her ability to return.

114. The return to work the Tribunal accept was not successful because of a non- work-related event which triggered a relapse rather than work.

115. Inspector Turner would express the same sort of cynicism about the request by the claimant to extend her phased return later in May 2023 (w/s para 117).

116. In cross examination Inspector Turner accepted that there was no evidence of the respondent having in place a stress risk assessment or personal safety plan for her return to work and appeared to agree that the absence of any of those documents in the bundle meant that they were not prepared. The Tribunal find on balance that a stress risk assessment and personal safety plan were not prepared for her return.

117. Unfortunately following a traumatic event experienced by a friend of the claimant, the claimant was readmitted to hospital and issued with a fit note signing her as unfit for work for the period to 3 October 2022.

Return to work: January 2023

118. The claimant was discharged from hospital in August 2022 and contacted Inspector Turner on 21 September 2022 to explain that she wanted to return to work at the end of the fit note, namely by 3 October 2022 [page 440].

119. The claimant complains that she was not allowed to return and it was unclear why.

120. The evidence in chief of Inspector Turner is that in preparation for an intended return to work on 1 October 2022 he contacted HR on the 21 September 2022 for advice on next steps. He accepts in his evidence in chief (paragraph 38 w/s) that although the claimant's fit note was about to expire and she was enquiring about returning to work, he asked HR whether at this stage the respondent should be considering what steps were left before moving on to step two [page 440], because *"…it remained unclear whether the claimant will*

be able to return to full operational duties". In his email to HR, he wrote:

"*Do we consider what steps are left between moving her onto Step 2 of capability?".*

121. Kirandeep Ajimal, People Advisor replied on 22 September [page 439], advising of the need to manage the case sensitively and carefully as the claimant returned to work too soon previously which resulted in her going off work sick so soon, that the HR/people advisor was not comfortable about a return on 1 October 2022 without any medical evidence and that an OH appointment was booked for 27 September 2022 and the respondent will wait for that report to advise whether the claimant is fit and what the restricted duties (TDR) should look like and believes OH want to speak to her psychiatrist and get their view especially in regards to suicidal thoughts. There was no response from HR to the question asked about the steps left before moving to step 2. Inspector Turner [page 438] did not push for an answer to the question he had posed about step 2 meeting and replied [page 438] confirming that he will share the urgency for the OH report.

122. Inspector Turner denied that he had asked about a step 2 meeting because he had already formed an opinion that the claimant would not be able to return to full time duties, however the Tribunal consider that at the very least he had significant concerns that she may not be able to.

Occupational health report: 27th of September 2022

123. An Occupational Health report was obtained on 27 September 2022 [page 443].

124. This report included the following advice:

"As well as the usual symptoms of severe depression, [the claimant] was also experiencing flashbacks, nightmares and intrusive thoughts related to past suicides that she dealt with at work. This has led to her doctors diagnosing a condition called 'complex' PTSD, presumably triggered by her mental illness. Since we last spoke to [the claimant] her care has been moved from hospital to community mental health team, so she is under different psychiatrist now, has been allocated a psychologist and is about to start a course of EMDR therapy for the PTSD. She remains on a cocktail of medication. Please note that EMDR can be quite challenging and result in a dip in the person's mood in the early stages, which might affect [the claimant's] ability to attend work…

Current capacity for work

The claimant remains unfit for full operational duties because of the mental state ***and I cannot say when she will be well enough again, so there is no planned return date****. She should be fit to resume work on her agreed phased return, from 10 October, beginning with four hours a day on three days in the first week and* ***gradually increasing as before****. The claimant should remain on office duties. She should work only regular days. She will need time to attend medical appointments and her therapy.*

Current outlook

The claimant has been seriously ill and remains far from being fully recovered. The diagnosis of PTSD is a further complication on top of the PND, because it might have long-term implications for return to duties that require dealing with suicides on the railway… I would say, though, that she will ***probably need temporary modified duties for 6 to 12 months****…"* Tribunal stress

Occupational Health Report 4 November 2022

125. HR then advised there were further questions they wanted to ask OH [page 449] and these were obtained on 4 November 2022. In the meantime, the claimant was kept on sick leave with full pay.

126. The questions the respondent wanted answers to from OH included fitness to travel to an alternative location than her home station, any duties of Sergeant which may act as a trigger, the potential impact of overhearing information about suicides over the radio etc. The Tribunal find that these were not specious questions which may indicate a desire to stall her return to work unnecessarily but reasonable questions with the intention of minimising risk to the claimant.

127. The OH report included the following advice following a discussion between OH and the claimant [page 452]:

"…She describes mental well-being as 'middling' at present and is certainly not well enough to resume operational duties, but she is keen to resume work. ***We discussed your questions and agreed that this sort of situation can be a bit like swimming - you can stand by the pool, look at the water and talk about it forever, but there comes a time when you just have to get in and have a go. However, that doesn't mean jumping in at the deep end or off the diving board but at the shallow end and gradually paddling out.*** *We couldn't be sure if anything that happens, that is discussed or overheard in the station might trigger symptoms, [the claimant] felt that they probably wouldn't at this stage and that she has come a long way since last in work. She doesn't think that sergeant's administrative duties will be a problem that she does feel that, for a time, she will be a sort of so 'sergeant's assistant'. She is keen to go back to Nottingham station and we didn't think that a different location would be helpful.*

Current capacity for work

The claimant is now fit to resume work, but on TDR, doing office duties only. She should start back on 12 hours a week, spread over 3 half days, preferably Monday, Wednesday and Friday. The claimant can have some flexibility for meetings or courses. She should work indoors only and should not participate in any investigations or public facing work. She will require Friday afternoons off for her therapy sessions. ***This will not be a normal 'phased' return because I can't say at present how long it will be before [the claimant] is back*** *and normal duties, including Taser, ASO etc and a psychiatrist is keen for her to take things slowly.*

Current outlook

There are two underlying mental health issues here, PTSD and PND, so the situation is complex, and it is difficult present to say how long [the claimant's] recovery will take and how well she will be at the end of it. At present, we can't guarantee that she will be able to resume full duties or not…

Tribunal's own stress.

128. The claimant complains that she felt very anxious during this period and was desperate to return to work and did not understand why with two OH reports, she was not being allowed to return to work and had only one home visit from Inspector Turner on 9 November 2022 [page 454]. This home visit it appears was before the respondent had received the answers to their questions from OH which appear to have been received on 14 November 2022 [page 454-455].

129. Trainee Chief Inspector (T/CI) Ricky Sweeny and Superintendent Susan Peters were also involved in managing the process around the claimant's return at this stage.

130. The claimant does not complain that this period of not being permitted to return to work was an act of discrimination because of something arising from her disability (or any other complaint).

131. The claimant complains that the respondent was arranging a capability meeting on 4 December 2022 even though the claimant was fit to return and waiting to return to work and that this was because of her sickness absence. It was agreed between the parties that the correct date was actually the 14 December.

132. The claimant refers not only to the 21 September 2022 email from Inspector Turner but also an email sent on 17 November 2022 from Kirandeep Ajimal to Lauren Edwards, People Advisor [page 458] about arranging a step 2 review. The claimant complained that this was an act of discrimination because of something arising from her disability i.e. her sickness absence:

"Just had a catch up with Ricky.

*He can do [X] Step 2 Review on Weds **14/12/22** anytime from 1pm and before 2:30pm if possible"*

133. In oral submissions however the claimant withdrew the claim however, she still seeks to rely on the discussions about arranging a further capability meeting at this time because the claimant asserts that it further illustrates that the respondent had already formed a negative view about the claimant's long-term prospects following her June 2022 relapse and this influenced their thinking and approach to the claimant on her return.

134. The claimant further relies on Inspector Turner's evidence at page 54, paragraph 39 of his witness statement: *"We were **all mindful** that when she had attempted to return to work in June 2022 it had not lasted for long…"* Tribunal stress

135. The claimant argues that this demonstrates that the respondent's approach was "*anchored in past absence, rather than present medical evidence or actual capability"*.

136. The respondent's position is that there was only a discussion about having a further capability hearing, one did not take place and that this discussion was not because of her sickness absence but because of her capability to do the substantive role. However, the Tribunal find that it is more likely than not that this discussion took place, not only because of concerns about her capability to return to her full substantive role but a materially influence (as with the step1 meeting) was because of the length of time she had been absent. Had she been absent for a few weeks after the step 1 discussion then the Tribunal do not accept that they would have considered a step 2 meeting so quickly. The policy itself provides that: "*The expectation is that between each step there will be a reasonable amount of time to allow for consideration of all possible options, including reasonable adjustments and/or redeployment."* [page 243].

137. The Tribunal also find that there was concern about the impact of the claimant's absence and need for adjustments on wider team resourcing. This is clear from the reasons given by Inspector Turner for implementation of the step1 meeting and his justification for why the Capability Policy was applicable and the Personal Safety Plan which was put together by T/CI Sweeney [page 477-480]:

*"It should be recognised that Nottingham train station is a category A Location and therefore the BTP station attached is a busy response hub with a high number of calls for service and one that has 24/7 rolling shifts with limited consistency in supervision and office numbers. This would make the implementation of a '54sergeants assistance' role- which is a role that doesn't exist in BTP but is referenced in the most recent OH report, **difficult to introduce and manage effectively**. Additionally, the workload for this role is unlikely to be meaningful or consistent and is not likely to be sufficient to require 40hrs p/week… and again would be an ineffective use of police resource." [page 478]*

*"The officer's role requires a level of line management responsibility … **having a detrimental effect on the support they could offer for their team**…" [page 479] Tribunal stress*

138. The claimant argues that this concern supports the claimant's submission that the respondent's approach was shaped /influenced by a desire to minimise operational disruption and move towards removal on capability grounds and that looking in December 2022 to arrange a step 2 meeting forms part of the wider factual matrix relevant to the claimant's claims under sections 15 and 20–21 of the Equality Act 2010.

139. What is clear however, is that the claimant was not at this stage moved to Step 2 of the capability process.

140. In his evidence in chief [w/s para 49] Inspector Turner states that although the claimant's ultimate capability to return to the operational role was still not certain, it was decided to support the phased return "***which OH suggested***" in the hope it would be successful and:

"It is in accordance with the ***Capability Procedure to leave a reasonable amount of time between each step to consider all possible options, reasonable adjustments or redeployment*** *[243]"*

141. The concern that the phased return may not be successful was however the Tribunal find, reasonable in light of the concerns expressed by OH in the 4 November 2022 report wherein they considered that the claimant, using their swimming analogy, needed to have a go and see what happens.

142. The Tribunal accept that having a discussion about step 2 before the adjustments had been attempted was premature, it is not consistent with what Inspector Turner said he understood was required or the wording of the policy i.e. to leave a reasonable amount of time between each step to consider adjustments. The recommended adjustments (e.g. phased return and the support recommended) had not yet been tried. To start someone's return with a step 2 meeting (which is akin to a warning with the next stage a Step 3 meeting and possible dismissal) would not be conducive to building confidence and supporting the return. The meeting however did not take place.

143. The claimant submits that the delay between October 2022 and January 2023 in welcoming her back to work "*cannot be explained by any medical or operational reason".* The Tribunal find however that it was reasonable, in light of the nature of the claimant's illness, to have considered that although the June relapse had been caused by a traumatic personal event, the nature of her work may cause a similar relapse. The Tribunal accept the respondent's submission that it was a sensible and understandable approach to refer questions back to OH to understand about how best to support the claimant's return. The Tribunal accept that the respondent was taking a cautious approach to ensure that it had clear advice on what it ought to do to support her and accept that the return to work was arranged for January because her line manager was on annual leave.

Meeting 11 to January 2023

144. Inspector Turner had a Teams meeting with the claimant on 11 January 2023 to discuss her return to work, with Lauren Edwards of HR in attendance. The meeting was recorded and a transcript is contained in the bundle [pages 193- 520].

145. The claimant's case is that during her return-to-work period beginning in January 2023, she was consistently told by Inspector Turner that she could not reduce her hours or apply to reduce them while on a phased return (TDR). That this position was maintained throughout the phased return period and had an impact on her ability to seek adjustments around her working hours that were necessary because of her disabilities.

146. The full transcript of that 11 January meeting includes the following entries [pages 516-517]:

40:54:970 – 0:40:20:980

Turner, Ellis

I would suggest we go into ***full hours*** *so we start work along the shifts then, but the shift with the sergeant of* your *choice…so what I would do then in months #three is a butter [buddy] you up with Helen." [****page 514****] (Tribunal's own stress)*

…

43:38:930 – 0:43:41:590 [page 516}

Turner, Ellis

*And then month # **5 would have you back. Folly [fully]**… (Tribunal stress)*

0:44:21.720 – 0:44:34:10

Turner, Ellis

***Is there any intention of you putting in for a flexible pattern**?… [page 516]*

0:44:34.910- :44:43:100..

Might have to sit down with my other half and see that it be 30 hours minimum, maybe slightly more okay?

0:44:43:760 – 0:44:52:190

"Edwards, Lauren

*Sorry, just to add, **have you seen the new shift patterns** off the A6 on 4/6 on? For off came in is that have you seen that she passing before yeah? [sic] [page 516]*

0:44:51:530 – 0:44:53:460
Turner, Ellis
***It's a bit difficult to work a flexi around.** [page 516]…*

0:44:58 – 0:45.15.800

Turner, Ellis

*okay, that's fine. **It's not something more daring to now** **[it appears likely that what was actually said *was:* 'need to do anything about now'**]. I just want an idea of what that actually looks like for you because your circumstances have changed, so that's okay. So that's what a phased return looked like. Yeah, I now make sure that that's documented in the room and at the end of each month we have a review as Lauren said, and just have a chat about that so" [page 517]*

…

147. During her oral evidence the claimant contended that Inspector Turner told her during this meeting that she could not reduce or apply to reduce her hours while on a phased return/TDR. She was taken to the transcript of the meeting, and she was not able to identify anything else he had said during this meeting which amounted to him telling her that she could not reduce or apply to reduce her hours while on a phased return. Referring to the difficulty with accommodating a flexible working application around the new shift pattern is indeed, as respondent counsel submits, different to telling a person that they cannot make such an application. However, the Tribunal consider that it indicates a concern about flexible working and may have been intended to deter an application.

148. The allegation is that Inspector Turner in January 2023 informed the claimant that she could not reduce her hours or apply to reduce them while on a phased return during January to July 2023. The claimant was adamant that this had been her understanding from numerous conversations although she could not be specific about the dates when it had been said. The claimant had not identified any other occasions in her witness statement. In cross examination cited a conversation that had taken place in May 2023 but had then stated that he had said this to her at other non-recorded and non-specified times in January 2023. The claimant did not (although this was asserted in her oral submissions), identify in her evidence

that it was specifically on 23 January that she told Inspector Turner she had spoken to her wife and wanted to reduce her hours.

149. The Tribunal take into account that Inspector Turner had committed in the 11 January meeting to having recorded monthly reviews, and he failed to conduct those and record them. There are limited records therefore of their conversations around this time. The Tribunal also take into account the anxiety the claimant would no doubt have been experiencing coping with a return to work after such a long period of absence and the impact this is likely to have on her recollection of what was said and/or dates.

150. However, after this meeting Inspector Turner created a document headed a 'Written Record of Meeting Form' [page 521 – 523] which summarised what had been discussed at the 11 January meeting and includes the following entries:

"*[The claimant] and ET discussed a phased return into the workplace on a full operational basis. A breakdown of what was agreed is as follows:*

Month one: 23rd Jan – 26th February: This will consist of [The claimant] being in the office for Mon, Tue & Weds working 0800 – 1200 each day. She will be catching up on NCALTS and making enquiries for upskilling courses on variety of systems, we will also be booking in mandatory courses as we go along.

Month 2: 26th Feb – 26th March. This will consist of the same days, however we will increase to full 0800 – 1600 shifts. This will continue with inputs and visits to different departments including case file quality team et cetera. I will also be introducing her to some work to assist across the East Midlands which feature a non-operational element.

Month 3: 26th Mar – 16th April. [The claimant] will drop onto the shift pattern of PS Helen White, her chosen peer support. [The claimant] will be following this operational response Sergeant through shadowing.

Month 4: 23rd April – 21st May . [The claimant] will continue the shadowing but this time will be taking the lead for non-operational sector cover, i.e. decision-making, team files, welfare etc.

25th of June 2023: ***fully operational."*** *Tribunal's own stress*

151. The record also includes the following:

"ET was explicitly clear that [the claimant] must meet this operational return plan otherwise there will be limited opportunity to avoid progression of the force capability procedure…

[The claimant] stated that Thursdays do not work due to childcare and psychologist interventions. Fridays are dedicated to receiving health treatment via a community psychiatric nurse.

ET asked [the claimant] if she intended to apply for flexible working pattern <u>when operational</u>. *[The claimant] said she would do on a 30-hour minimum pattern. The details of this FWP are yet to be agreed or rostered, as no formal application as yet been submitted." Tribunal's own stress*

152. The Tribunal take note of the fact that Inspector Turner had clearly recorded that the question he had put to the claimant was whether she intended to apply for flexible working **when she was operational** and the Tribunal find from his evidence that he what he meant by this was at the end of the TDR plan (i.e. after 25 June 2023).

153. The record was signed by both Inspector Turner and the claimant on 18 January 2023.

154. The proposed 5-month plan is something which as Inspector Tuner confirms in his evidence in chief, he had discussed with HR and the senior leadership team and "*sketched out"* prior to the meeting [w/s para 57]. While Inspector Turner refers in his evidence in chief to it being based on medical recommendations, the report on 27 September 2022 had

recommended a phased return of 6 to 12 months. This was a plan for only 5 months.

155. In terms of why the planned return was only 5 months rather than the 6 to 12, Inspector Turner in his evidence in chief asserts that this was because it was a combination of OH advice and the claimant's own preference and because it was difficult to predict what would happen. He described this as a ‘'*rough proposal''* [w/s para 62].

156. Inspector Turner's evidence in chief [w/s para 62] is that he had no idea the claimant may want it extended to 12 months. The Tribunal find that Inspector Turner presented this as the plan. He did not invite the claimant to confirm her agreement. The reason why he did not follow the OH advice (despite postponing her return to work to obtain advice from OH) was because he personally viewed 12 months as too generous. In his evidence in chief, he states [para 63 w/s]:

"I have never seen a 12-month phased return be implemented for an officer in BTP".

157. Inspector Turner refers to this plan as one which was "agreed" [para 64 w/s] however, nowhere within the notes of that meeting was the claimant asked whether she believed she needs a longer period of a phased return. While Inspector Turner checks she is in agreement, he puts forward one plan only which is the 5 month *"rough*" plan he had *"sketched out".* Further, when putting this plan to her, the claimant is told that the plan is "*fluid*" [page 514] and that each month Inspector Turner will review her progress, he will keep a written record of it each month to see how it is going, check if there is anything which could have been done differently and where there could be more assistance:

"…after month one we will do a review to kind of see how the first month has gone and cheque [sic] that you're ready to progress and if we need any extra medical evidence getting at that point. So this is what we propose and then we'll see how it goes at each month point before we progress to the next point" [page 513 -514 timed:3:29:170]

158. In his evidence in chief Inspector Turner [para 57] confirmed that he had proposed that it would be fluid depending on how the return progressed. Under cross examination he said the reference to "it" being fluid was not to the TDR itself but reviews (plural). The Tribunal have had regard to the fact that he does not say *"they*" will be fluid in the meeting, he says "it's":

"What I would do is would just do documents reviews. So just like we're doing now like a written record of meeting house [sic] month one going, is there anything further that we could have done differently or assisted with or within you wanna take up in month two etc? ***So I mean it's fluid****. Yeah and* ***you'll be able to contribute to that …"*** *Tribunal stress*

159. In cross examination Inspector Turner gave evidence that the TDR plan could be changed if he had wanted to change it. That he had the authority to extend it is consistent with the impression the Tribunal find he gave the claimant at this meeting and which the Tribunal consider would have made her feel comfortable agreeing to his "rough plan" for her return.

160. Inspector Turner refers to Head of OH, Judith Allen, responding on 16 January 2023 to confirm that the plan was reasonable as validation that the 5-month period was reasonable, however, Ms Allen's endorsement of it was subject to an important caveat [491]:

"The plan you have provided seems reasonable with ***regular reviews*** *to monitor progress and* ***adjust accordingly."*** *Tribunal stress*

161. In cross examination the clear impression the Tribunal formed from inspector Turner's answers was that there was an expectation, (which the Tribunal find he had made clear to the claimant), that she had to complete the TDR before the respondent would consider any

flexible working request. The last phase of the TDR included the claimant returning to full time hours.

162. The Tribunal has also had regard to later correspondence. On 26 April 2023 [page 624] inspector Turner contacted CI Maninder Gill stating:

"…she has not detailed but I believe it is the same medication as before; we would have to go back to establish what that was. She feels that she is under pressure from peers to get things correct & she still has blips within own mental recovery. I have advised her we will keep contact to maintain the support, ***but it is crucial that she returns by our suggested return plan."*** *Tribunal stress*

163. On 27 April 2023 (page 640), the claimant reiterated her request for reduced hours in writing:

"I do ***not*** *feel able to work six shifts in a row due to my disability and I have requested that you send me the flexible working request so that I am able to discuss officially reducing my hours."*

164. The respondent did not consider treating this as a request for an adjustment to accommodate her disability.

165. On 2 May 2023, the Claimant texted her wife (page 656) stating:

"Reduced hours won't be applied until I am off TDR."

166. That the claimant was told that a flexible working request would not be considered during a TDR is also confirmed by the evidence of Superintendent Sue Peters [paragraph 36] in her evidence in chief:

"In any event, the door was open to consider options for the Claimant ***once her phased return to work was*** **completed.*"*** Tribunal stress

167. On 3 May 2023 [page 677] the claimant wrote to Inspector Turner:

"Following our discussion yesterday can you confirm what shifts I will be expected to work. I have already highlighted that I don't feel at this time ***I can do a full set of 6 especially as*** *due to my MH issues and meds I quite often struggle to sleep and then get up at five for an early could mean I get little to no sleep before a shift. I've had a look at Nick's roster I wondered if it would be possible to start on Monday, 8 May, this would give me a similar length of rest period that I have been having."*

168. Inspector Turner responded on 4 May 2023 [page 676]:

"*As outlined during our conversation,* ***the expectation is you do work the full set as per your return plan****, which had approval from OH. If you are genuinely unable to complete these, I will note that down and arrange a review of your current case with HR/OH to determine the best outcome going forward.*

I will agree to the 8th May, I will submit the form notify PS Fowler on email…" Tribunal's own stress

169. The Tribunal is invited by the respondent in submissions to conclude that the claimant's testimony on what happened is not reliable. That her memory of what was said does not match what was in fact recorded in the 11 January 2023 transcript and where there are differing memories, it is submitted that the claimant's memory is not to be preferred.

170. Taking into account all the evidence, on balance the Tribunal find that Inspector Turner had told the claimant at some point and more likely than not on a number of occasions, that she could not apply to reduce her hours during the TDR process.

Return to Work Period: Extension

171. A further OH report was obtained on 24 January 2023. The assessment took place by telephone with the claimant on 24 January, the day after her return to work [page 526] which included the following advice:

"In my opinion, it is possible to expect periods of low productivity while she is trying to settle in work. She may take slightly longer to relearn any new information. [The claimant] is still in her early stages of her return and her progress could fluctuate on day-to-day basis. I would suggest that you review her progress at work daily from management perspective…"

"[The claimant] currently has a phased return plan in pace, is this plan still effective for her current condition at the time of this review taking place?

It is too early to comment on her progress at work, ***I would therefore advise that you review her progress weekly to ensure that she is coping well on TDR.***

Are there any further measures that can be taken to support the return for X being fully operational by June 2023? Are there any blockers currently preventing that?

…I cannot be precise about her returning to operational work in June 2023 as this will depend on her progress. [The claimant] is struggling with intrusive thoughts and her mood which in my opinion could interfere with her ability to manage operational duties…" Tribunal stress.

172. On 3 February 2023 inspector Turner set out the actions to be taken [page 532]. This included that he would personally maintain regular contact with the claimant to track her progress during the phased return.

26 March 2023.

173. There was quite a bit of discussion at the meeting on 11 January 2023 about what the claimant wanted Inspector Turner to tell her colleagues [pages 503-504] and Inspector Turner agreed to draft an email explaining a bit of background about the post-natal depression and PTSD to the Sergeants. The claimant explained that she may need to contact one of them and this was identified as a 'potential control measure.'

174. The claimant complains that Inspector Turner did not do what he had agreed to do and explain the background and nature of her condition to her colleagues. She would complain of later experiencing bullying behaviour.

175. It was put to Inspector Turner by counsel for the respondent in supplemental evidence, that he had said at the 11 January meeting that he was planning to send an email to *"**all** sergeants*" and that the claimant was not sure whether he had done that, to which he replied:

"I sent an email ***to the Sergeants*** *to advise* ***them of the claimant's planned return to work****." Tribunal stress*

176. The Tribunal find that Inspector had not told the sergeants anything about the nature of the claimant's condition.

177. The oral evidence of sergeant (Sgt) Wilson was that Inspector Turner had not told her that the claimant had been absent because of post-natal depression or PTSD or given her any overview about her health. She accepted she had some awareness from rumours and was aware her issues related to her mental health but she had very little information about the claimant's experience before these Tribunal proceedings. Sgt Wilson explained that she had and no experience of any of the officers on her team having a disability, personally she had no knowledge about post - natal depression and had received no training on disability. Sgt Wilson also gave evidence that Inspector Turner had told her that the claimant did not want information about her health divulging.

178. Sgt White in cross examination accepted that she had spoken to the claimant about her health and was aware of her having suffered with post-natal depression and had self-harmed because the claimant has confided in her about her admission into hospital during a 'heart to heart'.

179. The claimant alleges that on her return to work she was not welcomed back, particularly by her female colleagues, Sgts Wilson and White and alleges that there was a 'constant air of animosity' and that they would mostly ignore her but on the rare occasion they did engage with her it would be short and terse. She describes low-level sniping for the first couple of months with this escalating when the claimant received a phone call from Sergeant (Sgt) Wilson on the night of **26 March 2023**.

180. The claimant was initially due to start shadowing Sgt White on 26 March 2023 however she had agreed with Inspector Turner to take that weekend as leave. She received a call from Sgt Wilson asking why she was not at work, the claimant explained that she had booked leave and she contacted Inspector Turner the following day to inform him.

181. The claimant alleges that this created further resentment and what she describes as a 'barrage of hostile behaviour' from Sgt's White and Wilson.

182. The claimant alleges that Sgt White and Wilson made her feel unwanted, made it hard for her to ask questions and created a hostile working environment between February 2023 and May 2023.

3 April 2023

183. The claimant had come in to work a late shift on 3 April and then realised that she had been scheduled to attend a course the next day [page 580/581], the details had been sent while she was off work. She was required to have an 11-hour break and on raising this with Inspector Turner, he instructed her to attend the course and finish her shift to allow for the requisite break. She followed his instructions [page.578].

184. On 3 April 2023 the claimant emailed Inspector Turner at **14:31** copying in Sgt's Wilson and White [page 566] stating that she was not sure what was happening with her shift patterns as they do not align with Sgt White who she is shadowing.

185. Sgt Wilson then emails Inspector Turner, she does not copy in the claimant [page 566], at 15:05 to complaint:

"Sorry Boss but this needs sorting

I never know when she's working or what she's doing

She's not turning up for courses and changes her duties on the Sgts duty sheet constantly

Plus I'm interested to know why she can't work ET*[early turns/shift]*

I appreciate we need to help her come back but only working 4 days out [sic] is 10 is unfair.

What is the plan to get her back front line?" Tribunal stress

186. Inspector Turner on 3 April 2023 then emailed Sgt White at **15:08** explaining that the claimant was not aware how to view the breakdowns but he did not expect any further issues and asked Sgt White to let him know if there is a further pattern of not turning up when due to be working.

187. Sgt White then replied on **3 April at 15:12** and the Tribunal find, expresses obvious resentment and growing frustration [page 570]:

"*I've checked the breakdown and she's the ones [sic] changing them!!*

She's being paid when shes not here. Its not fair !

Amy Chapman is doing the same and getting SL and being BODs, then working BHW and RDW

***I'm really at my wits end and feel a right mug**!!*

***If I want a day off I have to jump through hoops.** This needs addressing by PI Barker and yourself. Its causing disharmony among the Sgts." Tribunal stress*

188. Inspector Turner replies and asks whether the claimant is in work to which Sgt White replies on **3 April at 15:42** [page 569]:

"she should have been in at 11:00 hours according to the sheet when I came in. She turned up at 14:00 hrs.

Tomorrow she should have been on it 08:00 hours for training but she's changed it to a night turb which means she won't be going on her course.

Origin was showing her as 1100 – 2100 today but that is now showing at 1400 -00:00 which means that she is email them to change [sic].

She showing as 0800 – 1700 tomorrow but she's changed ORIGIN tonights !!

She is also down to work late some bank holiday. Which would have been a rest day anyway !!

***She seems to be doing what she wants when she wants and it needs addressing."** Tribunal stress*

189. Sgt Wilson in cross examination accepted she was "*extremely frustrated"*. She alleges that this was about the situation and not the claimant. She also conceded that her frustration was that the claimant was the "*one who put the data on the duty sergeant pages and should be aware of her roster."*

190. The Tribunal consider that this frustration and exasperation toward the claimant who remained vulnerable and lacking in confidence, should have rang alarm bells with Inspector Turner and prompted some immediate intervention to prevent an escalation with the risk of impacting on the success of the claimant's phased return. This did not happen and the situation deteriorated.

191. Inspector Turner in his w/s (para 90) describes Sgt White and Wilson's thus:

*"I would acknowledge that both PS Wilson and PS White had direct or forthright leadership styles which **sometimes caused moments of tension** within their teams. This is not unusual as the force operates on a command and control culture/hierarchical structure which can cultivate professional disagreement…" Tribunal stress*

192. Sgt White in cross examination described her and Sgt Wilson's manner as follows:

"*I am direct, we are both jokingly described as very northern, we say what we need to get our point accost but we are open to discussion."*

193. Sgt Wilson in cross examination described herself thus:

*"I am a strong sergeant, I joke that I'm northern, I have a **very direct style**". Tribunal stress*

194. The Tribunal accept that Sgt Wilson and White had been working under a lot of pressure during Covid when the claimant had been absent from work and unable to assist and was not returning on light duties and reduced hours during the TDR.

195. Sgt White describes the pressure she and Sgt Wilson had been working under during the

Covid pandemic in her evidence in chief (para 28).

"During the Covid- 19 pandemic and over the couple of years after, I would say that was one of the most difficult times to be a police officer and a Sergeant. The job as a whole can be frustrating and as Sergeants at Nottingham we were managing shifts, operating as additional PCs to cover staff shortages, supporting other Sergeants, managing property, running shifts on a more remote level, having shift changes and extensions constantly dealing with staff performance. There was lot of expectation placed onto me and PS Wilson to get the job done – this was a double edged sword as senior officers knew we could do it - but did not fully understand the impact it had on us and the TPS's as it was a step learning curve for them and constant high pressure for myself and PS Wilson. I cannot comment on how PS Wilson felt in general but I had days where I was physically and mentally exhausted and I imagine she would have been the same. Both me and PS Wilson had matters to deal with in our personal lives which we did not allow to come into work however these all-round pressures took their toll…"

196. Sgt Wilson gave evidence that she did not know before these Tribunal proceedings that the claimant was disabled. she referred to the fact she had covered sickness absences since Covid and:

"*I had not seen my family in that time, I think I needed to have some knowledge*."

197. Sgt White recalled, in respect of this incident, in her evidence in chief para 45 and 46) that:

"*I do recall some conversation between the two over how difficult leave had been and how the working environment had been difficult over the past years…*"

"The Claimant was trying to say that we should be lenient with her due to her having been off work. (I do not believe, even to this day, PS Wilson had been made aware of the reason for the Claimant being off work as the Claimant had requested people not be told.) PS Wilson responded that everyone has their own personal struggles."

198. In terms of the incident on the 24 March Sgt White in cross examination described the claimant as potentially isolating herself at work by sitting in another office and when asked why, answered that the claimant was concentrating on eLearning but also that she was:

"*nervous in work."*

199. That the claimant was lacking in confidence and nervous, was therefore the Tribunal find known to the Sgts.

200. Whether or not Sgt Wilson considered the errors with the shifts were in part the claimant's fault, is not a reason to question the TDR arrangements.

201. On 3 April 2023 at 16:20 the claimant's wife sent a text message to Inspector Turner and asked to speak with him, they spoke and her evidence which the Tribunal accept is that she explained the impact on the claimant of the 'confrontation' with Sgt's Wilson and White and he agreed to handle the situation.

202. The claimant then emailed Inspector Turner later that same day on **3 April 2023** at 17:15 and set out what she had recorded in her personal notebook but asked him not to speak with Sgt Wilson before she has spoken to him. Her account of what had taken place is set out there in some detail and includes the following [page 577]:

"At approximately 1530 today I entered the sets office where both PS White and PS Wilson were working. At the beginning of the shift PS Wilson had spoken to me to say that my shift was down for 11 – 1900 but I said I was shadowing Helen shifts. I'd gone to look at my shifts and realised there was an error and that my shift had been changed to allow for training. However, my training invite was sent

while it was off duty. I came back to the office to speak to PS Wilson and PS White but I was just derailed despite admitting I must've missed it, but PS Wilson continued to state was my fault I had the sheets. Not wanting and [sic] conflict I left.

However, I felt I needed to go back and state I didn't appreciate our PS Wilson spoken to me. I came back to the office at approximately 1555 to clarify what happened and at State [sic] I wasn't happy with how PS Wilson spoken to me. It was at this point PS Wilson stated that as I was the only one changing anything on the due to sheet it meant I knew about it and the mistake shouldn't have been made. She then carried on to say I was on the sheet for Sunday the 26 and again I had input the shifts so should have known and it ***looked like I was doing whatever I wanted to****. PS White then said I had told her I was starting with nights on the 26th but I clarified I said I will be working late nights with her shadowing but no date was mentioned…*

PS Wilson ***raised a voice and began berating*** *me in a raised voice stain again "they are you [sic] shifts", "it was my fault, I was checking the sheets". PS Wilson then started to say* ***angrily "why should I not have to work earlies, and why should I be getting full pay working 4 on 6 off when she can't even book any leave****.". PS Wilson then says she was just trying to stop me getting in trouble but I had already [sic] accepted I made a mistake.*

I said to her why do you need to know about my shifts and PS Wilson stated "she did need to know" ***continuing to shout at me.***

I stated that she didn't need to know the ins and outs of my TDR phased return. I then left the room as I was getting upset and did not want this conflict." Tribunal stress

203. Sgt White although sat in the office with Sgt Wilson when this discussion took place (w/s para 40,) in cross examination maintained that she had no recollection of Sgt Wilson saying to the claimant that should not have made the mistake (with her roster) or that it looked like the claimant was doing whatever she wanted. She alleges that she was on the radio with the duty officer, or on the telephone or looking at the handover sheet and did not hear all the conversation.

204. In cross examination it was put to Sgt Wilson that what she said in the emails to Inspector Tuner [page 566,569, 570] supported what the claimant alleges she said during this incident on 3 April. Sgt Wilson replied: *"some, not all*".

205. When it was put to Sgt Wilson that what she had said in her email was very similar about pay and early shifts she did not deny it but merely responded; "*but I did not berate her*."

206. On balance, considering all the evidence, the Tribunal find that the claimant went to see Sgt Wilson to clear the air, she was prepared to admit that she had made an error but Sgt Sergeant was irritated and spoke to her in a manner which was more likely than not harsh. The claimant the Tribunal find considered that Sgt Wilson's behaviour toward her was unacceptable and went back to tell her that. The Tribunal consider that it was perfectly reasonable for the claimant to let Sgt Wilson know that she had crossed a boundary and that her behaviour was not acceptable. The Tribunal find that it is more likely than not that the claimant was being assertive in setting those boundaries because she was upset by the way she had been spoken to.

207. The Tribunal find that Sgt Wilson was unwilling to accept that she had been at fault and did not consider that her direct manner was something she needed to modify. The Tribunal also find that it is more likely than not that Sgt Wilson had raised her voice when the claimant attempted to address the way she spoke with her, because as evident in the use of exclamation marks and the wording of her emails to Inspector Turner, she was very frustrated and directing her ire at the claimant.

208. The Tribunal find that it is more likely than not that PS Wilson did comment: ***"****why should I not have to work earlies, and why should I be getting full pay working 4 on 6 off when she*

can't even book any leave.".

209. The Tribunal do not find that the claimant raised her voice or shouted.

210. Sgt Wilson had not real knowledge about the claimant's struggles with her mental health but had Inspector Turner, done what he had promised to do, she would have had an understanding. Sgt Wilson would have had the 'knowledge' which in cross examination she stated she should have had about the claimant's health and the Tribunal consider that this may well have resulted in a more understanding and a more patient attitude.

211. Sgt White, the Tribunal find, would reasonably have come across to the claimant as complicit and indeed the Tribunal find that she was. Sgt White did nothing to intervene in a situation where a colleague, trying to rebuild her confidence after 2 years of absence during which she had struggles with her mental health, was being met with open hostility from a colleague. The Tribunal accept that the claimant was insulted and upset by the references to the claimant's pay, the terms of her TDR and it looking like she was doing whatever she wanted.

212. The Tribunal accept that the claimant was very upset by this incident and that this shook her confidence. In a Whatsapp message to Lucy Milton [page 591] on 7 April 2023, the claimant explains how she was feeling at this time and the Tribunal accept that this genuinely reflects her feelings:

"I had an incident at home a couple of weeks ago. And I've had a crap week at work with ***one of the other sergeants basically having a go*** *at me being paid full pay for less shifts yet she can't get holiday and is working all the time****. Basically sounds like there's a lot of bitching behind my back*** *which I can't really cope with and I don't want that to set me back or have another indicant at home. It's made me worry if I can do the role or not and I wondered if you know much about the medical dismissal process." Tribunal stress*

213. The claimant's perception of people talking about her behind her back was the Tribunal consider a reasonable and valid perception of what was happening around her at work. Sgt White in cross examination referred to conversations about the claimant:

"other sergeants expressed frustration on not being updated on Origin – there were lots of conversations – I did not participate in all of them."

214. While Sgt White says that she did not participate in all the discussions about the claimant, she does not allege that she did anything to discourage those conversations. Sgt White denied that there were derogatory comments made about the claimant but she accepted that there was frustration expressed.

215. The Tribunal find on balance that it is more likely that not that the sort of comments Sgt Wilson had made about why the claimant should be paid the same as other Sgt's when she was not working the full set of shifts and it looking like she was doing what she wanted, were repeated in those discussions. The Tribunal accept that the claimant felt that her working environment was hostile and felt unwelcome.

216. Ms Milton, the claimant's, maternity buddy in messages exchanged with the claimant says various things about SI White and Wilson which are disparaging, including in response to the above messages:

"*I know it's no consolation but they're bitchy in general. I've lost count of the amount of times they've made someone at Nottingham feel like shit. I will refresh myself on it …shes [sic] a proper dickhead." [592].*

217. Ms Milton holds a fairly senior post within the respondent as Inclusion and Diversity

Business Partner but Superintendent (Supt) Peters gave evidence, which the Tribunal accept, that on balance Ms Milton would not have access to formal complaints raised by other employees and gave evidence that the messages 'are being looked into'. The Tribunal however attach little weight to the actual allegations made by Ms Milton, she uses extremely disparaging comments but sets out no clear facts, dates etc to substantiate her allegations. Her own experience of the sergeants may have tainted her language but she does not refer to any grievance she has personally made or formal complaints she has raised. Her language, including flippant comments about wanting to "*knock her out*" does not demonstrate sound judgment.

218. The Tribunal stress that Ms Milton did not attend as a witness to give her account of these events or an opportunity to explain her messages.

219. However, given Inspector Turner describes 'tension' created by Sgt Wilson's manner, the Tribunal consider that it is more likely than not that there had been at least some informal complaints, and perhaps from more junior colleagues or at least some negative opinions expressed about Sgt Wilson's manner.

220. The fact Sgt White was present was clearly an aggravating factor the Tribunal accept. The claimant in an *email to Lucy Milton states* [Page 592]:

Ms Milton: Was it Helen or Jacqui?

Claimant: "Jacqui (who was bullied me in previous years and I let it slide) but Helen was there."

221. This message supports the respondent's account that while present Sgt White did not actually participate in the conversation.

Response from Inspector Turner

222. Inspector Turner responds to the claimant's 3 April email [page 577] on 3 April [page 578] and addresses the issue about the claimant attending the course but makes no mention of the incident with Sgt Wilson. On 3 April the claimant emails again about shifts but mentions that she needs to have a conversation with him about how her TDR is being spoken about. Inspector Turner does not set up a meeting

223. The claimant contacts him again on 12 April [page 594] to say she will not be ready by the end of the TDR to take on her own team and only then does he appear to put in motion a meeting [page 594].

"*Can you let me know when you will be about Nottingham, so we can set up a meeting, **I'm not confident I'm going to be ready to take on my own team by the end of the current TDR** on origin, so I just need to go through everything with you before then.*

It will be letting the other sgts and officers down if this is rushed (I've already been bitten).I'm not even sure that all the medications I'm on would be conducive with front line. This is why I found it so strange that occ health cleared me and closed the case, it should have been an ongoing check in ?" Tribunal stress

224. The Tribunal find on balance, that it is this email and not the conversation with her wife on 3 April or her emails about the issues with Sgt Wilson and White which prompt him to set up a meeting.

225. Sgt Wilson gave evidence in cross examination that Inspector Turner never spoke to her about the incident on 3 April.

226. At the 11 January 2023 meeting Lauren Edwards of HR had assured the claimant that [

page 519]:

"*Today might feel quite intense, so if you need any support after the meeting, obviously just reach to Ellis [Inspector Turner] and* ***occupational health are available as well****…" and*

*"I think we need to probably submit the new referral now anyway for the review for the end of the month one just because of the backlogs with OH so we can make sure that once you've done your first four weeks we can cheque [sic]. Everything going smoothly****, get a medical view and cheque [sic] that you're happy to progress to the next point…"***

227. No further OH report had been obtained and far from a fluid approach and willingness to review the length of the phased return, and involve OH, Inspector Turner emailed CI Gill on **12 April 2023** at 15:18 [page 593]:

"I am arranging a meeting with [the claimant], I'll let you know when it is in the diary. However, we will need to forward plan with a case conference in mind. ***If [the claimant] doesn't return to full operational duties by 25th June, we will need to proceed with step 2****. We will need to ensure OH are invited onto that case conference." Tribunal stress*

228. The Tribunal consider that Inspector Turner appears to attach no importance to the concerns raised on 3 April because in his email to CI Gill he makes absolutely no reference to the incident or her concerns about a lack of support. He is focussed on moving the TDR to its end or moving to step 2 of the capability process.

229. The policy provides for a reasonable period for adjustments to be actioned. The phased return to work was an agreed adjustment and OH had recommended that it last between 6 to 12 months. The agreement on 11 January 2023 was to keep that period under review, with 5 months being Inspector Turner's own "*rough plan*". Inspector Turner does not set out any operational reasons why the 25 June date cannot be extended as per OH's original advice.

230. It appears to the Tribunal clear that Inspector Turner had in mind a fixed return date and does not indicate any intention of extending the TDR to reflect the claimant's needs.

17 April 2023 meeting: Email to Sergeants

231. Despite Inspector Turner having committed to having monthly recorded review meetings, the Tribunal find that no meeting had taken place that month or was scheduled to take place. He replied setting out his limited availability and suggested meeting on a scheduled early turn or via Teams [page 597]. He agrees to the 17 April which is the "*only availability I have for a scheduled meet…"* [page 596].

232. Inspector Turner met with the claimant on 17 April 2023 via a Teams call. There is a referral arising from this discussion to OH and the Tribunal accept on balance that this was at the claimant's request.

233. An email was sent to Sgt White about what she and the claimant will do during the shadowing process. There is no document however recording what exactly had been discussed, what the difficulties were which the claimant was experiencing and what the plan was going forward.

234. Following this meeting Inspector Turner prepared and the claimant agreed the wording [page 601] of a referral to OH [page 602- 604]. It asked if there were any further measures which could be taken to support the claimant being fully operational by **June 2023** and whether the phased return plan is still effective for her current condition.

235. Inspector Turner's evidence in chief [w/s para 101] is that on 17 April 2023 he met with the claimant and:

*"We agreed that the next step would be for me **to send an email** to all sergeants explaining what was **expected of them and to <u>treat the claimant with patience</u>**." Tribunal stress*

236. The claimant accepts that it was agreed that colleagues would not to be told about her health in any detail but it would be explained to them that she was returning from sick leave on a phased return.

237. This assurance was plainly important to the claimant because she wrote to her wife informing her that on 17 April at 11:35am that.

*"Just finished he's going to check up on **the training side of things** which he has asked for but he hasn't had replies so he's going to chase. My 4 on 6 off is only being extended by 2 weeks though [sad emoji face] and rather than speaking to Jacqui directly he's going to send **an email to all sergeants saying what he expects from them and what they should not be asking**. Jacqui will know straight away that it is about her but hey…" [page 608] Tribunal stress*

238. It was agreed that the 4 on and 6 off shift pattern would be extended by 2 weeks.

239. There was no copy of an email to all the sergeants in the bundle. Inspector Turner had not corrected his evidence to clarify that he had **not** sent it, as he assured the claimant he would.

240. There was an email on **19 April 2023** [page 609] sent to the claimant and Sgt White about the next phase of shadowing [page 609]. He refers to meeting with the claimant and of having hoped to sit down and discuss it with them both but "*with shifts and jobs it is tricky*". It sets out how the shadowing will work in terms of what duties the claimant will undertake and the role of Sgt White. He also refers to NICHE input training with Sam Clegg within the next 2 weeks. This email does not address issues in terms of what is expected in terms of the patience to be shown toward the claimant. It does set out a plan including the following:

- During the shadowing period 23 April to 21 May 2023 the claimant will run the ship/lead with operational incidents with Sgt White acting as buddy support should the claimant need help or ask questions (but cannot deploy operationally)

- The claimant was due to have NICHE training in 2 weeks

241. Sgt Wilson gave evidence in cross examination that a template on the NICHE system had changed, that she had to go through all the ones the claimant had done on one night shift because she had used the old template. That she had spent time with her and that she had told the claimant that there was: "*a lot to take in*".

242. Sgt Wilson referred to there being "*a lot of little things*" which the claimant needed to get up to speed with and that the claimant "*needed help"* and that while there is information on the intranet Sgt Wilson herself learns by being shown and described the respondent as an *"evolving organisation"* and while she gave help to the claimant when asked, she is not a trained trainer.

243. Sgt Wilson also described how after she had been off work for 3 months on sick leave AND on her return, she needed to get use to the system; "*how to find it and how to go through the questions"* and that the *"big change*" in the NICHE system was property management. before the claimant went off work, they had used the KIM system which was a "*totally separate property system"*. The respondent had had to "*step up their game to meet standards of the CPS"* and she considered the claimant would need an overview of it because if property is seized it needs to be returned if not evidential.

244. Sgt Wilson also explained that she struggles personally with the use of body worn video and when she returned there were areas such as track safety training she needed to have

which is done via E learning and Video, while discussing with colleagues can help upskill, Sgt Wilson observed that the claimant would tend to sit on her own in a room. That the Tribunal consider is more likely than not because of a lack of confidence and the attitude of colleagues, not least Sgts Wilson and White.

245. Inspector Turner in supplemental evidence was asked by counsel whether after the meeting on 17 April 2023, where he had told the claimant he would send an email to **all the Sergeants** about treating the claimant with patience, whether he had done it. His sworn evidence was not consistent with his statement. In his witness statement he gave the clear impression that he had sent the email.

246. When asked what he had done (given it was now apparent that there was no copy of any email in the bundle) he gave evidence that:

*"I said I would when I had the time to reflect – **instead I decided to speak to each of them individually** - sergeants on the roster at the time about the expectations, **about standards**, did not give information about what had been disclosed, it was about how they spoke to one another what to expect on handovers etc." Tribunal stress*

247. Clearly the most important Sergeants to speak with would have been Sgt's Wilson and White.

248. In the meeting the claimant said she felt supported by management (as Inspector Turner recorded in an email to her [page 614] and which she did not disagree with when it was put to her in cross-examination). However, the Tribunal find, that Inspector Turner did not do what he had promised he would do to support the claimant.

249. The judge asked Inspector Turner, when giving his evidence on **25 July 2025,** which sergeants he had spoken with, given he had referred to speaking with 'those on the roster'. He gave evidence that that there had been a lot of changes to the roster but named specifically Sgt's **Fowler Wilson, White and possibly Cooper and Byrne**. When asked by the judge the dates when he had had undertaken these conversations, his evidence was that they had taken place on different dates as the sergeants worked at different times.

250. When the judge asked about the absence of this evidence in his witness statement, Inspector Turner repeated under oath again that he had sat down with the sergeants although he accepted that this evidence was not contained in his witness statement.

251. There was no documentary evidence to support his evidence that such meetings had taken place.

252. On 28 July 2025, when giving evidence, Inspector Turner's evidence changed. He confirmed that he had **not** in fact spoken to Sgts Wilson or White. He later added to his evidence when he alleged that he had not spoken to Sgts Wilson and White because the claimant asked him not to. He now gave evidence that he had spoken to the other Sergeants about:

"…standards and general practice but not about the claimant."

253. There are no documents or corroborating evidence to confirm such conversations took place. Given the inconsistent evidence he gave, the Tribunal did not find Inspector Turner's evidence credible. The Tribunal find that he did not speak to any of the Sgts.

254. The Tribunal find that Inspector Turner did not take any action to safeguard the claimant against the behaviour of colleagues. The Tribunal find on balance that this was because he attached little importance to it, regardless of the impact on the claimant and her confidence

and overall mental health.

255. The Tribunal do not find that meaningful action was taken in response to the claimant's concerns.

256. In cross examination, Inspector Turner gave evidence that there was "*no evidence of actual bullying*" and no way to substantive it. The judge was asked about the allegations of bullying made by the claimant and whether he would ever take action even if the complainant did not want him to. He answered that he would if the allegations were about gross misconduct or serious misconduct. Despite a disabled employee complaining of bullying by peers, he explained that he did not consider the concerns the claimant raised of bullying amounted to gross misconduct or serious misconduct.

257. It seems that Inspector Turner did not consider the claimant's complaints, (as a disabled employee on a return-to-work plan complaining of alleged bullying in the workplace), were sufficiently serious to consider whether, regardless of her understandable fear of further conflict, he should take it upon himself to take any action to safeguard her. The Tribunal found this response very concerning.

24- 26 April 2023.

258. The claimant worked a night shift between 24 and 25 April 2023. The claimant was running the shift rather than shadowing. This was only the second shift the claimant had worked with Sgt White.

259. The amount of shadowing the claimant had with Sgt White overall was minimal because of the claimant's sickness absence, Sgt White's sickness absence and annual leave.

260. Sgt White clarified in answer to questions from the panel that including 23 April, there were only 3 ½ days of shadowing.

261. The claimant complains that on this shift, Sgt White did not answer her questions and because of this she sought guidance from the duty officer, PI Ribchester and the PCs.

262. The claimant texted her wife during the shift at 02:37 [p.616]: "*Helen just being a bit dicky and letting me do everything with no help and then criticising me"*

263. Sgt White's evidence is that the claimant asked questions of the Duty Officer that evening despite her telling the claimant that she was on hand to answer questions.

264. In oral evidence the claimant gave evidence that Sgt White had challenged her "*on speaking with duty officers whilst she was in the same room to answer questions*" [648] but that the claimant felt Sgt White was unwilling to answer questions.

265. The claimant does not allege that she had complained that evening to the Duty Officer about the unwillingness of Sgt White to answer her questions and there is no reference by the Duty Officer in an email he would send to Inspector Turner over concerns that the claimant was referring questions to him rather than Sgt White.

266. On the balance of probabilities, the Tribunal find that it is more likely than not that Sgt White was not outright refusing to help the claimant. It would not have reflected well on Sgt White if the claimant was having to seek support from the Duty Officer. The Tribunal note that the claimant sent a message to Lucy Milton where she mentions this. The message is not dated but was sent prior to the 5 May 2023 and the joint index to the bundle dates it 27 April 2023. The Tribunal find that on balance it was sent a couple of days after this incident. In she states.

"*…I was asking her for help (but she was very non-committal as though she wanted me to fail) ..." (p.636)*

267. In cross examination the claimant gave evidence that:

"I was trying to ask Sgt White's advice, I had not done much shadowing due to annual leave, and Sgt While at court, I had not had training on all the systems, this night was the first night I was taking charge. It relates to difficult incident in Lincoln about youths, should I interview them or bed them down for the night and interview them the next morning, needed to give them 8 hours sleep and then interview next morning – I asked Sgt Whites' advice, she said you decide …"

268. Sgt White knew about her mental health struggles, she was aware she was nervous and aware she had not had much opportunity to shadow her since she had returned. The Tribunal appreciate why when asked for advice, and not given much guidance or direct answers, the claimant felt unsupported.

269. Sgt White in cross examination accepted that if the claimant asked for help that shift, she may have directed her to the workflow diagrams they have on the sergeants' wall.

270. The Tribunal consider it more likely than not that the claimant did not feel that Sgt White was approachable or committed to supporting her and therefore, not least given the most recent incident, she did not feel comfortable continuing to ask her questions if she was being directed elsewhere to find the answers or being told as she alleged, to decide for herself. The claimant the Tribunal find, was clearly wanting help and guidance because she asked the Duty Officer and PCs.

271. This was the only second shift they had worked together. Had Inspector Turner made the time to sit down with them both together to discuss what was needed, explained the need for patience and confidence building, this may well have changed Sgt White's approach.

272. The Tribunal find, as supported by the documents, that PI Ribchester, the Duty Officer who was overseeing the shift instructed Sgt White to take over an incident from the claimant because he was concerned that a child safeguarding incident was not being progressed rapidly enough. The unchallenged evidence of Sgt White was that the claimant did not believe that Sgt White had been given this order.

273. The claimant did not complete the shift but left early which the Tribunal accept was for childcare reasons and she had been given permission to do so.

274. On **25 April 2023** [p 1178] at 03:16 PI Ribchester emailed Inspector Turner. His email supports Sgt White's account of the instruction she had received and the reasons for it. He also comments on the support that, with even his limited understanding, he considered would assist the claimant, indicating that he had observed this was not being provided. He clearly appreciated the importance of support to build her confidence:

"*I understand that [the claimant] is getting back to work and familiar with sergeant responsibilities but potentially a **structured plan and monitoring** may be required to assist with her return **and to build her confidence?"** Tribunal stress*

275. The response from Inspector Turner [page 26 April] is brief [p.627], despite the limited time the claimant had spent shadowing and the absence of reviews and recorded reviews, he states:

"*Thanks for this, there is a plan in place to get her returned, which feeds into the confidence element. Ultimately, she has a set return **whereby she will either meet the return or not".** Tribunal stress*

276. Once again Inspector Turner makes it clear that in his mind, the TDR plan and date to

return to full operational duties is fixed, regardless of whether the claimant may require more time or regardless it seems whether she is prevented for reasons outside of her control, from building up the confidence she needs in the workplace within the originally agreed time scale.

277. On **25 April 2023** Sgt White sent Inspector Turner an email 04:45 [page 631]:

"PI RIBCHESTER may contact you as he has concerns over the [claimant]

I have, as told to, given her oversight of CW and sector. I'm guiding her, but she doesn't take things on board and over focuses on the wrong things or passes on incorrect things when we have already discussed it. It's almost as though she doesn't listen

She is going to PCs and asking what to do and going to the DO even though I'm sat with her and advising. *When I've taken over, she appeared offended, but ultimately I have to make sure things are getting done*

I worry she doesn't understand the PC role, *therefore trying to bring up to speed on the Sgt stuff is twice as hard****. I'm wondering if she may be need some time just focusing on responding to jobs and getting to understand what everything means from PC point of view before she steps back into the Sgt world***

I've tried to explain how to priorities [sic] tasks and she is struggling with only one job – I've tried to get it across on our LT we can have double figures of jobs to oversee this about correctly identifying key areas and taking accordingly.

We are only on the second shift and she has gone home." Tribunal stress

278. The second shift and incident involving Sgt White was a night shift commencing 25 April/26th April at 10pm (this was only the claimant's 3rd night shift).

279. As set out in the list of issues, the claimant complains that Sgt White slammed the door shut and said things including that the previous evening was 'terrible', that the claimant should be demoted to PC, that she made Sgt White (who was hoping for a transfer) 'look bad' and that she was putting her move in danger and damaging her reputation

280. The 'slamming' allegation is not repeated in her evidence in chief and the claimant gave evidence under in cross examination that she now recalled that a PC came into the room to get a taser and she believes that he would not have come in if the door was closed. She could not be sure therefore whether or not the door was slammed however the claimant was adamant that she has a vivid memory of Sgt White shouting at her, telling her that she was too slow and not good enough the night before, that the claimant was ruining her reputation and impacted on her ability to get a transfer out of Nottingham and she should be demoted to PC .

281. The claimant reported to her wife on 25 April at **22:23** that she had walked into what she described as "hell !!!!!" (page 617 – 620) and:

"'She came in all hard ass on me saying she's going to have to take over because I'm not doing the job quick enough…I told her I felt she was controlling then she gave me hell for making it personal".

282. The claimant complains that this interaction with Sgt White impacted on her mood and it was more upsetting because prior to her maternity leave they had got on well (w/s para 91).

283. Sgt White agreed in oral evidence (correcting a line in her witness statement when taking her oath) that at the start of the shift the claimant had made a comment about her being 'controlling' and Sgt White had said that she had taken over the incident because the Duty

Officer ordered her to, and that the claimant did not need to make it personal although she believed this comment was on 24/25 April shift and the 25/26 April shift was uneventful

284. Sgt White in her evidence in chief states that it is possible (w/s para 77) that she had said that from an operational and personal reputation perspective it was important for her to have taken over this incident. In cross examination she stated that.

"I did say, as in my witness statement, I am well respected and well known and reputationally would see my call sign on duty and would wonder why I was not taking over."

285. The judge asked Sgt White why she referred to her reputation in this context when presumably the order being a lawful order from a superior would have been sufficient explanation for her behaviour. Sgt White answered that it was her own code of ethics about how she deals with incidents and it is important to her. Counsel for the respondent submits that Sgt White did not *need* to make the "reputational" point in order to explain her behaviour but it is not the same as telling the claimant that the claimant was "damaging her reputation" or "making her look bad".

286. Sgt's White's evidence was that she did not at any point use the word "terrible", tell the claimant that the claimant was putting her move in danger or suggest that the claimant be demoted. She did suggest that the claimant spend time with the PCs to re-familiarise herself with the role, which counsel in submissions avers is an entirely different proposition.

287. Sgt White it is not in dispute had requested a transfer for family reasons.

288. When determining whether to accept Sgt White's evidence about what occurred during the conversation on 25 April 2023, the Tribunal is invited by respondent counsel to take notice of the fact that the claimant regularly texted her wife when things occurred at work which upset her; and that at 10:20pm on 25 April she did exactly this. Although she noted in her text that she had called Sgt White controlling and that she had told her not to make it personal, she did not text her wife about any of the more egregious behaviour she now alleges: that Sgt White slammed the door, said that the previous day had been "terrible", told the claimant she should be demoted or that the claimant was making her "look bad". The Tribunal is also invited to note that the claimant did not record anything in her notebook, although she had used her notebook on 3 April after her conversation with Sgt Wilson.

289. The Tribunal is invited to infer that the things the claimant alleges occurred with Sgt White did not occur on the balance of probabilities, and that it is more likely than not that the claimant has conflated her memory of how upset she felt with various other conversations, and imagined that she was being attacked when she was not.

290. The claimant had in her email to Lucy Milton on 27 April, set out an account of what the claimant says had happened (p 635/636):

*"**Apparently Helen is worried I will damage her reputation**… she literally came bounding into my first day on last set saying she's doing nothing it's all down to me I was leading this shift. …she started doing the evening resourcing round and she literally came in told me to stop and that things would be different tonight. She was taking lead and would give me bits to do **as I was to slow the night before** and **spoke to the officers too much that I contacted the DO too much** and that she was getting things done on time. I said I'd like to see a list of those things as I'm fairly sure most things were done as they could and that I was asking her for help… I told her that she was a bit controlling to which she reacted badly to and said I was being personal !!! **She also said I should go back to being a PC** to learn how to do everything again !..." Tribunal stress*

291. The above largely chimes with what Sgt White wrote to Inspector Turner on 25 April 2023, in particular, the criticism about her going to the Duty Officer and PCs, the suggestion that she focusses on the duties of a PC and it is generally a critical email in tone. Sgt White was

aware the Duty Office was to contact Inspector Turner but nonetheless she also does, setting out how she has supported the claimant "*but it's as if she doesn't listen*". It has an air of exasperation and irritation and there is nothing positive in it about the claimant.

292. The Tribunal find on balance that it is more likely than not, that Sgt White was determined that the next shift it would be different, that it would run smoothly. She did not want the claimant seeking advice from the Duty Officer and she made this clear in no uncertain terms to the claimant in what the Tribunal find was more likely than not very direct and confrontational.

293. The Tribunal find on balance that Sgt White did make a comment that the previous evening was terrible or words to that effect, that the claimant should go back to PC duties and learn how to do everything again, and would have been reasonable for the claimant to have been offended by this remark which reasonably implied that she was not capable of holding the Sgt rank and while Sgt White may have not used the word demoted, the Tribunal consider that the claimant reasonably understood that this is effectively what she was saying. The Tribunal also find that on balance Sgt White did remark that the claimant had been that she had been too slow and had spoken too much with the DO and PCs.

294. The Tribunal also note that Sgt White accepts she may have made reference to her reputation in a context when it was unnecessary to do so and in her email to Lucy Milton the claimant mentions that Sgt White said that that she was getting "flack" because of things the claimant had not done. The Tribunal found the claimant's evidence around what was said to her to be persuasive. The Tribunal find that Sgt White was worried about how the claimant's performance may reflect on her and is more likely than note to have made a comment on this occasion about the impact on her reputation and chances of a transfer.

295. The Tribunal are not persuaded that Sgt White did shout, the claimant does not say to Lucy Milton or her wife that she was shouting, but it is likely that she was direct and her voice raised. By her own admission her is normally very direct and in these circumstances where, as is clear from her email, she had serious concerns about the running of the shift and was not happy that the claimant had bypassed her to speak with the Duty Officer, the Tribunal find that it is more likely than not that her manner was even more abrupt and was confrontational.

296. The claimant had previously had a good relationship with Sgt White, this is not someone she had any reason to complain about. The claimant had asked to shadow Sgt White.

297. On 25 April at 22:49, the claimant emailed Inspector Turner asking him to change the roster "*before I get even more conflict, unsupported, and attacked than I already feel*" ([614]).

Feedback

298. Inspector Turner sent to CI Maninder Gill a copy of Sgt White's email of the 25 April on 26 April 2023 [p 630] with the words; "*an overview of the feedback so far*." The comments of Sgt White were the only 'feedback' provided in this email.

299. By this date Inspector Turner had already been notified by the claimant on 22 April about the complaints of bullying behaviour and lack of support but none of this is mentioned to CI Gill in this email.

300. Inspector Turner accepted in cross-examination that by referring to this as an overview of feedback so far, that may have given the impression that he was sharing an overview of the claimant's performance throughout her return-to-work plan generally.

301. Inspector Turner had passed on this one piece of negative feedback from a putative bully

without even speaking to the claimant for her comments. It presented the claimant and her progress in a very negative light.

302. The Tribunal find on balance, that in the absence of any explanation for his behaviour, he forwarded this email because he considered that it would help to persuade CI Gill that the claimant was not making adequate progress and they should move to step 2.

27 April 2023: OH

303. An OH report was obtained dated 27 April 2023 [p.633]. It included the following advice:

*"[The claimant] has been on temporary duties restrictions following a return to work. She is due to return to full operational duties from 23 June 2023. As I understand, [the claimant] has expressed concerns about returning to operational duties due to the following reasons double: previous psychiatric treatment effects and c**urrent medications side effects causing drowsiness, lack of good quality sleep causing tiredness,** ongoing symptoms of low mood, racing thoughts, still suffering with symptoms of postnatal depression and low cognition. [The claimant] explained to me that her mood is quite low, and she gets emotional very easily. She finds it difficult to concentrate fully and **she takes longer time to process and retain information.** The medications are taken three times a day and has been for over a year. A drowsiness side effects have not subsided.*

*… She believes her workplace issues are linked with a performance**, bullying and harassment….***

Is it in the opinion of OH [the claimant] be in a position to complete full operational duties by 25 June 2023?

…She remains vulnerable, and she is likely to struggle with operational duties.

What measures do OH recommend supporting a full operational return [for the claimant]?

*It is not possible to advise workplace measures for supporting her return to operational duties at this stage. **I would value further advice and guidance from [the claimants] psychiatrist…***

Fitness for work status:

*I consider [the claimant] **temporarily unfit for operational duties** until her mental health and medication effects are settled. **It is not possible to comment on the timeframe for recovering. I will review her once I have received the specialist report and an update shall be forwarded to management thereafter.**" Tribunal stress*

304. On the **27 April 2023 17:02** the claimant was again raising concerns about being operational by June 2023 [page 640]:

"I don't feel that the current plan is sufficient for me to be able to get to grips with the workload as needed by 25th June. I started my shifts with information from the other Sergeants that they had been told to give me very little work so my original shadowing feels like it was not very productive and wasn't sufficient for me to learn. I have gone from having little to zero responsibly [sic] to being told on my last set of shifts that I was leading the shift, with very little support from my colleague. I don't feel I have any want to go to for help and support and I am expected to know everything despite being offered such a long period of time. I am also off for 3 weeks in June from 11 June which impacts on that timeframe.

I've felt bullied on several shifts and don't feel supported and able to ask for help from my colleagues. I've been told repeatedly that my absence over the last couple of years is putting strain the [sic] rest of the team which makes me feel isolated.

I'm still trying to maintain my mental health and have very little self-confidence, the lack of empathy, support and understanding from my colleagues, specifically my interactions with Helen and Jacki is having a detrimental impact on my recovery and is making me feel that I am not good enough or able

to do my job.

I am still a large amounts medications which impacts on my processing time and decision-making, being told I am being too slow by my shadowing sergeant doesn't feel appropriate or helpful.

My sleep is very poor at the moment which also impacts on my ability to function, I do not feel able to work six shifts in a row due to my disability ***and I have requested you send me the flexible working request*** *so that I am able to discuss officially reducing my hours…*

.At the moment I'm feeling very vulnerable and unsupported and I worried about a risk of relapse if I continue in this environment. I would request given the challenges that I am experiencing in processing my thoughts that I can have a family friend jointly from the meeting to ensure I am able to understand and retain all information discussed " Tribunal stress

305. Inspector Turner replies on 28 April [640]. He makes no express reference to the bullying complaints but refers to discussing her letter when they meet on 2 May 2023. He forwards her email to CI Gill [639], but Inspector Turner does not refer to the bullying in his email to c Gill or his previous discussions with the claimant about alleged bullying. He does not tell CI Gill that he had already spoken to the sergeants about expected behaviours or explain that he had agreed to speak to them.

306. CI Gill asks Inspector Turner in his email on 30 April, to ask the claimant why the current plan is not sufficient, he observes that it looks as if there has been a "significant" period of shadowing and asks him to ask the claimant to list all the incidents of bullying. He is not corrected on the amount of time the claimant had in fact spent shadowing.

307. CI Gill agreed to push the TDR plan back for 3 weeks. He would later say on 8 August 2023 [page 1027] that: "*In my opinion the plan should not have had an objective such as reaching operational duties by a certain date due to the reasons outline above."* (i.e. the content of the April OH report)." However, the claimant continued to be subject to the same TDR with a limited extension.

308. It is CI Gill who refers to her allegations as: "*a serious allegation of bullying."* In reply to Inspector Turner tells CI Gill that the points in the claimant's email have mostly already been covered in his previous conversation with her. He does not set out what is new about the allegations of bullying and again makes no reference to taking any action to speak with her colleagues or having failed to do so.

309. The Tribunal find that despite being asked by the claimant in her email for the flexible working request form Inspector Turner did not provide it to her.

310. In his evidence in chief (paras118 to 120), inspector Turner refers to the claimant emailing him on 3 May flagging that she often struggled to sleep and was concerned about working early shifts, he refers to the shift pattern at that stage of a phased return being two early shifts of 7 am to 4 pm, two late shifts of 1pm or 2 pm until 11 pm and two nights from 9 pm until 7 am and refers to responding on 4 May to reiterate what is said during the meeting on 2 May namely that the expectation was that she works the **full set** and;

"I wanted to be firm with the claimant *and to be clear about what was expected of her and encourage her to develop her operational confidence…" Tribunal stress*

2 May 2023

311. A meeting then took place with the claimant to discuss her concerns. There is a record of the meeting taking place [page 647] on 2 May 2023 between Inspector Turner and the claimant. The meeting is recorded on a formal pro forma form headed Written Record of Meeting Form. The claimant approved the written record by email [p.687] and the

accompanying risk assessment and asked to add items to the risk assessment.

312. The record of the meeting confirms that the date for the claimant to return to full duties is 25 June 2023. It refers to the claimant outlining some concerns regarding her return with details disclosed in an email to Inspector Turner on 27 April 2023.

313. There was discussion about a stress risk assessment which will be completed after the meeting.

314. There is also discussion about the matters the claimant raised about bullying. It records the claimant explaining that she had been having issues with the Sgt she has been shadowing as part of her return plan i.e. Sgt White. The claimant explains that Sgt White has not been supportive and to style of support has knocked the claimant's confidence.

315. The impact of the behaviour of her colleagues on her confidence and progress with the TDR is set out plainly by the claimant at this meeting.

> **"…** ***It was because of the behaviour of Helen and Jackie that she feels close to a relapse".*** *Tribunal stress*

316. Inspector Turner is recorded as informing the claimant that he is happy to discuss this with Sgt White and Wilson to set standards and listen to their version however the claimant did not want this due to her concerns that this may cause more conflict. Again, the Tribunal make the point, that this situation could have been prevented had Inspector Turner taken action earlier to explain the need for patience, set the standards of behaviour and made time to sit down with Sgt White and the claimant together and discuss exactly what type of support the claimant needed.

317. Sgt White refers in her evidence in chief briefly to Inspector Turner providing her with an "oversight" of what was expected however she does not describe this as a detailed conversation about what was required e.g. the training she would need etc. or that he stressed the need to be patient with her and supportive.

318. The records notes that Inspector Turner advised the claimant that:

> *"ET explained that he is happy to discuss this with Jacqui and Helen to set standards and listen to their version. However [the claimant] did not want this due to more conflict. ET advised [the claimant] that this approach from Helen and Jackie may continue if she did not allow ET [Inspector Turner] to mediate between the parties, ET advised [the claimant] to go away from the meeting and think about* ***this option****." Tribunal stress*

319. The claimant later that same day sent a message to her wife explain what had been said [655].

> *"Says he will challenge them if I let him. I've said no at this time."*

320. In her evidence in chief (w/s para 93) the claimant complains that Inspector Turner said he would challenge them **and** that she would have to be present in a mediation process.

> "*so that we could openly discuss concerns. I did not feel strong enough to be able to do this and I felt his approach of challenging them felt too confrontational when I was already suffering with my mental health. When I advised I did not want to do this, PI Turner told me there was nothing else he could do."*

321. The written record does not refer to any other options being put to the claimant to address these concerns with Sgt White and Wilson, other than mediation.

322. The claimant alleges that Inspector Turner told her that he would only speak to Sgt Wilson and White if she were present and for that reason, she asked him not to. Inspector Turner's evidence is that he did not and would not say this, but that he offered to speak to them without her present, and that she did not want him to do this because she felt it would cause conflict.

323. The Tribunal is invited by the respondent to draw an inference that if Inspector Turner had done as alleged and told the claimant that he would only challenge the Sgt's with the claimant present, the claimant would have mentioned this in her message to her wife and she would also have asked for an amendment to the written record of the meeting so that it would reflect that offer. Instead, she approved the written record of meeting as it is, and the text message supports both Inspector Turner's memory.

324. The claimant submits that the respondents' suggestion that the claimant did not want the Sgt's to be approached about the bullying is not supported by the evidence because in her email of 3 April 2023, the claimant simply asked Inspector Turner not to speak to Sgt Wilson before she had had the opportunity to meet with him, which was not an instruction that the matter should never be raised with the Sgts and on 17 April 2023, it was agreed that the issue would be highlighted to both of them. The only option subsequently presented to the claimant was mediation but at no point did she state that she did not want the matter discussed with them, she believed that such conversations had already taken place in accordance with the 17 April agreement.

325. The Tribunal find on balance, that what had been proposed by Inspector Turner is that he could challenge the sergeants at a mediation at which the claimant understood she needed to be present at. Given her concerns about confrontation, if Inspector Turner had taken steps to explain that she did not have to face the sergeants at the mediation, the Tribunal would expect this to have been noted given her concerns. The Tribunal do not find on balance, that this had been explained by Inspector Turner. It is not reflected in his own record of what was discussed i.e. he does not set out that he would ensure that during the mediation she would not have to be in the same room as the Sgts. If this was explained it was not mentioned by the claimant in her message to her wife.

326. The Tribunal find that the claimant wanted to change who she was shadowing but wanted no further action because she did not feel she could cope with further conflict and she had not been reassured that the mediation did not have to involve her facing her colleagues. Despite the seriousness of the allegations, Inspector Turner did not consider that it was serious enough to warrant him taking any further action and indeed the Tribunal find that he then did nothing.

Inspector Turner's perception

327. Inspector Turner in his evidence in chief (para 117) states that the claimant at this meeting had indicated that she felt underprepared for her return to work and that the phased return should have started from the 3-month mark when she began shadowing. He comments that his view (in the absence of any referral to OH) that extending the phased return plan would have been the wrong incorrect thing to do because:

> *"…it would not address the fundamental ability of the claimant to return to full duties at all, because* ***the phased return plan could not be extended indefinitely*** *(as this would effectively continue to provide an operational gap in our supervisory cover, which other sergeants were being expected to cover on top of their own duties).It is my opinion that, by this time the claimant was aware that she was not going to be at capable to returning to full duties, either within the timeline of the phased return, or potentially at all and this was reflected within OH reports [634] but* ***she wanted to extend the period for which she would receive full pay so far as was possible in order to preserve financial security and that is why she asked for an extension to the plan."*** *Tribunal stress*

328. The Tribunal do not accept that this evidence is Inspector Turner's thoughts now rather

than what he was thinking at the time. He states; "*My impression **at the time** was that the Claimant had expedited her return to work…"* (para 30). Further this thinking is consistent with the same opinion he formed about her motivations back in June 2022. Indeed, despite the respondent's submissions that this was not what he was thinking in May 2023, Inspector Turner in cross examination stated that he based this view set out in para 117 of his witness statement on;

"…conversations had previously with you [B] and the claimant about the implications of sick pay and the need to be on full pay … impression I got through conversations."

329. Inspector Tuner went on to confirm that at that point in May 2023, he considered it *"unlikely at that point she would get back to full duties."*

330. The Tribunal consider that this thinking, that she would not be able to return whatever the length of the phased return (despite the advice from OH to the contrary) explains the lack of engagement Inspector Turner would show over the return to work plan, not addressing the issues she raised which she felt were preventing her from building back up her confidence, (such as assurance that she have a more flexible working pattern than the full time 4 on 6 off shift arrangement), speaking with the Sgts about showing her patience, having regular documented reviews, taking action to address the allegations when the claimant first raised them of bullying and the willingness to consider need for more time and extend the phased return.

331. This perception of the claimant's true intent by May 2023 was never put to her by Inspector Turner, without any real evidence, he appears to have formed a view that the claimant would not be able to return to work at any point and that she was operating with an ulterior financial agenda. The OH report of 27 April did not support this view, it could not advise on a possible time frame without input from her psychiatrist and before that was obtained Inspector Turner was prepared to effectively write off the chances of the claimant's return and the Tribunal consider this explains his comment about not being able to extend the TDR indefinitely. No one had mentioned an indefinite extension. OH, had recommended a 6 to 12 month phased return which he does not refer to and does not comment on whether a 12-month TDR could be accommodated.

332. The claimant submits that the comment about what he was thinking about the claimant's real motive reveals a "*premature, assumption-led approach to capability, inconsistent with the need to assess current performance or recovery in real time".* The Tribunal accept that Inspector Turner was influenced by his own assumptions which more likely than not explain his 'firm' approach to the claimant and his resistance to considering a change to the TDR plan.

Training

333. The claimant complains that she was worried about not having the training she needed to be operational and that the return-to-work plan did not set out the training she needed and hence she had to keep asking for it and the absence of a sufficient training programme did not allow for a successful return to work. She mentions specifically NICHE, command and control, EOR and station operations.

NICHE

334. NICHE is a records management system used to log crime reports and organise the workload in relation to each incident and subsequent investigation. NICHE is used to record all information, decision making, and processes in relation to the incident after a crime has been recorded or following a contact with a vulnerable person. It is therefore a crucially important system but the respondent's evidence is that it did not consider training on NICHE

"*absolutely necessary*" to lead the shifts.

335. Inspector Turner in his supplemental statement referred to periodic changes and interface changes in NICHE which are generally small although he could not recall exactly what updates may have taken place. In his evidence in chief, he gave evidence that there had been changes every 9 months but in cross examination stated that this was only an estimate and it was "*impossible for me to say".* He did not give evidence that he had undertaken any enquiries to understand what changes had taken place and to assess what the claimant may need on her return to ensure she felt confident on her return.

336. It was also the Tribunal find clear that Inspector Turner did not consider how the treatment the claimant had received during her illness may have impacted on her memory. He did not assert that he gave this any consideration. In cross examination he stated that he would not know what exposure the claimant had to NICHE before her sick leave and clearly it seems he took no steps to find out. In cross examination he stated that in his role as Inspector he would use NICHE less than sergeants and Sgt Wilson would have a better understanding than he did however he does not allege he spoke to her about it to understand the changes and what training the claimant may need to get up to speed and when would be a good time to provide it in terms of building confidence (rather than when absolutely necessary to have it).

337. Sgt Wilson had given evidence that the claimant would need to understand the property management part of NICHE and referred to this as a 'significant change' in the system. Sgt White in a supplemental statement confirmed this change (para 6- 8) and her evidence is that property is a "*slightly harder element of NICHE*" but knowing how to use it is not she believes 'essential' to be an operational sergeant.

338. The Tribunal find that there was no plan at the outset, agreed with the claimant about what training and retraining she may need and when this should happen and how it would be provided. As Sgt Wilson stated in her evidence, it is an evolving organisation, after she had 3 months absence on sick leave her evidence is that she needed to get back up to speed and there were things such as wearing body cameras which she had difficulty with. After such a long period of time it would be the Tribunal consider, known to the respondent that the claimant would require retraining and training on new processes and to give her confidence this would need to be given at stages in the TDR and in good time for her to process it, feel confident with it before moving on to the relevant next stage of the TDR.

339. The Tribunal find that the approach was far more ad hoc, hence the claimant's requests and the time she spent isolated trying to use eLearning platforms.

340. The record off the 2 May 2023 meeting also refers to the claimant raising, in the context of what further support she needed, that she had not received any NICHE input training or ERO training prior to coming back to full operational duties.

341. In April Inspector Turner arranged NICHE input with a 'super user' Sam Clegg on 3 May 2023 (supplemental w/s Inspector Turner para 7) [page 609]. He accepts that the claimant had asked for this training back in January [page 521-523] but it had not been provided because he had not wanted to overload her and accepts would have been "an important part of the Claimant's role as a fully operational officer." (supp w/s para 11). Professor Turner asserts that he timed the training to fit in with the shadowing (supp w/s para 9) however her shadowing had begun in April.

342. Sgt White gave evidence that the best way to familiarise oneself with it was through shadowing and using the system. The respondent submits that the claimant was not disadvantaged by the lack of training, she had an 'extended' period of shadowing during which she could watch others at work and ask if she was unsure how to use the system.

However, the claimant had limited opportunity for shadowing, Sgt Wilson accepted there had been limited time for shadowing for various reason e.g. sick leave and holidays and it was clear that she was nervous and struggling with her confidence. While further training was arranged after this in May, the claimant had not been asked what she needed and when to ensure she felt confident to proceed to each new stage.

343. The notes of the **2 May 2023** meeting record the claiming being asked what further support she needs and she mentions training. In terms of NICHE training Inspector Turner arranged it for 3 May 2023. This is after the claimant had started leading the shifts in April.

ERO

344. Inspector Turner advised the claimant at the 2 May meeting that she would not be expected to do ERO cases whilst on duty and would need to be wholly retrained.

345. An ERO is an officer of Sergeant rank or above who is trained to review a case file submission for evidential and public interest, normally when a person is in custody. The ERO decides whether there are any offences that could be chargeable. On the evidence the Tribunal find that it is not essential for a Sergeant to have completed ERO training to undertake their operational duties, and not all acting Sergeants do have it. It is submitted by the respondent that the claimant completed ERO training as a substantive Sergeant prior to her maternity leave. There is no refresher training, and best practice for someone who had not used it for some time would be a complete re-training.

346. It is submitted by the respondent that when the claimant raised the matter with Inspector Turner on 2 May, he told her that she would not be expected to ERO on shift and could be re-trained fully when operational [648] and that accordingly the claimant did not suffer disadvantage in the lack of provision of this training and that as the claimant was undergoing a gradual return to work, it was appropriate not to re-train her on matters that were not strictly necessary for her return to full duties, particularly where (as recorded during the night shift of 25 April) she was already struggling with more fundamental tasks.

347. However, the claimant in cross examination explained that this alleged view that she should not be 'overwhelmed' was (if genuine) an assumption made by Inspector Turner and not what she actually needed to make her feel confident at work. She described how she was worried about not having sufficient training and she needed more time to prepare to be operational because she did not feel ready, because she had not had the training she felt she needed. She described how with respect to ERO the Nottingham station is a CAT A station and often a sergeant will be on duty alone and despite it being put to her in cross examination that it was a "*good to have but can do the job without it",* the claimant did not agree, she felt that there were not many substitute sergeants at Nottingham and it was needed to take the burden off other sergeants . The claimant's undisputed evidence is that there are offences where CPS approval is not required to charge someone, there is a set system which is used to make the decision and this can happen multiple times on a shift and there is a 1-day refresher course which she wanted to do.

348. Inspector Turner decided she did not need to do this training yet however he failed to appreciate that the claimant wanted the training to be confident that she was ready for frontline work at the end of the TDR. The claimant's evidence in response to questions from the Tribunal was that after 5 months she would be frontline and needed to train while she was leading in the station to be ready. While Inspector Turner [page 648] is recorded as saying that she would not be expected to do ERO cases whilst on duty, the claimant could not recall that being said but nonetheless her view was that she would have explained why she needed it.

349. Inspector Turner in his supplemental statement gave evidence that he cannot comment

on ERO processes because he was not trained and he considered that she may use her second month to get up to speed but does not assert that this was agreed as part of any training plan and appears to accept the importance of it:

*"It was my intention at the appropriate time; the claimant would be ERO trained firstly because **it would enhance her skillset within NICHE** and secondly because it was the Force's intention to bolster the number of ERO trained sergeants across the East Midlands. However, for the reason set out in paragraph a 9 above **I felt** that the Claimant's ERO training needed to be only [sic] take place once she was ready to return to her full operational duties." Tribunal stress*

350. The date in June to be operational was however fast approaching.

351. The Tribunal find that the notes of the 2 May meeting record little discussion about training. The claimant clearly felt that she would need ERO training before taking on front line duties regardless of what Inspector Turner "felt". Counsel put the respondent's case in submissions on the basis that this was only "good to have". It is clear that the claimant felt it was good to have in terms of what she would need to do on the job but also what she to give her confidence that she understood the job and was ready for front line duties. Sgt White in her supplemental statement refers to ERO training (para 13).

"***Whilst beneficial*** *for a Sergeant to have ERO, the ERO can be passed to other Sergeants on sector to complete if there is no ERO at Nottingham." Tribunal stress*

Command and Control

352. Command and control is also known as Control Works.

353. Control Works is a live incident management system used by contact handlers, who are staff members taking calls. They use Control Works to record information coming in from a caller, such as personal details, location, vehicle details, officer movements, updates from scene. Control Works and NICHE have an interface and can work together for the purpose of crime recording

354. The respondent submits that there is no formal training for the Control Works software; it is something officers learn by using, it had not changed during her absence and there was therefore no failure to provide her with training on Control Works. It is submitted that the claimant was not disadvantaged by the lack of training and the only training available was using the system to re-familiarise herself and the claimant had an extended period of shadowing in her phased return, during which she could watch others at work and ask if she was unsure how to use the system.

355. The claimant accepted in cross examination that she had learnt the system before she went on maternity leave and that she asked for this training but could not recall when she asked. She gave evidence that the system had changed and while one way to learn about any changes was to watch someone in shadowing, she was not really given the opportunity because when she asked Sgt Wilson and White how to locate this, they would tell her to learn how to find it herself.

356. Sgt White in her supplemental statement gave evidence that there were occasions when the claimant sat with her whilst she was using it and "*she could have used the flowchart to complete this task."* Sgt White confirmed in cross examination that Inspector Turner did not sit down with her and the claimant to explain what support or training the claimant may need or want during shadowing and observed that the claimant was nervous and isolating herself but she does not give evidence that she took any action to encourage the claimant to sit with her or raise with Inspector Tuner concern that she may need to some encouragement to sit

more with her and explore with her why she was not doing that.

357. Sgt White in her supplemental statement (para 14 – 19) refers to not being aware of anything changing other than M-Tasks holding queue when she said she had shown her and that there would have been no need for her to use it before she started shadowing and she "*could have learnt by using and watching me." S*he does not say that the claimant did sit and watch her while she was using it or that she spoke to the claimant and invited her to come and watch her while she was using it. Sgt White says she asked the claimant if she was okay with using Control Works and she said she was "okay" but she cannot recall when she asked her and this was not put to the claimant whose evidence is that she did not get the chance to watch and copy and she was told when asked about things, to learn herself.

358. Inspector Turner in his supplemental statement (para 12 -17) cannot recall the claimant asking for this training. He does not allege that he raised it. He refers to sporadic changes to the system which he 'estimated' happened about every 12 months or so. He was confident he alleges, that shadowing would provide a sufficient refresher. He does not allege that he had any discussion with the claimant about what training she was getting from shadowing, what specific support she may need, what training was outstanding, despite the issues the claimant had raised about the lack of support from her colleagues. His evidence in cross examination was that if the claimant felt she needed training, it was for her to say and only under cross examination did he accept that is also partly his responsibility under the return-to-work plan to identify what had changed and what training she may require. In cross examination when asked if he had carried out any assessment of what had changed and what training she may need, gave evidence that the systems had not changed "*as far as I was aware*" and "*there was no assessment per se, it was my knowledge and talking to the claimant."* His knowledge was however clearly limited.

Operations

359. In relation to new operations in the station, this means any ongoing station wide operations and the evidence of Inspector Tuner is that a fully operation sergeant would be expected to be aware of these operations and deploy their recourses to meet these requirements (supp w/s para 28). That there is no training but officers re updated via the internet and he would expect a sergeant to be updated but shadowing an operation sergeant.

360. At the time of the claimant's return Sgt White's evidence is that the only Operations running were Operation Alert and Operation Bronco. Operation Bronco was an evening Friday and Saturday deployment to have officers monitoring trains from Nottingham to Mansfield to reduce anti-social behaviour during the journey. This Operation had run since before the claimant went on maternity leave, so she was familiar with it. Operation Alert may have been brought in whilst the claimant was off work. This Operation was a weekday, rush hour type deployment where officers were deployed onto the platforms at the main railway stations to seek to prevent anti-social behaviour and have visible policing presence.

361. There is no training on new Operations but Sgt White's evidence is that the way to get up to speed is to sit on the daily briefings and read the briefings on the intranet. The claimant sat in on briefings and she did not say she was confused about the operations.

362. The claimant in cross examination gave evidence that while she could sit in on briefings the operations had been ongoing for months, she accepted that she could have looked at the briefings on the intranet but was not sure she could remember where to find them and that Origin was not an easy system to navigate and it had taken a long time to find information about mental health.

Shifts

363. There is also recorded from the meeting on 2 May, a discussion about the claimant elaborating on the inability to work a full set of six shifts in line with the return plan. The claimant reports taking numerous medications impacting on sleep and performance. The medication can make her slower and drowsy with side effects including slurred speech and slower cognition function. The claimant asks what will happen if she is not fully operational by 25 June and is told that Step 1 capability would be reviewed with the movement toward a Step 2 meeting. The claimant advises Inspector Turner that she wants to submit a flexible working pattern.

364. The outcome is recorded as the claimant asking to shadow another sergeant, which is agreed and the claimant identifies Sgt Fowler. Her annual leave and Sgt Fowler's clashed (as it had with Sgt White's) which reduced the amount of shadowing she could carry out.

365. It also records that Inspector Turner will organise an ERO course for the claimant in due course, with no date for that set out.

366. In terms of flexible working there is no discussion about Inspector Turner supporting this or considering the request as a request for a further reasonable adjustment for the claimant.

367. There is a WhatsApp message between the claimant and her wife following this meeting on 2 May [page 656] where she refers to been told by Inspector Turner at this meeting that reduced hours would not be applied until she was off TDR.

368. Inspector Turner confirmed in cross examination (and repeated the same evidence when the point was put again), that while willing to consider flexible working it could not be implemented while she is on TDR;

*"yes, would accept it but **not put in** until after period of temporary duties restriction". Tribunal stress*

369. Inspector Turner was asked in cross-examination why the claimant had to complete a plan which required her to work full time hours, before her hours could be reduced to which he replied:

"*return to work plan said reduced hours anyway and flexible working application not been applied for."*

370. After giving evidence that the claimant could not reduce her hours until after the TDR later in his evidence in cross examination stated that if it was agreed, it could be implemented during a TDR. The clear impression the Tribunal formed his evidence was that the understanding of Inspector Turner was that the claimant had to complete her TDR before any consideration would be given to adjusting her hours of work and the Tribunal find that therefore this is what he told the claimant.

371. A stress risk assessment is then completed dated 2 May 2023 [page 650]. It provides for weekly reviews. The assessment reports the claimant's feelings about lack of support, not being able to ask questions and feeling bullied and harassed by the two sergeants. The stress action plan records, for both those matters in terms of solutions/adjustments, support through NICHE training and a refresher course in ERO and to shadow a different sergeant.

372. The risk assessment had an action date of 2 May 2023 to shadow a different sergeant [page 650]

373. The claimant's evidence is that Inspector Turner asked her to continue to work with Sgt White for some further shifts while the changeover takes place. Given the claimant had said that she was close to **relapse**, in part because of Sgt White's behaviour, the Tribunal find

that it is quite remarkable that Inspector Turner expected the claimant to continue to work in that environment. Even if he had not said explicitly she had to do this, he did not change her shift pattern and therefore she remained rostered to work with Sgt White .The claimant emailed Inspector Turner on **2** May 2023 15:54 [page 646)] to inform him that for the next 3 sets of shifts it is unreasonable to require her to work in that environment and asks to take half a day and use annual leave for the next two shifts. There is no response from Inspector Turner to say that this was not expected of her, he agrees she can take leave.

374. In his evidence in chief Inspector Turner (para 113) states;

"*I could not accommodate her new shift pattern sooner, so she did still have shifts left with PS White before moving."*

375. Inspector Turner does not assert that he made any alternative proposal, such as paid leave or to use the time training. The claimant had to use her leave to avoid working with someone she had alleged had bullied her. In cross examination he attempted to assert that she could have shadowed someone else but could not recall mentioning that option and stated when asked by the Tribunal he confirmed that he had had not looked at the shifts of other sergeants to see if there was someone eels she could shadow.

376. Inspector Turner gave supplemental oral evidence that he had not told the claimant at this meeting that she had to work 3 further shifts with Sgt White, rather he had told her an option was to take accrued annual leave rather than continue to work with PS White.

377. The Tribunal find on balance, that Inspector Turner did make it clear that she was expected to complete the shifts with Sgt White as set out in the claimant's evidence in chief [para 93].

3 May 2023

378. On 3 May 2023 the claimant wrote to Inspector Turner and asked what shifts she would be expected to do:

"I have already highlighted that I don't feel at this time I can do a full set of 6 especially as due to my MH issues and meds I quite often struggle to sleep and to then get up at 5 for an early could mean I get very little sleep before a shift…"

379. Inspector Turner responds (page676) that as per their discussion on 2 May she is expected to do the full set of shifts as per the TDR and if she cannot, he will arrange a review of her case with HR/OH. Later that day CI Gill contacts HR and a case review meeting is arranged for 5 May (page 675).

Flexible working request

380. The claimant sent an email on 5 May 2023 to Inspector Turner and CI Gill [page 666]. The claimant again expressed concern about the time frame for completing the TDR:

"I had a long discussion with OH about my concerns of working six shifts in a row and I gave all of the reasons for my concerns, these are documented on the latest OH report. Unfortunately I am still struggling with my illness, have recently been referred to the specialist depression service in Nottingham and have my first appointment with them next Friday, 12 May…

My illness is classed as a disability due to the length of time and the adverse effects it has on my ability to function, and therefore formally requesting ***that I am able to make a flexible working request is a reasonable adjustment under the Equality Act 2010*** *.I cannot see any information on the policy about not been able to do this while on TDR. I have some leave booked in May and June which reduces my working days so my request would be to start my reduced hours, if approved, from*

July 2023. ***I am requesting to remove the 2 early shifts, partly because of my poor sleep and the effects of my functioning due to my medication in the morning*** *but also in the hope that this has less impact on the team rather than requesting relates/nights off.*

I also some questions I would like to discuss when possible-

1. *The latest OH report states that I am not fit for operational duties -what happens when 25 June arrives if I'm not deemed as fit for full duties by OH?*

2. *I am concerned about the timeframe of 25th of June due to the* ***leave I booked in June. Although you did state this was my choice during our last meeting, the leave has been booked for a long time … It feels like I've been given an impossible task of learning everything I need /completing*** *training et cetera when absent from work for nearly 3 weeks during that time period* ***- I have raised this concern a couple of times already.***

3. *As part of the BTP capability policy talks about discussing recent adjustments/looking at redeployment options, neither of these have been done so could I formally requested this be discussed." Tribunal stress*

381. The claimant's evidence, which the Tribunal accept (and was not challenged) is that by this stage she knew she could not mentally or physically work full time hours particularly with the 6/4 shift pattern in place. She was on strong hypnotic medications to assist with sleep and pain at night which impacted her the next morning. She gave undisputed evidence that she was sleeping less than two hours before having to get up for an early shift and felt that by requesting the two early shifts off, this would assist her and these were the easier shifts to cover.

5 May 2023

382. On 5 May 2023 a case conference took place with Supt Peter, CI Gill, OH and HR. Inspector Turner was not present.

383. Supt Peters sent only a fairly brief email afterward to confirm next steps [page 672 – 673]. It states that they had all agreed that a Step 2 meeting is the next step and this will afford the claimant the chance to understand the process and the line manager to review her case and refers to this as a sensitive and complex case. Despite the sensitivity and complexity of the case and presence of HR, the Tribunal have regard to the fact that there are no minutes of what was discussed.

384. Supt Peters when giving evidence in response to questions from the judge, stated that she could not recall any particular urgency about getting the specialist report OH had requested and could not explain why it was not asked for until July.

385. Supt Peters evidence was that CI Gill would have briefed her on the April OH report but that she did not see it. She was aware that Inspector Turner was dealing with bullying issues, that these it would have been discussed but she was assured he had it in hand and understood it had been resolved and that the claimant did not want to take it further. She does not assert that there was any discussion about the possible impact on the claimant's confidence of the alleged bullying and whether this warranted consideration about whether more time should be given to the TDR.

386. CI Gill in cross examination gave evidence that he had formed the view in May that 5 months was sufficient time for the claimant to have been 'operationally ready' because:

"the plan had several reviews before put in place, several OH reviews, Drs reports, we had to be mindful that the claimant ***had returned before and there had been a relapse, the plan was slow and limited training initially …not to rush her*** *…" Tribunal stress*

387. Between 14 May and 3 July 2022, the claimant was back on the full-time roster taking periods of annual leave to reduce her working days to avoid working six shifts in a row. The claimant complains that she was back on the full-time rota despite occupational health advising she was unfit for full duties.

388. The respondent submits that the claimant relies upon evidence showing that Inspector Turner privately considered that the claimant had returned to work because her sick pay entitlement was due to run out, and that he had been considering Step 2 in September 2022 but the Tribunal is invited to note that the decision in May 2023 to invite the claimant to a step 2 meeting was made at this case management conference at which Inspector Turner was not present [page 672]-[673]. It is submitted that the privately held opinion about why the claimant had returned to work had no bearing on the decision taken by those present. It is submitted that the decision was taken because there was no timeframe within which it was thought the claimant might be operational and CI Gill and Supt Peters thought it appropriate to consider her capability at a second meeting, having first considered it over a year before in March 2022.

389. The Tribunal however are also mindful that Inspector Turner while not present at this meeting, was the claimant's line manager. He had come up with the 'rough plan. He had overseen the plan which had been agreed on the basis it was fluid however he had fed back to CI Gill his firm view, which the Tribunal consider would no doubt have influenced the decision to hold this May meeting in the first place (including what he states in his email on 17 April [page 625]).

390. The respondent submits that it is plain from the evidence that had the claimant been absent for an equivalent period of time but there was a clear indication of the timeframe within which she might be operational, the capability procedure would not have been used when it was. It is submitted that this counter-factual allows the Tribunal to determine the reason the capability procedure was used i.e. the lack of timeframe for a return to operational duties, not sickness absence. However, what Inspector Turner had been feeding back was that the claimant would not be ready by the end of the TDR. In terms of a clear indication of time frame, OH had made it clear they required guidance on this from her psychiatrist and that had not been obtained thus they were not in a position to say whether a time frame could be identified and yet the respondent was prepared to proceed to Step 2. But even with the absence of a clear time frame that does not mean that the decision was not influenced by the period the claimant had already been off work sick. Counsel submits that while the claimant submits that it had been a personal event causing her relapse in July 2022 rather than incapacity to work, to the extent that it is at all relevant, it invites the Tribunal to consider that where hearing about a death caused a serious relapse, the respondent had understandable as to whether the claimant may struggle with the traumatising content of her role, which included suicides and fatalities with some regularity. However, that further relapse and the further absence caused by it is of itself part of the claimant's sickness absence history and medical history and by definition consideration of the relapse and consequential sickness absence arising from that relapse, is part of their thought process and decision making, and not only what the current time frame for a return is.

391. CI Gill had himself remarked to Inspector Gill [page 638] that "*absences put a strain on the team".* It must be the case that longer absences cause more strain.

392. Had the claimant been absent for a few weeks or few months and returned on this 5 month plan, the Tribunal is not persuaded that after a 'rough' plan which was less than the period recommended by OH advice (and no evidence of prior relapse leading to a further period of sickness absence), the decision would have been taken at this stage to move to Step 2 rather than extend the TDR as well as looking at other adjustments.

393. On 16 May 2023 CO Gill spent about 10 minutes talking to the claimant [page 692]. The claimant did not feel this had given her sufficient time to explain her issues [page 691/692]. Ci Gill told her that he considered 5 months was sufficient time to support her back to full fitness (w/s para 41). This is not the fluid approach the Tribunal find that she had been told would be taken and was a view not supported by the OH advice. CI Gill in his evidence in chief did not explain why he formed this opinion and based on what evidence/advice.

394. After this discussion [page 691] the claimant sent Inspector Turner an email in which she complained of the limited time she had to speak with CI Gill and set out the issues for her:

"The work place for me at the moment is very stressful, not only due to feeling isolated from others but also the tasks and work required I feel unprepared for…my MH issues are more apparent for me during early turns where I can be groggy from medication, often not had a good night's sleep again due to my MH ***…My confidence has taken knocks*** *and this can quickly spiral my MH if something comes up where I feel out of my depth…" Tribunal stress*

395. On the 17 May 2023 Inspector Turner sent an email to HR and CI Gill in which he expressed his view that the claimant would not be fully operational by 25 June [p.690]:

"It is highly unlikely that [the claimant] will be back fully operational by 25th June. ***I know it is our intention to extend by 3 weeks to account for AL [annual leave], which would take up to approx. 16th July 2023****. Even so, I do not feel like she would be back by that time. I would suggest we diary a conference call with Jude Allen/ OH advisor to discuss next steps. It will need to be a CO who chairs the Step 2 if the case is progressed to that stage."*

396. CI Gill replied on 17 May expressing the view that while he accepted, he was not aware of the full details, he felt 6 months was sufficient to support her back to full time duties [p.690]. In cross examination his evidence was that;

"I felt 5 month was sufficient as return to work plan for someone who has come back into work on a TDR to understand the role- … In my experience 5 months is sufficient to understand the requirements for someone who had done the role."

397. CI Gill accepted in cross examination however that he was not aware of all the circumstances of the claimant's case but went on to give evidence that in the meeting he had said if significant progress had not been made, they would "*look at step 2*".

398. In terms of the additional stress and anxiety proceeding to the next stage of the process put the claimant under, CI Gil gave evidence that he sent reassuring emails, by which he accepted in cross examination he was referring to emails sent from August 2023. However, he also he asserted that the June emails and the use of the word "*initiating"* Step 2 made it sufficiently clear that that it was not predetermined that the outcome of the Step 2 meeting would be that the claimant was at Step 2 of the process [page 840]

"The Step Two process is being initiated as you [sic] there are not timescales for a return to full operational duties at this time.

399. The Tribunal find that it is was not at all clear that the decision had not already been made to move the claimant to Step 2. CI Gill gave evidence that he "*appreciated* ", in response to a question from the Tribunal, that the claimant's concern that after Step 2 the next stage is Step 3 which may lead to her dismissal. Indeed. the invitation to the Step 1 meeting in February 2022 (p.363) had used the same wording and the claimant had been placed on Step1.

"*The Step 1 process* ***is being initiated..."*** Tribunal stress

400. CI Gill also stated in response to questions from the Tribunal, that the respondent did not

need to go to Step 2 in order to review the TDR, they could have changed it informally, without putting the claimant through the formality of a Step 2 process. He accepted that the capability policy states that all adjustments should be explored before going to Step2 and in response to a question in cross examination that it looked like the outcome was predetermined by moving to Step 2 without first exploring reasonable adjustments and alternatives, he gave evidence that:

"*..there must be a reasonable time frame between Step 1 and Step 2,* ***considering it was more than a year later [after Step 1],*** *and after the meeting we changed duties and made adjustments" Tribunal stress*

Period of sickness a consideration

401. The claimant's relapse and resulting further sickness absence meant that it had been over a year since her Step1 meeting. The time between the stages was due in part to her further period of sickness, therefore the time which had elapsed since the last stage was clearly a consideration in deciding to move to Step 2. The issue of whether there was a clear time frame for her return to work was therefore the Tribunal find, not the only consideration when deciding whether to move to Step 2.

402. On 22 May Inspector Turner confirmed that the end date of the TDR was **16 July 2023** [page 689].

403. The claimant on 24 May 2023 submitted a flexible working request via the online hub.

New 6th Sergeant Role.

404. In **May 2023** a new role was created at Nottingham, the East Midlands resilience sixth Sgt role.

405. The Tribunal accept that the role was created because of the operational need for more Sgt resource. Nottingham station was struggling to provide minimum supervisory cover. As set out in Inspector Turner's witness statement, officers and sergeants on leave or TDR meant that temporary sergeants were appointed to act up to cover Sgt duties but this then led to gaps in the PC roster.

406. The role was designed to address this issue and provide resilience cover across the East Midlands to ensure minimum Sgt cover [page 720].

407. The role was intended to work under a four week roster consisting of early shifts (starting at 7 am sometimes earlier, until 4 pm or 5 pm) and late shifts (from 1 pm or 2 pm until 10 pm or 11 pm) [page 719], with an expectation that the person would also cover shifts where other sergeants across the East Midlands were on leave, training or on periods of sickness [page 520]. The responsibilities would include frontline duties including attending fatalities and loss of life incidents [page 721].

408. The evidence in chief of Inspector Turner is that he notified all substantive sergeants under his command about the role via an email on 31 May 2023 and that this was sent to Sgts White, Wilson and the claimant [page 718]. It was explained that if interested they must reply direct to CI Gill and PI Godhania.

409. An expression of interest email was sent out on 31 May 2023 [page 849]. The claimant disputes that she was copied into this although her name does appear on the email. She has no recollection of the email and does not believe that she received it.

410. The respondent, it is alleged by the claimant, failed to send the email to the claimant. The

claimant contends she did not receive the email, at least she has no recollection of it. The email has been produced by the respondent and it shows the claimant as a recipient. The Tribunal find on balance that the claimant has not established that the email was not sent to her.

411. Sgt Fowler sent an email to CI Gill and PI Godhania notifying them of his interest on 31 May 2023.

26 May 2023

412. Inspector Turner resigned on 26 May 2023 [page 730] to take up a role with the West Midlands Police

Flexible Working Meeting: 2 June 2023

413. A meeting was arranged with the claimant, PI Godhania, Inspector Turner, the claimant's Foundation Federation representative Mr Found and the claimant's maternity buddy, Lucy Milton, to discuss the flexible working application on **2 June 2023** [page 777].

414. The meeting was originally scheduled for 2 pm.

415. The claimant was to join via Microsoft teams. Inspector Turner was aware that the claimant had a medical appointment that morning [page 781].

416. Mr Found sent an email to Inspector Turner on 1 June at 17:25 [page 729] and copying in the claimant and asked to move the time of the meeting:

"I have been asked to do another meeting at 2 pm, also flexible working .
Any chance of doing yours a little later?
The other one cannot move to any other time".

417. Mr Found then emailed again that evening on 1 June at 19:21 [page 728] but this time failed to copy in the claimant. He explained when he was likely to finish the meeting and then sent a further email that evening at 20:14 again failing to copy in the claimant and now suggesting that he could make the claimant's meeting if it were arranged earlier and suggested 1:30 pm.

418. Inspector Turner responded on 2 June 2023 at 07:19. He confirmed 1:30 pm but he also failed to copy in the claimant. In his evidence in chief Inspector Turner states that his assumption would have been that the claimant's representative was in contact with the claimant and would confirm the meeting time with her.

419. Inspector Turner sent a meeting invitation on 2 June at 07:18 for the meeting to commence at 13:30.

420. The claimant appears to have received the meeting invitation and queried the time of the meeting at 12:20 on 2 June, which inspector Turner gave evidence he did not see until 13:32 once the call had commenced.

421. The claimant in her email of the 30 June 2023 [page 841] refers to this incident and does not assert that she had not joined at the time it started:

"…*the meeting was also started 30 minutes before the scheduled time without me being informed – I am unable to understand why this was done but luckily (for me) I was online early and saw this had been changed…"*

422. Tribunal find that the reason for changing the time of the meeting was only because of

the request from the claimant's representative and find on balance that the reason Inspector Turner did not include the claimant in his email is more likely than not because he had not noticed that Steve Found had dropped the claimant off copy when sending a follow up email and responded directly to the email he was sent and because he probably assumed Mr Found and the claimant would have been in contact about the time of the meeting.

423. The Tribunal find on balance that it was a mistake, it was not done intentionally however they do find that it was lax of Inspector Turner not to confirm with Mr Found, or direct with the claimant, that the proposed change to the time was convenient to the claimant given how important this meeting was to the claimant. The Tribunal consider that this failure to ensure the time suited the claimant does indicate a certain lack of appreciation of the importance of this meeting to the claimant. There is no evidence however of Inspector Turner treating anyone else, who was not disabled (or did not have the claimant's disability), differently in not materially different circumstances.

424. Inspector Turner verbally gave his recommendation to reject the request at the meeting. His witness statement refers to conducting the policy in line with the flexible working policy [p.264].

425. Inspector Turner followed up his decision, given verbally, in writing, [page 831- 832]. There is no reference in his email to the Equality Act 2010 or the claimant's disability. He accepted in cross examination that there is no reference to him having taken into account the Equality Act 2010 and whether the respondent had an obligation to consider whether they should implement the flexible working as a reasonable adjustment, despite accepting that the claimant had made this as a request with express reference to doing so under the Equality Act 2010.

426. Inspector Turner gave the following evidence which the Tribunal considered to be evasive over the issue of whether Inspector Turner considered the needs of the claimant as a disabled person:

B: the request was not considered under the Equality Act?
IT: not accepted
B: so, you did assess it under the Equality Act?
IT: I accessed it under the flexible working request
B: There is no indication you assessed it under the Equality Act??
IT: There is nothing that refers to that
…
Judge: which policy did you apply?
IT: Flexible Working

427. The claimant alleges that Inspector Turner began the meeting almost immediately by explaining why her request was denied. The claimant's oral evidence is that it felt as if the meeting was to simply tell her the decision rather than consult with her.

428. The meeting of the 2 June 2023, despite its importance to the claimant, was not minuted and despite being a Team call (unlike the transcript provided for the 11 January 2024 call), there is no transcript produced by the respondent.

429. The respondent did not obtain advice from OH prior to recommending a refusal of this request or it seems carry out any assessment as to the possible impact of the change to her shift pattern on the station. Inspector Turner relied it seems on his knowledge of the working arrangements at the station and his view that the shift pattern the claimant has requested could not be accommodated.

430. The Tribunal accept on balance that there were no discussions at this meeting about alternative flexible working arrangements and that this is more likely than not because

Inspector Turner was simply following the Flexible Working Policy, rather than considering more broadly whether as a disabled person there were alternatives which the station could accommodate. Inspector Turner only made some suggestions about alternatives which could be applied for when asked but those were not explored at this meeting.

431. Taking into account the lack of guidance from OH, Inspector Turner's decision to reject the proposed flexible working pattern without exploring first what may be workable, and the decision not to record or minute the meeting, the Tribunal find on balance that it is more likely than that Inspector Turner had gone to that meeting having made up his mind to refuse the request.

432. The claimant on 2 June at 15:12 after the meeting, sent an email [page 779] in which she requested the minutes of the meeting and the decision in writing and stated that she wanted to appeal it.

433. The claimant's Federation representative on 2 June 2023 [page 776] asked if the claimant could write back with some other options to consider before the application was rejected.

434. The respondent's document headed 'Workplace Adjustments Passport' [p.734] states that its purpose is to support inclusion and to help individuals and managers understand and identity adjustments. It sets out forms to complete to request adjustments which requires the reasons for an adjustment to be set out and the impact of the disability and a disability passport to be created. There is also a document headed 'Workplace Adjustments Toolkit' document [p. 742] the purpose of which is stated to be:

"As part of our ongoing commitment to support inclusion at BTP, we have designed this toolkit and streamlined the adjustments request process to support your role as a line manager in developing adjustments for your direct reports whilst utilizing the Workplace Adjustment Passport."

435. The Workplace Adjustments Toolkit document provides that when a line manager *receives information that an employee requires adjustments, the line manager should* ***'ensure'*** the employee has completed Part 1 and 2 of the Workplace Adjustments Passport '***before the initial discussion'*** and book in a meeting as soon as possible to discuss their reason for the request and look at '***possible solutions in offering adjustments.'***

436. These policies and toolkit were not followed. Inspector Turner does not allege that he asked the claimant to complete a passport or that he considered these documents.

437. The claimant was not asked to complete forms in order to prepare a passport prior to this meeting or by Inspector Turner after it. The Tribunal note however that Inspector Tuner was acting on the advice of HR who on 24 May 2023 had sent him an email with guidance referring only the Flexible Working Policy and making no reference to the claimant's disability, her health issues more generally or to the Equality Act 2010, which is really quite remarkable given the claimant's health issues and that she working through an OH recommended phased return following a long period of serious illness.

438. Lucy Milton, the claimant's maternity buddy, after the meeting [page 790] on 2 June 2023 sent to the claimant and Mr Found an email in which she referred to a passport:

"*In case a passport is a good option following today's meeting find the info attached."*

439. The claimant replied about completing this [page 790]:

"I have no idea what to fill in in the strength and skills section I just can't think straight about anything today."

440. The Tribunal accept that the claimant was having difficulty because she had not completed this document before and was upset after the meeting with Inspector Turner and his decision to refuse the request for flexible working. Inspector Turner should gave ensured she had completed it before the meeting on 2 June.

441. Inspector Turner set out his decision in writing [page 792] to CI Gill, Sue Peters, PI Godhania and HR for his recommendation to reject the request, on 6 June at 10:33. He sent the same reasons by email to the claimant on 6 June 2023 at 10:48 [page 945]. He did not provide a transcript of the meeting which the claimant had requested.

442. As recorded in his written decision sent on **6 June 2023** [page 945/946] he refused the request and his reasons reflect the wording of the Flexible Working Policy in that he gave the reason as:

- Burden of additional costs
- Detrimental impact on performance
- Detrimental impact on quality
- Inability to reorganise work amongst existing staff

443. Inspector Turner sates that he did not rule out the option of part time hours but he rejected the manner in which those hours were to be reduced i.e. no working of early shifts which would mean that that claimant would work 4 shifts comprising late and nights shifts then have 6 rest days. In essence the objection was that her team would be disadvantaged by not having a supervisor working with them on all of their early turns.

444. As set out in his rationale, Inspector Turner refers to the claimant not working early shifts leaving her team without sergeant cover, but does not address the issue of whether he has or will enquire whether other sergeants are prepared to step up to acting sergeant on those shifts and/or whether the new 6th sergeant role could cover those gaps even if short turns or whether she could work some early turns or and/or some alternative shift arrangement. He also refers to the cost of having to pay for other sergeants to work on what would be rest days (which he estimates that to be around 4 to 8 rest days) but does not take into account the claimant's reduced salary and does not comment on whether requesting additional financial resource to cover the overtime required, even short term, can be requested.

445. In this email, Inspector Turner ends by stating:

> "*At the end of the call, I was asked if I had any recommendations that I can suggest for [the claimant] to go away and reconsider. Because part of this request is to achieve a reduction of working hours, I suggested that any flexi roster must be achievable within the demands of the 24/7 post of Nottingham. I recommended that the claimant look at an option* ***to amend the starting hours or finishing hours on ET, as opposed to putting forward a roster that removes the ET altogether****. A roster that reflects the pattern of four on six off with full LTs and NTs is unlikely to be accepted at any post with a 24/7 demand, let alone a CAT a station." Tribunal stress*

446. The claimant alleges that Inspector Turner at the end of the meeting made a suggestion only about starting an early shift slightly later by approximately 1 hour.

447. The Tribunal find on balance, that there was no reference to the claimant's disabilities or her request being treated as a reasonable adjustment. There is no reference to her disability in Inspector Turner's email setting out his reasons for recommending a refusing of the request or any reference to why the claimant required an adjustment to her hours or what impact not making an adjustment would have on the claimant.

448. In cross examination Inspector Turner denied that he had immediately rejected the application for flexible working without allowing the claimant to amend her application and

put forward any other alternative shift patterns, however the Tribunal consider that his evidence on this was again inconsistent. He gave evidence that he had not immediately rejected it, he then gave evidence that he had rejected it but said he would look at other applications she could make but "*she stuck with that application*". It was then put to him that the claimant had not "*stuck with it"* but had been told to think of other options only at the end of the call and was doing so but he had confirmed 4 days later on 6 June in his email, that he was recommending that the application was refused. The email did state in bold letters: "***I recommend request is refused".***

449. While in cross examination Inspector Turner gave evidence that he would have considered a trial period as part of what he considered when making his decision, (the implication being that he accepts it should have been considered), he however does not mention this in his evidence in chief or in his email setting out his decision. The Tribunal simply did not find his evidence credible on this issue and find that he gave no thought to trialling whatsoever the working pattern she had asked for.

450. The claimant had been expected to work full time hours since 14 May under the TDR but she was booking leave to reduce her shifts because the Tribunal accept, she was not well enough to cope with the full shift pattern as OH had advised in the last OH report.

451. Inspector Turner accepted in cross examination that if the claimant had finalised the change to her hours in March 2021, the respondent would have "*had to accommodate those reduced hours*".

452. Inspector Turner gave evidence that because the claimant's application had been rejected, she would have to put in another application if she wanted a different arrangement to be considered:

"*She could resubmit another application." And "for the audit trial she would have to put in another one."*

453. The Tribunal find that while his email and at the end of the telephone meeting, he gave the claimant the impression that there would be an ongoing discussion about possible alternative working patterns and that she could go away and consider other alternatives, in his mind he had made the decision to reject her application. The Tribunal accept that his handling of her application was very upsetting and distressing for the claimant at a time when she was battling to try and keep her job, adjust to being back into a very demanding role, build her confidence and balance the demands of the job with the effects of her medication.

454. The Tribunal accept that the claimant had been led to believe by the suggestion that she could consider other working patterns which may be acceptable, that this would involve an ongoing process and dialogue to discuss what could be accommodated but she was faced with a recommendation to reject her application, hence why she put in an appeal and why Mr Redmond of HR would later question (after the event) whether the application should be treated as rejected or not.

455. The Tribunal accept that this approach was not conducive to making the claimant feel supported at work and does not indicate a desire by the respondent to work with the claimant to look at reasonable adjustments and keep her in her job. Inspector Turner had the Tribunal find, formed a negative view of the claimant and was cynical of her motives, without the Tribunal consider, good reason.

456. It is clear the Tribunal find from his answers in cross examination, that Inspector Turner saw the onus and obligation to come up with a suitable working pattern as resting solely with the claimant, because he was applying the Flexible Working Policy rather than treating the claimant as a disabled person for whom the respondent had an obligation to consider reasonable adjustments. He has no recollection of any alternatives being discussed at the

meeting and the Tribunal find there were no such discussions.

457. In terms of the claimant wanting to reduce early shifts, Inspector Turner was asked in cross examination whether other sergeants wanted to do more early turn shifts whether at the Nottingham Station or elsewhere to which his answer was that there are only 5 sergeants and 5 budgeted posts where the claimant is stationed *and the "limited option" to move around."* He did not give evidence that he had enquired of other sergeants whether they would be interested in swapping other shifts for more early shifts either at Nottingham or elsewhere.

458. The claimant had expressed her interest in the 6th sergeant role verbally to Inspector Tuner at this meeting, she felt this new role, which was to cover gaps, could accommodate the shift pattern she wanted.

459. Inspector Turner gave oral evidence that he did not consider whether the 6th sergeant role could have filled any gaps in the claimant's early shifts because the role did not exist at **the time the application was made** and confirmed to the Tribunal that he had not applied his mind, when dealing with the application, to whether the creation of the 6th sergeant role could cover any gaps , simply because he says it was not a role which existed at the time of the application.

460. However, Inspector Turner sent the emails asking for people to express an interest in the 6th sergeant roles on **31 May 2023** [page 718 – 722], before the meeting to discuss her application. In May 2023 the station had been given the budget for the role. Despite having the budget and knowing what the role would involve, Inspector Turner did not, he confirmed, apply his mind to whether that role may be able to cover any gaps to enable the respondent to accommodate the claimant's request, even short term to allow more time for the claimant to adjust to her role and to her medication. The respondent did not seek any medical evidence or OH guidance on making this adjustment in the context of the claimant's disability and whether a short-term adjustment to early turns may be helpful at this stage before Inspector Turner recommended a refusal of the request. There was no enquiry about adjustments in line with her medication and how long this was likely to be required for until this was raised by a People Advisor, Ms Phillips later on 14 July 2023 [page 949].

461. The 6th sergeant role would later be fully deployed to cover sickness absence at the Nottingham station and while not what the role was intended for, it was used to cover Sgt Wilson's sickness absence for several months.

June 2023

462. After 3 June, the claimant was in contact with Ms Milton and Ms Bove Inclusion and Diversity Business Partner [page 817] about putting together a disability passport and on 7 June sent them a copy of a letter from Dr Williams, the claimant's Forensic Psychologist dated 7 June which explained her ongoing mental health issues and generally set out the adjustment to work hours to alleviate some of the fatigue and enhance her ability to manager her mental health effectively [page 815 – 816].

463. On **7 June 2023,** Steve Found wrote to Inspector Turner [page 830 – 831] copying in CI Gill and PI Godhania which the Tribunal find, made it clear that the claimant was interested in this new role:

"*We feel this role would be really open to what the claimant is asking for (education in hours/ Flexible working), far more so than a 24/7 Cat A post. From our information [the claimant] is the only substantive Sgt who is willing to take up this role]*

Why has [the claimant] not been allowed to apply for this role?

Can you confirm that this role is still only open to substantive Sgt's only?"

464. The claimant went on annual leave on 9 June 2023 and returned on 3 July.

465. CI Gill on **12 June 2023** [page 850] sent an email to the claimant, PI Godhania, Mr Found, Inspector Turner and Ms Milton. It did not state that the claimant was not suitable for the 6th sergeant role however, it is clear from the evidence from CI Gill in cross examination, that he assumed the claimant would read this email and conclude that the role was not suitable for her:

"Just some points to note before next week's meeting, the 6th sergeant role is designed as a sector resilience role operating with a degree of flexibility to cover,

- *Assist with PS Gaps across sector*
- *NICHE governance for the sector*
- *Property audits (this will involve travel to all posts to carry out the monthly property audits)*
- *Governance meeting attendance [ET commitment)*
- *performance updates (dashboard review to assist station commander for the two weekly governance calls)*
- *Roster reviews*
- *manage welfare, long term TDR officers*
- *Capita audits*

Ham [PI Godhania] Can go through and explain each of these at his meeting with [the claimant]" *Tribunal stress*

466. The Tribunal find that a natural reason of this email, is that no decision had been made and there would be further discussion with the claimant about the role at a meeting with PI Godhania.

13 June 2023

467. On **13 June 2023** [p 940] CI Gill sent an email to Supt Peters in which he recommended that the request for flexible working be refused. His rationale is in essence simply a repeat of what was set out Inspector Turner's email of 6 June 2023, apart from adding whether the 6th Sgt role Nottingham would allow the claimant the opportunity to meet the flexi request and in respect of this he informed Supt Peters that "*this will be discussed with [the claimant] at the next meeting"*

468. Supt Peters on **14 June** [page 939] replied endorsing the decision to reject the application. In an email to CI Gill she refers to having read PI Turner's rationale and which she accepts as fair, considered and balanced but goes on to say that she will be willing to review this to try and support the claimant, and 24/7 supervision is essential but she is willing to try and adapt the early shifts to a later start, say 8am or 9am.

469. Supt Peters also gave evidence in cross examination that it is unlikely that she was aware that the claimant had requested that her application should be considered as a request for a reasonable adjustment, however the Tribunal find that this was made patently clear from her email of the 5 May 2023 but this was simply not acted upon.

470. Supt Peters also gave evidence in cross examination that if the application had been made as an adjustment request under the Equality Act 2010 the respondent would have followed a different process and applied the Capability Process.

471. The capability policy provides as follows [page 241 -242].

"We will consider what reasonable adjustments may be suitable to assist you in remaining within the

*organisation**, wherever possible.** As we are a national force, we will explore the availability of suitable roles in terms of current vacancies in our preferred location/base and to those areas you may be able to travel to, dependent upon the circumstances of your case whilst also taken into account rank or grade…*

*Proposed adjustments to a role or your redeployment to an alternative role will require approval by the superintendent/police staff equivalent using the reasonable adjustment template and is **likely to include a trial period**…*

Specialist guidance and advice can also be sought via:

- *Health and safety…*
- *OH, and well-being…*
- *If the help you need work is not covered by is making reasonable adjustments, you may be able to get help from Access to Work…*

ACC/Director protect desktop review and final decision. The Chair of the Panel will make the final decision. This will include redeployment within and across divisions.

The adjusted duties panel will comprise of:

- *ACC/director-panel chair*
- *Chief superintendent/head of Department or delegated authority*
- *people business partner*

The Chair of the panel will need to be satisfied the rationale in the adjusted duty proposal is fair, reasonable and proportionate, taking into consideration the reasonable adjustment guidance and that all options for accommodating an adjustment have been explored including transfer to another division…" Tribunal stress

472. Supt Peters gave evidence that because it was dealt with under the Flexible Working Policy, she did not look at the OH reports including the last one. The Capability Policy was not considered the Tribunal find or applied.

473. Supt Peter's gave oral evidence that reducing one early shift may have been possible. She did not explain in her evidence why reducing both early shifts would not have been possible or whether she had considered a short-term arrangement, however the Tribunal take into account that having not seen the claimant's email on 5 May or the OH report, she did not have information about the impact of the claimant's medication. In answer to a question from the Tribunal about what information she had when she considered the application, she gave evidence that it was:

"I had 2 emails from the conversations with Inspector Turner and CI Gill, detailed rationale from Inspector Turner and I would speak to Respondent and Chair of Female Police Federation."

474. Supt Peters however was aware of the claimant's case, she knew she had been off work for a significant period on sick leave and was aware of the issues with her mental health, and she accompanied Inspector Turner on a home visit to the claimant because of her own experience of complex cases. Supt Peters was also supported by a Senior HR business Partner. The Tribunal consider that it is remarkable therefore that she did not consider whether the claimant wanted/needed reduced hours for health reasons and whether this should be considered as a reasonable adjustment and whether it was supported by OH. None of that happened.

475. Supt Peters in cross examination accepted that had she been aware that the claimant had said that she needed this adjustment because of her disability and as a reasonable adjustment, she would have reviewed the OH advice and considered it under a "***different lens."***

476. Supt Peters confirmed that the claimant did not have to apply referring to the Capability Policy for it to be considered under that process.

477. The "lens" applied she said was "***simply the operational roster lens*.**" In applying that "lens", the implication from Supt Peters evidence is that the approach to the request for an adjustment to her shifts would have been materially different. Supt Peters referred to; "***different considerations based on disability and medical position but we were not looking at it via that lens*."** When asked by the Judge how different the approach would have been, she answered: "*I would have worked with them to implement reasonable adjustments, does not mean it could have been accommodated – we would not look at it as a yes or no response*."

478. When asked by the Tribunal if she had got the application today and knew the reason for making it was the claimant was finding the early shifts difficult due to a disability, what difference would it make, to which she replied:

"*Different consideration, it would be based on disability, and the medical position but we were <u>not</u> looking at it via that lens."*

And

"I would work with them to implement a reasonable adjustment- does not mean it could be accommodated at a 24/7 station by it could be accommodated elsewhere such as Derby."

479. However, in supplemental evidence, Supt Peters was asked if her view removing one or two shirts could be accommodated. Her evidence was not that his was impossible. Her evidence was:

"One or more shifts from 6 shifts, it would ***be a challenge to cover on a permanent basis****. This application* ***was for 2 shifts;*** *we could not accommodate it." Tribunal stress*

480. The Tribunal find that Supt Peters was not ruling out the possibility that some accommodation could be made to reduce the claimant's shift pattern, removing one shift perhaps or more than that on a more temporary basis, at least while the claimant's medication settled.

481. Supt Peters went on to give evidence that because they were moving to a Step 2 meeting, they would be able to discuss reasonable adjustments then. However, that fails to appreciate that the claimant wanted some confirmation about what adjustments could be made at this stage. The claimant had been required to work full time from 14 May 2023; this was clearly a request for reasonable adjustments which was not dealt with under the correct process and it was rejected. The rejection of it was not only the Tribunal find impactful on the claimant's state of mind but meant she continued to have to work under the pressure of a requirement for full time hours and shifts.

482. The phased return at this stage, had not been extended until after a Step 2 capability hearing at which she had been told that her request may be able to be accommodated or some variation of it. Inspector Turner in oral evidence confirmed that he had the authority to extend the TDR.

483. If a disabled employee raises that they are having a problem with a working pattern

because of their disability, the obligation to consider making reasonable adjustments is triggered and the onus is on the employer to the make reasonable adjustments regardless of how the employee frames the application.

484. The claimant had been raising concerns with the early shifts prior to making the formal application, when she was working under Step 1 of the process and a TDR, and had been told by Inspector Turner she could not make a flexible working request to reduce her hours during the TDR. However, Supt Peters in cross examination contradicted what Inspector Turner had told the claimant and confirmed that the claimant could have applied for flexible working not only in her substantive role but during her TDR. Had she been able to do so the Tribunal find that there could have been some further flexibility afforded to her which may have made the transition for the claimant less stressful and more effective and would in effect have enabled her to have a trial period during the TDR.

485. On **21 June 2023** [page 836] the flexible working request was confirmed to be refused however, the claimant was also told that she could appeal.

486. One of the 3 stated reasons given in the 21 June 2023 letter is burden of additional costs. Supt Peters gave evidence that it costs about £300 a shift to cover a sergeant, so for every week for the year it would be £20-30,000. However, this was patently the Tribunal find an 'off the cuff' response to the question put to Supt Peters by the Tribunal about costs, and she had not, as she accepted, offset that figure by the cost saving from the claimant's reduced salary however she still maintained that would be additional costs of RDW but did not suggest what that would be.

487. It was clear to the Tribunal that there had been no actual assessment of the additional cost. No figures were set out or provided in evidence although this had been put forward as one of the 3 reasons for not being able to accommodate it.

Complaint: 30 June 2023

488. On the 30 June 2023 the claimant sent in a document setting out all her concerns about her return to work and flexible working application and the bullying and harassment. Inspector Turner had by this stage left. The complaint was emailed [page 841] to a number of people including HR, PI Godhania and Supt Peters.

489. In this letter the claimant challenges the reasons for refusing her application but also makes clear that she is prepared to consider other options:

"… This illness has impacted me greatly and I continue to suffer adverse effects, I remain under the care of a psychiatrist, psychologist and Community Mental Health team. I remain on high levels of medication and my medication continues to be titrated while the medical team look for a combination which best works for me. I am now classed as having a disability due to the length of time I illness has been present and the impact it has on my functioning

..following a substantial amount of time off I returned to work in January 2023 on a phased return. I made it clear to the inspector that I will be looking to reduce my hours, as previously agreed, on my return to full duties, I was advised to not worry about this until I was back on my full rota and that it will be discussed in due course. I was then told by the Inspector that I was not able to put in a flexible working request while I was on restricted duties, despite being back in full time hours. This was overturned on my application was submitted stop…

I requested the early shifts off as I felt this would have the least impact on the team, I would be happy to discuss other options such as taking one early and one night off etc** but there was no room for much discussion during my meeting. I find difficult to understand why was granted permission to reduce my hours back in 2020, when I covered a 24/7 rota as I do now**… I have been told I will be moved onto stage 2 the capability process by mid-July but I have had very little support in

getting me to where I need to be in time. *There was been no discussions about re-redeployment options or reasonable adjustments to help me with my return to work. I did make it clear that my request to reduce hours was be made under the Equality Act 2010 as part of a reasonable adjustment. The force also have supporting evidence from my psychologist and psychiatrist to support this request but yet is has been dismissed with barely any discussion.*

My last occupational OH report stated that I was not fit for full duties and that they were going to contact my medical team to discuss further-I am unsure if this is happened as I have had no contact from OH since my last review a few months ago*. I have no idea where I stand if they deem me as unfit to return to full duties when I am meant to in mid-July – this is something that has never been discussed with me. I have not had regular meetings with my inspector since my return so I am unsure how they are assessing that I will be ready for full duties.…* ***I am currently going through major medication change which is impacting on my physical and mental health..***

I am due to return to work on 3 July on my 6 working pattern which numerous health professionals have deemed would not be appropriate for me but have been left with little support about where to go with my concerns. This coincides with my medication change which will make this work pattern even more challenging for me…" Tribunal stress

490. The claimant in this email also asks if the 6th sergeant role is a job she could do.

491. Farah Redmond, People Business Partner, on **3 July** [page 939] asked the question copying in Inspector Turner, Supt Peters and CI Gill, (after the decision had been made to refuse the request) why the hours could not be reduced now given that previously before going on maternity leave this had been agreed and would obtain the details of that previous agreement. Clearly the Tribunal find (and this is not referenced in the rationale of Supt Peters or Inspector Turner) there had been no consideration of that by this stage because the respondent was looking at this application through the 'lens' of a standard request made under the Flexible Working Policy. The question was also asked whether the application should have been refused or whether the claimant should have been given more time for variances to be suggested/reviewed. Further advice on 4 July from Farah Redmund [page 937], given the decision has been communicated to the claimant [page 937], was to re-open the discussion without the claimant having to submit a new application. The Tribunal appreciate that the refusal of her application would have caused the claimant significant anxiety about her ability to remain in her job.

3 July 2023

492. on **3 July** at 08:00 the claimant emailed CI Gill and PI Godhania [851] stating this that she had never been sent the initial opportunity to apply for the resilience six Sgt role:

"This was the first time I was sent anything and it was just before I went on leave. It has been mentioned in meetings that this could have been a potential role for me to allow for the reduction in hours but I have returned to find that Nick Fowler been given this role. I was told this will be discussed with me but the opportunity did not arise in the short time I had between receiving this and going on leave. Can I ask why was not officially given the opportunity to apply for this role or even considered during the FWA application."

493. PI Gill replied [851] stating that he had sent her an email regarding the role but she did not respond to the questions in the email.

"I explained the role would require travel to Lincoln, Peterborough, Leicester and the demands that it placed on governance and the early turn duties. As I recall you did not wish to do early turn, it also required flexibility as the role would require the Sgt to step in to fill gaps. I will be at Nottingham later and can speak with you."

494. Despite the claimant expressing an interest orally at the meeting on 2 June and despite

receiving this email, CI Gill in his evidence in chief alluded to the claimant not having sent a 'formal' expression of interest as a justification for not considering her for the new role:

"*She **had chosen not to formally express an interest** in accordance with the EOI process (although she had verbally informally expressed interest to PI Turner on 2 June 2023) **and** she was unsuitable for the role, as set out above, **so the role was given** to PS Fowler [w/s para 81 and 82]." Tribunal stress*

495. CI Gill goes on to imply in his statement that a reason for not considering the claimant was because of this failure to send an email expressing her interest (para 82):

*"On 3 July 2023, the claimant emailed me and PI Godhania stating that she was never sent the initial opportunity to apply for the resilience Sergeant role and that when she was forwarded it on 5 June 2023 this had been the first time she had received it and that had been just before she went on leave [849].As set out above, this is not correct . Even if the claimant had not received it until 5 June (which is not the case), **she could still have expressed an interest before she went on leave on 9 Jun 2023**, or after she had one on leave as she had confirmed that she was taking her work phone but did not do so. As can be seen from PS Fowler's EOI [724 – 725], all **that was required was a very short email to let us know that she was interested in the role."***

496. CI Gill however in response to questions from the Tribunal confirmed that he knew the claimant was interested in the role and if he had considered her a suitable candidate he would have put her forward through the competitive exercise regardless of whether she had herself sent an email expressing her interest. The Tribunal consider that the decision by CI Gill to include within his statement that a reason why she was not considered for the role was because she did not send an email is disingenuous and indicates that he was concerned when preparing his statement, about the respondent's handling of this situation, otherwise he would not have felt the need to state something which he knew to be misleading. He gave evidence when asked questions about this evidence under oath by the Tribunal, that not putting forward a 'formal' expression of interest would not have been an issue for someone he considered suitable. He had been asked by the Tribunal however at the outset of his evidence if he needed to make any corrections to his statement before swearing as to the truth of it, and he did not correct this evidence.

497. While CI Gill therefore may have considered that reading his email of the **12 June**, the claimant would not pursue her interest, she had the Tribunal find, been given the clear impression that her interest in the role would be discussed on her return after annual leave. CI Gill and PI Godhania did not give the claimant an opportunity to make representations as to why this job may be suitable for her, even if that was with reasonable adjustments. It is clear from CI Gill's witness statement that the issue of reasonable adjustments did not form any part of his decision-making process when dealing with this situation.

498. Although CI Gill does not explicitly state in his email of the 12 June that he did not consider that the claimant would be suitable, it is implicit in his email that this is the case and that he had reached this view before he had had any discussion with the claimant. CI Gill in his oral evidence is clear that he did not consider the claimant to be suitable and he set out the demands of the role in that email so that she would reach that same conclusion, it is clear what was in his mind in the way in which he frames his communication to her (w/s para 69);

*"On 12 June 2023, I wrote to the claimant setting out some points to note regarding the 6th Sgt role [867. In my email I expressed the demands of the role, which also set out in the East Resilience Sergeant Role profile sent the claimant on 31 May 2025 [720 – 721], **as I did not think that the claimant was suitable for the role. I shared the demands of the role with her with the expectation that, following that explanation, she will share my view that the role was unsuitable for her.** This is why we did not take her informal expression of interest is a serious expression of interest and allow her to go through a competitive application process… I do not think the claimant was suitable for the role **because she could not do ET's; was not willing to travel to other locations within the East Midlands sector; could not offer the flexibility required around***

covering shifts; and was not at that time capable of fully operational duties. *A requirement for the role was to assist cover Sergeant gaps which only an operational Sergeant would have been able to do." Tribunal stress*

499. The claimant's Federation representative Steve Found had asked on her behalf on 7 June 2023 whether her flexible working application, which proposed the removal of early shifts, could be granted in the 6th sergeant role even when it was not applicable to her substantive role [830]-[831]. In reply, PI Godhania asked her on 8 June 2023 to come to a meeting: "*so that I can go through this with you"* [page 869].

500. Because the claimant was going on holiday on the evening of 8 June 2023, the meeting was arranged at the claimant request for her return from holiday on 3 July [pages 868-869].

501. The respondent submits that the claimant seems to have believed that the purpose of the meeting which was arranged for 3 July 2023 was to discuss the possibility of her undertaking the 6th sergeant role; she thought the option was being left open for her to undertake it but that this was a misunderstanding on the claimant's part. The meeting was always going to be a meeting in which it would be explained to the claimant why this role would not be suitable and that the respondent's consistent evidence has been that this meeting was planned to explain to the claimant why the 6th sergeant role's requirements would not suit her needs or capability at the time.

502. CI Gill also states in his evidence in chief (w/s para 84) that:

"…*had there been an expectation that the claimant would return to fully operational duties within a reasonable timeframe, this may have been different, but this was not the case."*

503. Sgt Fowler was appointed into the role when the claimant was on annual leave and no one informed the claimant.

504. CI Gill in cross examination accepted that the claimant would have gone on holiday thinking this would be discussed with her when she returned:

"Yes, I can understand that- the meeting was to discuss suitability on her return."

505. The Tribunal consider that the way this was handled was grossly insensitive and wholly unnecessary. It would have afforded the claimant respect and dignity to have had a discussion with her about the requirements of the role and listened to anything she had to say rather than make a decision that she was not suitable and for her to learn on her return from leave that someone had already been appointed. It was insensitive and disrespectful. It understandably added to the claimant feeling unsupported.

506. In response to the Tribunal Panel questions, CI Gill gave evidence that the key consideration for him was that the role needed to be filled urgently and, they had to have someone operational and there was no indication at this point when the claimant would be operational and certainly not by July. However, the Tribunal do not consider that he took on board the issue of whether parts of the role could have been carried out by the claimant, the non-operational elements, whether on a permanent or temporary basis subject to review. There was no discussion with Sgt Fowler about whether he would be interested in some sort of job share arrangements with the claimant whether temporary (subject to a review/trial period) or permanent.

507. Almost immediately on Sgt Fowler taking up the 6th sergeant role, Sgt Wilson went on sick leave and Sgt Fowler, was then not covering gaps across the sector, he was filling in for one sergeant. If he could fill in full time for one sergeant, a relevant consideration would be whether he could have covered, prior to this, even on a temporary basis, some early turn

shifts for another sergeant while the claimant adjusted to her medication? It is clear this was not considered.

508. CI Gill gave evidence that if someone non-operational had been recruited to the 6th sergeant role, they could not have filled the gap left by Sgt Wilson however there were still administrative duties to perform, and CI Gill did not explain why the claimant could not have then been allocated other non-operational duties and provided cover for gaps across the sector at least relieving other sergeants of the need to cover some of the non -operational duties of other sergeant absent from work. A trial period would have shown how feasible or not this was. That was not considered.

509. CI Gill explained in response to questions from the panel, that Sgt Fowler left to take up the 6th sergeant role and another sergeant left to go to CID, this created 2 vacancies which were filled within 28 days by 2 people who joined from another department via the posting panel.

Formal Goals or assessment

510. The claimant complains that in the absence of any formal assessment or goals, it was not possible for the respondent to really assess her readiness to resume operational duties and this was required so that it was clear what she had achieved and what she was still to achieve before she was able to be fully operational.

511. The Tribunal find that this makes eminent sense and would have helped the claimant. Inspector Turner when asked how he was able to assess how ready she was, gave evidence that this was through OH reviews, however when it was put to him that OH can assess her health but not her ability to do the duties of the role and how she was getting on in doing the actual job, he then gave evidence that this was through reviews and the return to work plan and discussions with the claimant and that he assumed " *if she made it to the end of the return to work plan she would be fully operational".*

Reviews

512. In terms of the reviews which Inspector Turner was adamant he had diligently carried out, he gave evidence that while there were no emails between him and the claimant organising review dates, no invitations or written record, they took place.

513. The Tribunal was unclear how these review meetings came about and Inspector Turner clarified that HR would roster in a review on Microsoft Teams and he would get an invite and dial in. He also gave evidence that there were no emails because there was no discussion between him and HR or the claimant about availability, he would just get an invitation. He then accepted that possibly when the invitation was sent there would be a calendar invitation, the invite via Teams would populate his calendar and he accepted that his calendar should therefore show the review meeting dates however, he had no explanation why those diary entries had not been disclosed other than he did not prepare the Tribunal bundle (and they were not produced during the course of the hearing). He could also not explain how HR would know when he and the claimant would be available to have a meeting without checking with them first. We saw in the bundle emails between him and the claimant when trying to arrange a meeting between them and the limited availability he had. The Tribunal find it highly unlikely that HR would have simply put a date in his diary without contacting him first to confirm he would be available.

514. The Tribunal did not find Inspector Turner's evidence to be plausible or credible on this issue either.

515. Inspector Turner also gave evidence in cross examination that he carried out regular

undocumented reviews but *"There was no particular structure, just a chat where we are."*

516. The Tribunal conclude that the only reviews he carried out were the ones documented in April and May which had been initiated by the claimant.

517. Inspector Turner gave evidence in cross examination that he could not see how documented reviews, a training checklist, a record of shadowing hours or any performance criteria by which to assess how the claimant was performing and how close she was to being to fully operational, would have assisted but considered; "*it's not about measurable goals, it's about the claimant herself returning , had she made it back."*

518. The Tribunal consider that Inspector Turner did not provide a structure to enable him to assess the claimant's progress and needs during the TDR, he essentially left it for the claimant to see if she 'could swim' again in the job, with minimal support from him.

3 July 2023 meeting

519. The claimant met with PI Godhania and CI Gill on 3 July 2023, on her first day back from leave and a new return to work plan was created [page 888].

520. The claimant complains that CI Gill at this meeting had alleged that she was fabricating what she was saying about the lack of support from Inspector Turner and that CI Gill had told her that he did not believe what she was saying. He denies this. The Tribunal have taken into account what he says in his evidence in chief (para 95):

"She [the claimant] said that she wished that this type of plan had been put in place at a much earlier date. I felt that this comment was unfair to PI Turner as the earlier return to work plan that had been put in place was not dissimilar to this newer one, but PI Godhania had just laid it out in more detail for the Claimant. The overall aim of getting the claimant to a stage where she could take the lead (this time with PS Burn in the background to support as needed, instead of PS white) was the same as the goal with PI Turner's original return to work plan with shadowing taking place prior to that…"

521. However, the claimant was complaining largely about how the plan had been implemented in practice. The promise of reviews she complained had not materialised. This plan put much more structure around the reviews and when they would take place e.g. at week 10 and 14 the inspector will seek a progress report. This plan now set out clearly not only that there would be shadowing but what the shadowing would involve e.g. body worn video reviews, plan effective briefings, patrol strategy et cetera and identify the training that the claimant would receive etc.

522. There are WhatsApp messages between the claimant, Stephen found and Lucy Jane Milton [page 903 – 904]. The claimant sent a WhatsApp message on 3 July 2023 in the evening stating:

"*spoke to them today (very stressful)* ***I felt like I was lying*** *about the failures in support…." Tribunal stress*

523. The Tribunal accept the submissions of counsel for the respondent that while CI Gill thought the claimant was being unfair in her criticism of Inspector Turner or words to that effect and that he did not accept what she was saying, that is not the same as putting to her that she had fabricated/ lied but rather he did not accept what she said was fair.

524. The claimant does not allege that this was said in a manner or tone which was oppressive or overbearing. Respondent counsel asserts that CI Gill had good reason for thinking that the claimant was overstating the matter because he knew that she had had meetings with Inspector Turner and there had been several occupational health consultations.

525. The Tribunal also take into account the strict hierarchy within the police and the claimant's deference to that, however that said the claimant did send several emails after this meeting about the lack of support and challenging the decision to proceed to Step 2 but does not raise any concern over how she was made to feel about her complaints about the lack of support and certainly does not allege that she had been accused of lying. The WhatsApp message to Ms Milton [page 903 above] she does not say she was accused of lying only that: *"**it felt** like"* she was lying.

526. On 3 July 2023 (12:24) immediately after the meeting [page 857] the claimant sent an email to CI Gill and PI Godhania and thanked them for the meeting which she states she found useful, while the Tribunal is mindful of the claimant's deference and respect for rank, she does add;

"I am grateful that you were able to listen to my concerns which I have been raising for several months."

527. The claimant asked about Step 2 of the capability process and asked them to confirm that this will only take place following the extended return to work and if after this period she is deemed not fit for duties. She does on to explain how during the meeting it had been discussed how very little of the previous plan had been followed through, that she had minimal support, no access to all the required training, no regular meetings to discuss and monitor her progress and with no discussions or workaround redeployment options and reasonable adjustments.

528. Late on 3 July 2023 (15:25) the claimant wrote again to CI Gill and PI Godhania , in which she asked for records of meetings between herself and Inspector Turner from January 2023. The claimant asks for information about the capability meeting so that she can arrange support. She also refers to reducing her hours and wanting to pursue that but as discussed will request to revisit that once she is back on to full duties. In this email she asks the following question but does not allege that CI Gill had accused her of fabricating support:

"…I am unsure which help I received which you were referring to…"

529. CI Gill replied on 3 July resending her email back to the claimant but adding his comments within it [page 88]) and in terms of her comments about flexible working;

"Y*ou are well within your rights to request a FWA, if we cannot meet this condition in Nottingham we will look at options where we can accommodate the request. We will put in the reasonable adjustments in the hours you are able to do as part of your TDR plan to get you to your goal of operational sergeant."*

530. The Tribunal consider that it is more likely than not that in that meeting (for which no minutes have been produced), CI Gill had made a comment likely to be somewhat stronger than the comment he makes in his witness statement before this Tribunal, challenging the claimant's criticism of the plan put in place by PI Turner and the support provided. However, the Tribunal do not find on the balance of probabilities, (not least taken into account the emails of gratitude the claimant sent after the meeting), that he had accused the claimant of lying about the lack of support.

531. It was also not put to CI Gill that when speaking to the claimant about what she had said about a lack of support, he intended it to have the prescribed effect i.e. to create an intimidating, hostile, degrading, humiliating or offensive environment or to violate the dignity.

532. PI Gill in his evidence in chief (para 90) refers to the claimant understanding (as evidenced by her email) that they respondent would discuss a flexible working application once she was back onto 'full duties' and; "*there was no detriment to the claimant as we agreed to reconsider the position once she was back up to full operational duties*" which he gave evidence meant being fully deployable in the role and able to respond to incidents, not

full time hours.

533. CI Gill set out what had been discussed at the 3 July meeting in an email to Farah Redmond [page 937 – 938] and Sup Peter and the next steps which started with the following:

"***Start again*** *with a new TDR Plan." Tribunal Stress*

534. This was effectively a TDR that starts fresh, which the Tribunal find indicates that the respondent appreciated the deficiencies in the original TDR and how it was implemented. Nonetheless despite the claimant's clear concerns about being moved through to the next stage of the capability process, CI Gill records that he told her:

"one of the possible outcomes of the procedure should this reach a step three may be the ending of your employment…"

535. Despite the tacit acceptance that that a fresh TDR was required, the claimant was clearly being told that she would be moved through the capability hearing.

536. The new TDR set out in some detail the issue of training, it is not asserted here that training is not required until the claimant is carrying out operational duties. The training included during the first six weeks for the claimant to book herself on various courses and then for the claimant to be in the company of a tutor Constable so she can attend incidents and familiarise herself with frontline policing. In week 7 to 14 which is the shadowing phase, it provides that some of the shadowing will include attending incidents and understanding the command-and-control supervision requirement. Shadowing also expressly includes NICHE crime reviews, NICHE stop and search reviews and NICHE case file reviews.

537. The claimant in her evidence in chief accepts that this was a much more detailed plan than the initial return to work plan created by PI Turner (w/s para 81). However, it did still stipulate that in the last 3 weeks of the plan the respondent would look at a phased return to a 6 on and 4 off shift pattern.

538. CI Gill did confirm that the plan would be amended to ensure that she does not work more hours than she feels she can do, but this was not until 3 August. He then also suggests that she can submit another FWA but if this cannot be met in her current role, as a 24/7 sergeant, but they will look at other options.

539. Her treating psychologist wrote on 7 June (816) about her need for reduced hours.

540. The claimant was to start the plan on reduced hours however PI Godhania advised that it was not possible for her to start it because the claimant was not signed off as fit for operational duties by occupational health [page 928].

541. The 27 April 2023 OH report (above) had advised that the claimant was temporarily unfit for operational duties and included a clear request by OH for specialist advice to be obtained. Inspector Turner gave evidence in cross examination that he had made no changes to the TDR after this advice was received, the claimant continued to be expected to work full time and lead a team. In his witness statement he had alleged (page 120) that he had requested a review with HR and OH. He gave evidence that the review would have involved the claimant, OH, HR and senior leadership. He had told the claimant in an email on 4 May 2023 that he would need to arrange a review if she genuinely could not work the full set of shifts [page 676]. While Inspector Tuner gave evidence under cross examination that he had taken action to arrange this by emailing HR or his line manager (he could not recall which) he could not locate any email in the bundle, he could not recall the exact date he did this and agreed that while he was still in post (up to 8 June 2023) no case review/conference took place. Inspector Turner had appeared uncertain in his evidence about this email and was asked to

clarify by the Panel that his evidence is that he sent it, to which he replied:

"*I cannot say for certain".*

542. The Tribunal find on balance that no such request was made and Inspector Turner took no steps to arrange a review and meanwhile, the claimant was using annual leave to avoid working the full-time hour and full shifts. On balance the Tribunal accept her evidence in chief that she was also required during this period to cover the whole sector as the only sergeant on duty despite not being operational [page 599].

543. In the email on 4 July 2023 to the claimant, PI Godhania [page 888] referred to the claimant expressing her commitment at the meeting on 3 July to get back to operational duties as a sergeant however, PI Godhania states that the respondent should firstly look at how they can assist the claimant in getting medical clearance and proposed the following:

- the next 8 weeks the claimant will not work an early turn. The shift pattern will be 2 late shifts and then 2 shifts.
- OH, to review if there is anything else the respondent can do to assist.
- there will be discussion with the claimant about duties in the interim.

544. Attached to the letter was a proposed plan [page 889 – 890] which scheduled the training to be carried out included during week 1 to 6 when the claimant would accompany a Tutor Constable to attend incidents and familiarise herself with frontline policing. For weeks 7 to 14 it included shadowing and it set out the areas this would cover including NICHE case file reviews. Week 15 to 22 included the claimant taking full control with a Police Sergeant shadowing in support. It provided that the claimant works 2 late shifts and 2-night shifts with no requirement for her to work early shifts during this period. The plan provided that during phase 3, which was to be week 15 to 22, the inspector will review the shift pattern and look at a phased return to a 6 on 4 off pattern i.e. full-time duties at phase 3.

545. It also sets out clear review periods for each phase including for example in phase 1 the inspector to have biweekly meetings with the claimant and the inspector to obtain a progress report from the sergeant that the claimant would shadow.

546. It was a carefully considered and thorough plan. However, the claimant complains that the revised plan should have happened after the OH report in April. CI Gill accepted in evidence that both plans aimed to get her back to being operational but this new plan:

"*we tried to do it in a slower process."*

547. The claimant had however expressed frustration (page 1063) that whoever she speaks to tells her that part time working is not likely to be accepted in a 24/7 sergeant role and she cannot understand why, given part time working had been agreed previously.

548. The Tribunal find that Inspector Turner could have (which he accepted in cross examination), acceded to the claimant's requests to slow down the return plan and given her more time to complete it when it became apparent in April 2023 that she would not meet the requirement to return to full time hours and the 6/4 shift pattern. He had the Tribunal find, closed his mind to that as an option. He was fixed on her need to return full time by the end of the TDR in place. He had a view that the claimant would never be fit to return and was extending her TDR for financial reasons which may well have influenced his approach.

Case Quality Team

549. On **5 July 2023** [page 917- 918] the claimant provided to PI Godhania copying in Mr Found and Ms Milton, the details of her current psychiatrist and doctors' details, it listed **Dr**

Nixon, Specialist Depression services, and Dr Malik with his surgery address. It was acknowledged by PI Godhania and he informed her he would speak to People Advisor and he forwarded the details [page 922]. On **6 July** PI Godhania spoke to the claimant, as confirmed in an email [page 927] wanting her authority to get another OH report to advise whether she was fit to return to work operationally as a sergeant. In the interim she was told to work from home but if she was not signed as fit to return, they would look at roles such as in the Case File Quality Team (CFQT). This was a non-operational role which could be carried out on late and nights shifts. It was a desk-based job reviewing case files

Invite to Step 2

550. During July 2023 steps were taken by the respondent to obtain the claimant's consent to obtain a report from her treating medical practitioner, as OH had asked for in April 2023, in advance of the Step 2 Capability Meeting [page 960 – 969].

551. On **14 July** [page 951] the claimant mentioned in an email to CI Gill and T/Insp Keane that she had recently been diagnosed with fibromyalgia which she had been dealing with fro a long time and provided again details of her practioner in order of priority for OH contract, the one listed first was Dr Nixon, Psychiatrist.

552. Helen Asare of the respondent contacted the claimant on 14 July [page 955] to let her know that she had chased a report from her consultant but did not identify who she had contacted. The claimant asked her to clarify who she had contacted on 15 July because the claimant had not received anything yet from Dr Nixon her current consultant who has the most recent overview. It transpired on 10 July [page 960] that the respondent had written not to Dr Nixon but Dr Medley because they had used it appears a previous medical consent from the claimant had signed. The claimant expressed her frustration on **20 July** in an email to Ms Asare copying in CI Gill and T/Insp Keane that the medical consent form was used was from April, she had not been asked to fill in another and she had sent details of her current psychiatrist.

"I have been trying to help as bet I can in order to get this expedited, please send me a consent form and I will fill this in with the up-to-date records so this can be process as quickly as possible."

553. It appears the Tribunal find that the claimant had filled in another consent form on 2 May with the names of Dr Williams and Dr Medley and Ms Asare had sent the request for advice to Dr Medley on 2 May and she had been waiting to hear back, she and had not been forwarded the emails the claimant had sent in July with the details of her current treating psychiatrist. This was communicated to the claimant on **20 July** [page 974]. There was some approval required internally to pay the fee for Dr Nixon's report and this was approved and questions were sent to Dr Nixon. The claimant was notified of this on **4 August 2023 [page 1007].**

554. The claimant was concerned the Tribunal accept, that she would not get an updated OH report with input from her psychiatrist before a Step 2 hearing was held.

555. T/Insp Keane was covering for PI Godhania and sent the claimant details of a role in CFQT as part of her return to work [page 977- 981]. The claimant agreed to this move.

556. There would then follow letters to the claimant on 23 June [page 84], 5 July [page 909] and 26 July [page 987] stating that her attendance was required at a Step 2 meeting stating:

"The Step Two process is ***being initiated*** *as there are no timescales for a return to full operational duties at this time." Tribunal stress*

557. On the **26 July** [page 993] the claimant was given a new date of 7 September for the

Step 2 meeting. There was still no further input from OH.

558. The policy provides that at the end of a Step 2 meeting [page 245] the employee is made aware of the possible outcomes, which may be termination if it Step 3 is reached. The policy does not state that at this meeting that a decision will be taken whether this should be treated as a Step 2 meeting. The Tribunal find that the claimant reasonably understood that the meeting was itself a Step 2 meeting, not a review of Step1 but a meeting to discuss further action and the range of options included further medical evidence, redeployment or whether to a proceed to the next Step.

559. The Tribunal accept the claimant's evidence in chief (w/s para 66) that she felt from the wording of the letters that the decision had been made to move to Step 2.

30 July 2023

560. The claimant was moved to the CFQT) n 30 July 2023 and the Tribunal accept that she performed well in this role. Her placement was extended on 18 August. However, the claimant complains that she was still under the threat of Steo 2 capability proceedings and the proposed TDR that would be implemented still required a return to full time hours and the full set of 6 shifts.

August 2023

561. The claimant was working to a plan in CFQT as follows:

Week 1 -3: 24 hours per week for 3 weeks

Week 4 – 6: 32 hours per week.

Week 7 – 9: 40 hours per week.

562. The claimant was still required to work full time hours in the last 3 weeks of this plan in the CFQT team and would request leave to reduce her hours.

563. On **7 August 2023** the claimant's representative contacted CI Gill [p.1013] setting out his concern that the claimant was told that she cannot get a reduction in her working hours to go part time until her capability process is resolved and been told that the current role in Nottingham is not open to part time working. He complains that the capability process cannot prevent the claimant from applying for flexible working nor a reduction in hours and she is open to asking for reasonable adjustments. He goes on to refer to another officer in another area who has been supported with a workplace adjustment passport and attaches the other officer's passport. While he appreciated the need to ensure Nottingham was policed and staffed according to being a 24/7 station, he states that police constables were working part time hours and it was unfair for sergeants to be the only positions not open to this process and complained that it was unfair not to have allowed the claimant to apply for the 6th Sgt role because in his opinion this would be a role better suited to a reduction in hours and a flexible working pattern. He repeated the request to reconsider her request to reduce her working hours and work with her to put in place a shift to support her disability. While allowing her to work flexibly on the CFQT was a help, this was not a long-term solution and she had been told there not a permanent position within the CFQT team for her.

564. CI Gill replied on 7 August [page 1068], he did not confirm that the claimant's request was something which could be accommodated but he states:

"*Reasonable adjustments are in place to support the [claimant'] recovery, once **[the claimant] is shown as fit to work, we will then have an understanding of capabilities and will look at reasonable adjusted roles i**f this is required. As you know, each step of the capability process looks at roles within the organisation which can be adjusted, all of which [the claimant] will be able to*

consider/apply to. We have adjusted duties for officers in the past and there is no reason why we would not consider this again." Tribunal stress

565. The clamant **on 7 August 2023** submitted a fit note which stated that the "*Patient is fit to work part time*" to support her request for reduced hours [page 1067].

566. T/Insp Kane sent an email in response to the claimant on 8 August [page 1066] asking questions in light of the fit note namely whether the fit note meant that she was ready to return to full operational duties (under a phased return) and given the fit note did not comment on the times she can work, whether he could assume that she is able to work ETs, LT and NTs. It also referred to the plan she was working to and asked.

"This plan is in place we are awaiting the report from your psychologist and currently deem you unfit to return to front line duties. If you are fit to work, we will look at move you to the other plan agreed by Insp Turner, is this what you believe to be correct in relation to the fit note?"

567. On **8 August 2023** [page 1065] the claimant sent an email which was sent to a number of people including CI Gill and T/Insp Kane in which she replied to questions raised by T/Insp Kane about her fit note. She responded to Mr Kane's email and expressed surprise by the suggestion of not awaiting the psychologist report, who is a specialist in severe depression, and that she was not fit to start the other plan [1066].

"… I am unsure why my request for reduced hours is being stalled till my capability meeting and should have no bearing on my request for reduced hours I have put in leave requests for the 3rd phase in order to reduce my hours as I have done over the last few months in order to work appropriate hours for my ongoing health issues."

568. On 8 August CI Gill replied [page 1064], stating that the claimant could submit a flexible working request and if that cannot be met in her current role, the respondent would look at options in other areas.

569. The claimant referred to the distress the ongoing situation was causing her. The claimant wanted clarity that she could return on to her sergeant role part time.

570. The Tribunal accept that the claimant was being given no reassurance that some adjustment to her shift pattern could be accommodated to allow her to remain in her job and she was confused why some accommodation could not be made and felt that the respondent was not taking into account her disability and her needs but had been willing to consider adjustments previously when she went on maternity leave.

571. The claimant's email on 8 August 2023 to Mr Found and Ms Milton expresses her exhaustion and in summary makes these points [page 1031]:

- While CI Gill had said they were not stalling her requests for flexible working, whenever she speaks to anyone, they state part time working is not likely to be accepted in the Nottingham response Sgt role.
- She was given no support during the TDR with training, sgts were told not to give her work during shadowing, she was bullied and intimidated by other staff
- she has been approved for a trial period while on maternity leave but not now
- She had asked for the April OH report and despite what it said, she was left shadowing and often on her own covering the team
- The details of her psychiatrist had not been passed on even by CI Gill and she did not know until end of July they had not contacted her psychiatrist. With regards to

FWR they state they will look at other options but have not given her any for her to consider

Alternative Proposals

572. On 9 August the claimant sent T/Insp two alternative proposals to reduce her hours, including some early turns [page 1039].

573. There was the Tribunal find, no reply to these suggestions and the Tribunal accept that this left the claimant feeling unsupported and increasingly frustrated and exhausted by the process.

574. **On 10 August** [1058] the claimant submitted a disability passport which referred to capping her early turns at 8 hours [page 1054] and requested a meeting with CI Kane [1058] and People Advisor to discuss, stating that this meeting may not be able to take place before the step 2 review but it is something she wants taking into consideration. It included a lot of detail about her conditions and their effects and requested that:

"I want to reduce the amount of hours I do part time and where possible the amount of ET Shifts I am required to do. When I do work ET shifts it would be beneficial for me if these could be ***capped at 8 hours.***

I would need my working hours on Thursday to incorporate my psychology sessions."

575. On **11 August 2023** Mr Found told the claimant that CI Gill had agreed that she could reduce her hours in her response role and she felt relief that she was getting somewhere. However, and unfortunately it appears that Mr Found had misunderstood what CI Gill had meant.

576. On **14 August** the claimant sent a further email setting out a response to his email of the 8 August which ultimately complained that while everyone keeps stating they will look at other options in respect of the flexible working application, she had not been given any options still but repeated that she should be allowed to return to her response role but with adjustments [1063]:

"I am stressed, frustrated and tired of fighting and being made to feel like I am being slowly pushed out of my role."

577. CI Gill replied [1061 – 1062]. He stated that OH had advised that they contacted the psychiatrist that she had initially advised for them to contact and now have the updated information and funding approved for a report which has been requested and a step 2 process will not take place until the report is received. He also told her that while she may apply for part time working, he had **not guaranteed** it would be in the response role but there are other roles where the respondent may be able to accommodate it. He did not identify what the roles may be. That her hours may be accommodated in another role was not what she had understood CI Gill had told Mr Found and it seems Mr Found had misunderstood what had been relayed to him.

14 August 2023: OH report

578. The claimant met with OH on 14 August 2023 [page 1025]. An OH report was obtained on 14 August 2023 [1074].

579. CI Gill stated in hiss evidence that at the end of the TDR the claimant had to be **ready** for operational duties, rather than **return** to full operational duties and once ready would need medical clearance.

580. However, CI Gill accepted, in response to questions from the Tribunal, that the claimant would 'possibly' have understood that the requirement by the end of TDR was to be **fully** operational rather than ready to be.

581. CI Gill's evidence is that once operationally **ready** a request for reduced hours could then be made but to his mind, not before.

582. If the claimant was **ready** to be front line but could not do the hours, his evidence was that she would not be put through a Step 2, they would treat it as a reasonable adjustment under the capability policy or make a flexible working request.

583. The Tribunal do not accept that this was communicated to the claimant.

584. CI Gill did not say and the claimant was not told, that at the end of the TDR if operationally ready, if she put in a request for reduced hours, the TDR would be extended until that application was dealt with. Otherwise, she would still have to work the full set of shifts until a decision was made.

585. The report referred to the claimant experiencing excruciating abdominal pains which can randomly occur and that her symptoms can be debilitating when very severe and that she had been given an appointment for gallbladder removal in October 2023. The fibromyalgia symptoms include widespread pain all over body and joints, lack of sleep, fatigue, muscle stiffness in the mornings and occasional brain fog as well as sense of increased sensitivity to touch and pain. The report referred to the claimant struggling with coping in the mornings with her sleep usually interrupted by pain.

586. The advice included the following in response to specific questions asked by the respondent:

"How will the 2 newly diagnosed conditions impact [the claimant's] role as a Response Sgt on a 24-hour shift pattern? Will [the claimant] still be able to perform this role?

Following our discussion after gone [sic] through her symptoms and her work, she feels she can manage a response sergeant role with adjustment to a shift pattern. Although [the claimant] is on sleeping medication she is still waking intermittently due to pain. ***In view of this she may struggle with morning shifts.*** *We have discussed brain fog issues which she said are very infrequent and therefore she can make decisions concerning her normal role*

Are there any further measures that can be taken to support the claimant?

The claimant may find working late shifts helpful until the health symptoms have become stable. I may be in a better position to advise further once I have received the report from a psychiatrist. I *understand that she is currently working reduced hours (30 hours) which she finds manageable.* ***At this moment it is possible that she may struggle working more than 30 hours due to a mental health and physical health concerns.***

The combination of medication for the two newly diagnosed conditions, plus of the medication [the claimant] is taking have a permanent impact on [the claimant's] ability to conduct her role as a response St on a 24-hour shift pattern?

It is not possible to provide an answer on a future prognosis at this stage the condition affects individuals differently. If a gallbladder surgery goes well then this will reduce the gallstone issues…"

Fitness for work status

I consider the claimant continue amended duties on current reduced hours ***whilst waiting for her psychiatrist report."*** *Tribunal stress*

587. The occupational health advisor stated that a review appointment will be arranged as soon as she was in receipt of the psychiatrist report and an update will be forwarded to management thereafter.

Dr Nixon – report 15 August 2023

588. Dr Nixon's report was dated **15 August 2023** [page 1092].

589. The relevant extracts include:

> *"The main diagnosis is recurrent major depression… The current episode is of moderate – severe intensity without psychosis but chronic (persistent beyond 2 years) and treatment resistant (continuous despite adequate clinical interventions over this time).*
>
> *…a consideration of reduction in total hours worked (less than full time working to enable continuing treatment and accommodate any residual symptoms); and allowing time within work to attend necessary appointments … There is no necessary bar to [the claimant] returning to her former occupational level, since functional improvement should follow recovery from the current illness… There is some reason for current optimism, though [the claimant] has had a long illness and further response cannot be quarantined. The more effectively Occupational Health illness can work with [the claimant] on reasonable adjustments, the fuller and more sustained the recovery is likely to be; and I strongly recommend that if there is further clinical improvement, then room is given for a staged, flexible return that is acceptable to all parties.*
>
> *Likely timescale for return to operational duties: The timescale of return to operational duties, will depend on the time and extent of the current treatment response. We will know more over the coming months and if the hoped for fuller recovery transpires then I strong advise a negotiated timescale of return with scope for flexibility and agreement of aims [with the claimant] (including work pattern and total hours per week)."*

590. Had this advice been obtained sooner, when OH health in April had recommended this further advice was sought, then the respondent may have perhaps taken further steps to review the TDR, the working patterns and the claimant's hours, looked at her application through the 'lens' of a request for a reasonable adjustment and reached an accommodation which enable the claimant to return to her post and avoided putting her through the next stage of formal capability process.

591. On **29 August 2023** T/Insp Kane requested that the claimant's rota was reduced to 32 hours per week for the final 3 weeks of the extended TDR.

592. The Step 2 meeting was set to take place on 7 September 2023.

593. The claimant had still had no response to her proposal set out in in her 10 August letter for an adjustment to her early shifts in her sergeant role. The respondent had not suggested any alternatives.

594. On the 31 August 2023, the claimant attempted to take her own life.

595. The claimant was hospitalised from 12 September 2023 to 28 March 2024.

596. The claimant's employment ended on 1 October 2024 on capability grounds.

January 2024

597. On 24 January 2024 B made a freedom of information request which disclosed that 7 sergeants across the respondent cover a 24/7 role and do not work the maximum 40 hours per week.

598. The Tribunal heard evidence from Mr Ian Drummond Smith, he had no direct involvement in the facts of this case.

599. Mr Drummond-Smith is one of three Assistant Chief Constables in the respondent, part of the Chief Officer Group (COG), with 27 years of policing experience. He joined the respondent in 2024. He holds the portfolio of 'Network Policing' across the Respondent, leading the strategic delivery of policing across the rail network to ensure passenger and staff safety. The claimant's representative who cross-examined all other witnesses at length asked no questions of Mr Drommond-Smith by way of cross examination.

600. His unchallenged evidence is that due to budgeting constraints the respondent's resources are stretched thin on the ground. He has no knowledge of the claimant or the circumstances of her case. He gave evidence on operational and resourcing matters within the respondent only.

601. He gave evidence as to the importance of the role of sergeant, as an important leadership role (para 11 w/s) and a vital operational role.

602. His evidence is that in the case of long-term sickness absence an absent sergeant's role can be temporarily back filled by a police officer (PC) acting up. The PCs role is not back filled and there is no mechanism whereby extra budget can be allocated to fill the gap.

603. Where at Nottingham therefore a segreant would lead a team of 5 PCs, where a sergeant is on long term absence, a PC may act up and the team is left with 4 PCs.

604. A shortage of PCs who had passed their sergeant exams means sometimes PCs had to act up as Temporary Police Sergeants even without passing their exams cover other states in the East Midlands which left a shortage of PCs. This evidence was not challenged by the claimant.

605. He also gave evidence that the majority of prisoner handling takes place in the mornings which requires coordination across the sector and Nottingham station was and remains the only 24/7 BTP police station in the sector.

606. Nottingham had in 2023/14 a budget to employ 5 sergeants and 23 PCs, which changed in 2023 when it was granted a budget to add a 6th sergeant but this role was to fill gaps in supervisory cover, governance reviews etc. Nottingham is a category A station meaning it is of critical importance.

607. Mr Drummond-Smith also gave evidence that flexible working applications may be turned down should they lead to additional cost by for example needing overtime to fill a gap. However, the Tribunal find that this was a general statement and not specific to the respondent or the claimant and when the Judge asked whether there is any policy or guidance on how to calculate what gaps can be covered and what can be afforded, Mr Drummond- Smith gave evidence that he was not aware of any, that the budget is cascaded down to the superintendent who will need to check the budget for that division and whether they are overspending or not but there is no central guide or matrix to determine what additional operational cost can be covered. He had no evidence about the budget or overspend at Nottingham during the relevant period.

608. He gave evidence that there is no additional money to backfill sickness and when officers are sick the police station runs short and:

> "*We cannot fund roles or sickness **indefinitely**…" (para 26) and*
>
> *"due to BTP wanting to support [the claimant] through an extremely difficult period, but operationally,*

*commercially, and financially**, this could not continue**." (para 27)*

609. That there are budgets and finite resources is clear however his evidence is that what can be afforded is down the individual division which does not assist the Tribunal in assessing what the budget was for the respondent and whether it was overspending and whether and what additional cost it could cover.

610. Mr Drummond- Smith made a general statement (para 27) that the claimant had been paid for an extended period of time but operationally, commercially and financially this could not continue however, he provided no more detail beyond that broad statement. The Tribunal were not presented with any figures for the division at the relevant time and it appears to the Tribunal that no actual cost/budget assessment was carried out to assess whether the claimant's request for flexible working or extension of the TDR could be financially accommodated and for how long.

611. The Tribunal heard evidence from Sgt Wilson who gave some evidence about the impact of a shortage of PCs who had passed their sergeant exams (w/s para 14 and 17) and how PCs acting up to temporary Sgts left a shortfall in PC cover at the respondent station and the impact of having to cover for sickness absence during Covid 19.

612. The Tribunal also heard evidence that Sgt Peters hosted a "Gold Group" (a strategic meeting designed to improve the police response to an incident, crime or other matter) as a result of which the resilience sergeant role was required and created in May 2023. It was filled in July and by August 2023 that sergeant role was already required to back fill a role caused by the long-term sickness absence of Sgt White.

Submissions

613. On the 13 August 2025 the respondent filed written submissions of 71 pages and further comments on the claimant's submissions of a further substantial written comments on the claimant's submissions.

614. The claimant filed 83 pages of submissions and significant comments on the respondent's submissions.

615. At a hearing on 27 August 2025 oral submissions were also heard.

616. Those submissions were considered in full by the Tribunal and given their length are not repeated within this judgment however, they are referred to in part within the factfinding exercises and the conclusion and analysis section.

617. The legal authorities relied upon by the respondent are as follows:

Wong v Igen Ltd (formerly Leeds Careers Guidance) [2005] ICR 931
Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205
Ayodele v Citylink Limited and anor [2017] EWCA Civ.1913
Madarassy v Nomura International plc [2007] IRLR
Bahl v The Law Society [2004] IRLR 799
Any V University of Oxford and anor [2001] ICR 847
Hewage v Grampian Health Board [2012] ICR 1054
Field v Steve Pye and Co (KL) Ltd and others [2022] EAT 68
Shamoon v Royal Ulster Constabulary [2003] ICR 337
Shamoon v Royal Ulster Constabulary [2003] ICR 337
Nagarajan v London Regional transport [1999] IRLR 572
Baldwin v Brighton and Hove City Council [2007] ICR 680
Malone V Chief Constable of Scotland [2021] 10 WLUK

Tess Esk and Wear Valleys NHS Foundation Trust v Aslam and another [2020] IRLR 495
Unite the Union v Nailard [2018] EWCA Civ 1203
Worcestershire Health and Care NHS Trust v Allen [12024] EAT 40
Richmond Pharmacology v Dhaliwal [2009] ICR 724 EAT
Betis Cadwaladr University Health Board v Hughes and ors EAT 0179/13
Land Registry v grant [2011] ICR 1390
General Municipal and Boilermakers Union v Henderson 2015 IRLR 451 EAT
Ahmed cv Cardinal Hume Academies EAT 1096/18
Sandhu v Enterprise Rent- A -Car Ltd 2025 EWCA 190 CA
Quality Solicitors CMHT V Tunstall EAT 0105/14
Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230
Charlesworth v Dransfield's Engineering Services Ltd [2017] 1 WLUK 87
Heskett v Secretary of State for Justice 2021 ICR 110 CA
Gray v University of Portsmouth EAT 0242/20
Rider v Leeds City Council [2012] UKEAT/0243/11
Tarbuck v J Sainsburys Supermarkets [2006] IRLR 664
Bank of Scotland v Ashton [2011] ICR 632

Legal Principles

618. Section 136 Equality Act 2010 sets out the burden of proof which applies in case of discrimination:

"(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*."*

Direct discrimination

619. Section 13 EqA sets out the definition of discrimination:

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

620. Section 23 EQA provides that on a comparison of cases there must be no material difference between the circumstances relating to each case.

621. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL,** and particularly in the judgment of Lord Hope at paras 33-35.

622. The Tribunal have reminded itself of the guidance in **Field v Steve Pye and Co. (KL) Limited and Others [2022] EAT 68.**

41. It is important that employment tribunals do not only focus on the proposition that the burden of proof provisions have nothing to offer if the employment Tribunal is in a position to make positive findings on the evidence one way or the other. If there is evidence that could realistically *suggest* that *there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment.* ***To do so ignores the prior sentence in Hewage that the burden of proof requires careful consideration if there is room for doubt****.*

42. Where there is significant evidence that could establish that there has been discrimination it cannot be ignored. In such a case, if the employment Tribunal moves directly to the *reason why question, it should generally explain why it has done so and why the evidence that was* suggestive *of discrimination was not considered at the first stage in an Igen analysis.* ***Where there is evidence that suggests there could have been discrimination, should an employment Tribunal move straight to the reason why question it could only do so on the basis that it assumed that the claimant had passed the stage one Igen threshold so that in answering the reason why question the respondent would have to prove that the treatment was in no sense whatsoever discriminatory****, which would generally require* ***cogent evidence****. In such a case the employment Tribunal would, in effect, be moving directly to paragraphs 10-13 of the Igen guidelines.*

43. Although it is legitimate to move straight to the second stage, there is something to be said for an employment Tribunal considering why it is choosing that option. ***If at the end of the hearing, having considered all of the evidence, the Tribunal concludes that there is nothing that could suggest that discrimination has occurred and the employer has established a non-discriminatory reason for the impugned treatment, there*** would ***be no error of law in just answering the "reason why" question, but it is hard to see what would be gained by doing so, when the Tribunal has already concluded that there is no evidence that could establish discrimination, which would result in the claim failing at the first stage . There is much to be said for making that finding and then going on to say that, in addition, the respondent's non-discriminatory reason for the treatment was accepted****.*

44. ***If having heard all of the evidence, the Tribunal concludes that there is some evidence that could indicate discrimination but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic, it is permissible for the employment Tribunal to reach its conclusion at the second stage only. But again, it is hard to see what the advantage is. Where there is evidence that could indicate discrimination there is much to be said for properly grappling with the evidence and deciding whether it is, or is not, sufficient to switch the burden of proof. That will avoid a claimant feeling that the evidence has been swept under the carpet.*** *It is hard to see the disadvantage of stating that there was evidence that was sufficient to shift the burden of proof but* that*, despite the burden having been shifted, a non-discriminatory reason for the treatment has been made out.*

45. Particular care should be taken if the reason for moving to the second stage is to avoid the effort of analysing evidence that could be relevant to whether the burden of proof should have shifted at the first stage. This could involve treating the two stages as if hermetically sealed from each other, whereas evidence is not generally like that. It also runs the risk that a claimant will feel that their claim that they have been subject to unlawful discrimination has not received the attention that *it merits. 46. Where a claimant contends that there is evidence that should result in a shift in the burden of proof, they should state concisely what that evidence is in closing submissions, particularly when represented*

623. **In *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA, the Court of Appeal*** the court set out guidance the approach to be taken to the burden of proof.

Harassment: section 26 Equality Act 2010

624. The starting point is the statutory provision under section 26(1) EqA 2010 provides that:

"(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B."
…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a)the perception of B.
(b)the other circumstances of the case.
(c)whether it is reasonable for the conduct to have that effect.

625. To succeed in a claim for harassment, the claimant must prove, on the balance of probabilities, the following necessary elements (as defined in the case of **Richmond *Pharmacology* Ltd v Dhaliwal [2009] IRLR 336 EAT)**: (1) The respondent(s) engaged in unwanted conduct. (2) The conduct in question either (a) had the purpose or (b) the effect of either (i) violating the claimant's dignity or (ii) creating an adverse environment for her. (3) The conduct was on a prohibited ground.

626. The Tribunal have considered the guidance in: **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam & Anor [2020] IRLR 495**:

627. The Tribunal have had regarded to **Pemberton v Inwood [2018] ICR 1291, CA, 1324** para. 88:

"In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect."

628. **Thomas Sanderson Blinds Ltd v English EAT 0316/10** : unwanted conduct means conduct that is unwanted by the employee and whether conduct is 'unwanted' should largely be assessed from the employee's point of view.

629. In **Reed and anor v Stedman 1999 IRLR 299, EAT**, the EAT noted that certain conduct, if not expressly *i*nvited, can properly be described as unwelcome.

630. Conduct that is by any standards offensive or obviously violates a claimant's dignity will automatically be regarded as unwanted.

631. The EHRC Employment Code gives example of what it terms 'self-evidently' unwanted conduct (para 7.8).

Something arising from: section 15 EqA

632. Section 15 EqA *provides* as follows:

(1)A person (A) discriminates *against a disabled person (B) if—*
(a)A treats B unfavourably *because of something arising in consequence of B's disability, and*
(b)A cannot show that *the treatment is a proportionate means of achieving a legitimate aim.*

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

'Unfavourably'.

633. The Equality and Human Rights Commission's Code of Practice on Employment states that it means that the disabled person 'must have been put at a disadvantage' (see para 5.7).

Because of something arising in consequence of disability'

634. The EHRC Employment 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.

635. The Tribunal have had regard to the guidance of the EAT in **Pnaiser v NHS England and anor 2016 IRLR 170, EAT** where Mrs Justice Simler summarised the proper approach to establishing claims under section 15 EqA.

636. The claimant *needs* only to establish some kind of connection between the claimant's disability and the unfavourable treatment. A section 15 claim could succeed where the disability had a significant influence on, or was an effective cause of, the unfavourable treatment.

Employer's knowledge of causal link between disability and something arising from it?

637. Knowledge by employer of the casual link is **not** required only knowledge of the disability

638. Whether the 'something' for section 15 EqA purposes arises in consequence of the employee's disability is an objective matter i.e. a matter of fact for the ET to determine on the evidence.

639. The "something" that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the *unfavourable* treatment and so amount to an effective reason for or cause of it.'

Objective justification

640. The EHRC Employment Code: aim pursued should be legal, should not be discrimi*na*tory in itself and must represent a real, objective consideration.

641. As to proportionality, the Code notes that the measure adopted by the employer *does* not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective (see para 4.31).

Failure to make reasonable adjustments.

642. Section 20 EqA provides:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage…

Paragraph 20 (1) of Schedule 8 of EqA provides that: *A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—*

(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage

643. Section 212 (1) EqA states that 'substantial' means 'more than minor or trivial'

644. The employer will only come under the duty to make reasonable adjustments if it knows not just that the relevant person is disabled but also that his or her disability is likely to put him or her at a substantial disadvantage in comparison with non-disabled *persons*.

645. Knowledge, in this regard, is not limited to actual knowledge but extends to constructive knowledge (i.e. what the employer ought reasonably to have known).

Constructive knowledge

646. EHRC Employment Code - employers must 'do all they can reasonably be expected to do' to find out whether a claimant has a disability.

Effectiveness of proposed adjustment

647. An essential question is whether a particular adjustment would or could have removed the disadvantage experienced by the claimant. It is sufficient for the tribunal to find that there would have been a prospect of it being alleviated. The Tribunal have also had regard to the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA,** and the remarks of Lord Justice Elias on efficacy in the context of whether an adjustments is reasonable.

Conclusions and Analysis

Direct disability discrimination: Equality Act 2010 section 13

Did Inspector Turner in January 2023 inform the claimant that she could not reduce her hours or apply to reduce them, while on a phased return during January to July 2023? LOI 3.1.1]

Treatment

648. The respondent submits that as a matter of fact Inspector Turner did not told the claimant in January 2023 that she could not reduce her hours or apply to reduce while she was on a phased return and submits that the only conversation which took place between Inspector Turner and the claimant in January 2023 about whether she could reduce or apply to reduce her hours took place in the back to work meeting on 11 January 2023.

649. The respondent refers to the transcript which was checked and signed by the claimant which records Inspector Turner raising the possibility of a flexible working request and commenting that this was not something they had to determine 'now'. His evidence is that her intention was to make a flexible working arrangement once she was fully operational

[523].

650. For the reasons set out in detail in its findings of fact, the Tribunal conclude that Inspector Turner **did** communicate to the claimant at some point in January 2023 that she could not reduce her hours or apply to reduce them, while on a phased return to work. The Tribunal conclude that he had made it clear that she would have to successfully complete the phased return and be operational before this could be considered. What he meant by 'operational', the Tribunal conclude was the ability to carry out the full set of 6 shifts.

Was this less favourable treatment because of the claimant's disability?

651. The respondent does not take issue with the knowledge of Inspector Turner and it accepts that the claimant was disabled at the relevant time.

652. The claimant has not named an actual comparator but relies on a hypothetical comparator.

653. A hypothetical comparator would be, the Tribunal consider, someone in the same role as the claimant who was on a TDR but who was not disabled or did not have the claimant's particular type of disability.

654. As an alternative submission, the respondent submits that if the Tribunal find that Inspector Turner did as a matter of fact tell the claimant in January 2023 that she could not reduce her hours or apply to reduce them while on a phased return, this is not an act of direct discrimination in that he did not treat the claimant less favourably than he did or would treat a hypothetical non-disabled person in materially similar circumstances but it was because of his mis-understanding of policy and/or practice, namely that he thought an employee on a phased return would need to return to their full duties first, and consider adjustments to their working arrangements after that and there is no evidence to suggest that he would not say exactly the same thing to a non-disabled employee coming back to the workplace on a phased return. In other words, the 'because of' test set out in 13(1) is not satisfied, the material cause of the treatment was not the claimant's disability.

655. The Tribunal conclude that the claimant's return to work was poorly managed by Inspector Turner in numerous ways, and that his management of the TDR process and indeed the issues she would complain about in terms of bullying, was poor and that is unfortunate because of its profound impact on the claimant.

656. As set out in the findings of fact, although the occupational health report had recommended regular reviews of the phased return and Inspector Turner had made all the right overtures at the 11 January meeting about the return plan being fluid and the intention to hold documented monthly reviews to assess whether further support was required, this simply did not happen in practice.

657. Inspector Turner was not conscientious in his monitoring and oversight of the process and his view of the plan, far from seeing it as fluid, hardened into a plan which was rigid. He himself refers to taking a 'firm' line with the claimant, an approach at odds with the assurance the respondent had given at the 11 January meeting about it being fluid and subject to review. The difference in approach may have been down to lack of general concern or a growing belief that the return to work would not ultimately be successful and/or a lack of willingness to commit the time and recourses to it. He had the support of HR and he and HR conducted the meeting in January when commitments were made about the process and the support which would be provided.

658. The Tribunal, however, conclude that what Inspector Turner said to the claimant about when she could apply for reduced hours was more likely than not a consequence of his lack

of understanding over how to manage a TDR process in line with the requirements of the Equality Act 2010. The Tribunal accept that it is more likely than not that he would have said the same thing to anyone else in not materially different circumstances who had a different or no disability and who was returning on reduced hours.

659. It was apparent in his oral evidence that he did not really appreciate the difference between a flexible working request and a request for reasonable adjustments under the Equality Act 2010. His oral evidence under cross examination and in answers to the Tribunal was confused and confusing and showed a lack of understanding of the distinction

660. Inspector Turner's in cross examination appeared to fail to appreciate that a disabled person is entitled to make an application for adjustments as a reasonable adjustment under the EqA at any time, outside of and separate from a flexible working request or while on a TDR.

661. The Tribunal were not impressed with Inspector Turner as a witness of fact for reasons set out in the findings of fact. Further, the Tribunal consider that what he and HR said in the 11 January meeting was not carried out in practice, he failed to support the claimant in material respects and was remiss in his care of her return to work. He did not take seriously the importance of making sure the claimant's colleagues appreciated her situation and were supportive of someone who had been through such a horrendous time struggling recover her mental health and returning to such a challenging role of such a protracted absence. Inspector Turner failed to communicate the need for patience despite assuring the claimant that he would do so. He failed to appreciate it seems the importance to the success of the TDR of holding proper and meaningful monthly reviews, of keeping in regular contact and understanding and agreeing with her what she needed (such as training) and obtaining an up to date OH report when it became clear that she would not be able to complete the TDR in accordance with his 'rough plan' of when it should end.

662. Although Inspector Turner stated in evidence that he had significant experience at the time in dealing with complex return work situations, Superintendent Peters gave evidence [w/s para 16] that she had accompanied him to visit the claimant on 7 March 2022 to support him because she felt he may need support with a relatively complex case such as this. It is a shame that support did not continue.

663. The claimant was unable to identify an actual comparator (or evidential comparator) and while inspector Turner's management of the situation was deficient in material respects, the Tribunal conclude what he had said to the claimant about having to wait until she was operational to apply for flexible working was not because of her disability itself, it was because of something arising from it, namely her return on a TDR.

664. Having heard all of the evidence, the Tribunal concludes that there is no evidence to draw an inference of discrimination and that the claimant has not satisfied the burden of proof, but, in any event, even had he burden of proof shifted, the Tribunal conclude that the impugned treatment was in no sense whatsoever because of the protected characteristic.

Detriment

665. This did give rise to a detriment, because the Tribunal accept it caused the claimant considerable concern and anxiety. The claimant was being told that she had to be able to do the full set of 6 shifts before the respondent would even consider an application to reduce her hours, and as she felt she could not do those shifts (because of her disability) as supported by OH, this placed her at an obvious disadvantage.

666. The claimant was increasingly panicking and distraught at the prospect of having to do a 6-shift system and of her inability to be able to do and the Tribunal accept that applying

Shamoon test, a reasonable worker would take the view that in all the circumstances this was to her detriment.

667. However, for the above reasons, this claim cannot succeed.

668. **The claim is not well founded and is dismissed.**

Did Inspector Turner start a flexible work meeting 30 minutes earlier than had been arranged, on 2 June 2023, and not inform the claimant in advance? [LI 3.1.3]

Treatment

669. The meeting was very important to the claimant and it is more likely than not that Inspector Turner failed to appreciate just how important that meeting was to her.

670. The Tribunal conclude that Inspector Turner did start the meeting 30 minutes earlier than had been arranged and had failed to inform her in advance and that was remiss of him.

671. Even though the claimant's union representative had asked to change the hearing time, Inspector Turner should have checked that the claimant was in agreement with that request given he knew that she had a medical appointment that morning.

Was this less favourable treatment because of the claimant's disability?

672. The Tribunal however take into account that this had not been something initiated by Inspector Turner and accept that he had done this deliberately or because of her disability.

673. The claimant does not identify an actual or evidential comparator. The appropriate hypothetical comparator would be someone without a disability or without the claimant's particular disability in not materially different circumstances. The relevant circumstances would be where a trade union representative is to accompany a non-disabled person or someone with a different disability to the claimants to a meeting and contacts the manager to change the time of a meeting where the employee has a known medical appointment for that morning. The Tribunal conclude that Inspector Turner would have dealt with the situation in the same way. The claimant had been copied into the original email from the Trade Union representative and therefore it would have been reasonable to assume that the Trade Union representative would keep the claimant informed, nonetheless Inspector Turner should have checked.

674. The Tribunal consider that even if the burden of proof shifted to the respondent because of what appears on the face of to be egregious conduct in starting a meeting to discuss a disabled person's request for flexible working earlier without informing the disabled person, the Tribunal are satisfied that the reason was not the claimant's disability.

675. Having heard all of the evidence, the Tribunal concludes that there is no evidence to indicate discrimination but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic.

Detriment

676. The claimant did not miss the meeting as set out in the findings of fact (p.841). The claimant refers in her email of the 30 June 2023 to joining early and seeing the message. The Tribunal accept nonetheless that she must have felt under a degree of additional pressure, starting a meeting earlier than she had planned and applying the Shamoon test,

the Tribunal find that a reasonable worker would in all the circumstances feel disadvantaged by such late notice of a change in the start time of such an important meeting.

677. **The claim is not well founded and is dismissed.**

Did Inspector Turner refuse the claimant's flexible working request verbally on the 2 June 2023 without taking various matters into account including: the claimant's disability and the request as a reasonable adjustment, the fact that it had been previously agreed prior to disability in 2021, other ways to make the request workable e.g. job shares, other shift patterns [LOI 3.1.4]

Treatment

678. Inspector Turner in his evidence in chief confirms that he verbally declined the flexible working request at the meeting on 2 June (paragraph 144 w/s).

679. The Tribunal conclude that he did fail to take into account the claimant's disability in that he failed to treat the request as an application for a reasonable adjustment because of her disability despite the claimant in her email of the 5 May 2023 (page 665) stating that the request was being made as a reasonable adjustment under the EqA.

680. As set out in the findings of fact, Inspector Turner approached this on the basis that it was simply a flexible working application and that necessarily engages different considerations for an employer, it is a less onerous obligation.

681. The Tribunal conclude that Inspector Turner did not consider it relevant to consider the previous application the claimant had been granted before her maternity leave and he failed to consider other ways to make the request workable e.g. job shares, other shift patterns on a permanent post TDR or temporary basis, reducing the hours to account for the handover between shifts etc. For the reasons set out in the findings of fact, Inspector Turner the Tribunal conclude, had decided to reject the application before the meeting started and he did not explore at the meeting alternatives with the claimant.

Was this less favourable treatment because of the claimant's disability?

682. The difficulty with this case as presented as a claim of direct discrimination, is that the claimant's own case is that Inspector Turner failed to take into account the claimant's disability in his decision making which necessarily defeats the claim that he discriminated against **because** of her disability. What he failed to do was consider that her disability meant that he should consider this as something other than a request made under the Flexible Working Policy.

683. The claimant does not identify a comparator, but it stands to reason that someone without a disability would have their application dealt with as a flexible working request and not under the EqA.

684. The claimant does not identify someone with a different disability whose application to change their working pattern was treated under a different process.

685. What Inspector Turner is accused of doing is not taking into account the claimant's disability, and that complaint is more appropriately brought as a claim for a failure to make a reasonable adjustment.

686. He failed to appreciate that he should have treated the request under the Capability Policy and not the Flexible Working Policy, and the Tribunal consider that the most likely reason for that was because of his ignorance about the circumstances in which those different policies should be applied.

687. The Tribunal take into account that the respondent had agreed the request to work part time before her maternity leave and as set out in the findings of fact CI Gill confirmed that had she returned on that amended contract the respondent would have had to find a way accommodate it and therefore there were accommodations or adjustments which it seems could have been made regardless of the change in circumstances within the respondent during her absence. It was appropriate to consider the needs of the business at the time she applied again for a change to her shift pattern however CI Gill's evidence is that had she signed off the reduced hours before her maternity leave, they would have had to find a way to accommodate it.

688. There was no discussion about a job share or alternative working arrangements other than those proposed by the claimant, but the Tribunal do not find that there is evidence or that it is reasonable to draw any adverse inferences from any primary findings of fact, that Inspector Turner managed the application in the way he did because of her disability.

689. Having heard all of the evidence, the Tribunal concludes that there is no evidence to indicate discrimination but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic.

Detriment

690. Applying the Shamoon test, the Tribunal find that a reasonable worker would feel disadvantaged by the refusal of the application.

691. **The clam is not well founded and is dismissed**

Did C.I Gill and/or Inspector Turner not send to the claimant an email about a new sergeant role which had been sent to all other substantive Sergeants? (This was in May or June 2023 but the claimant believes it is more likely the latter). The email was later forwarded to the claimant on 5 June 2023 [LOI 3.1.5]

Treatment

692. The Tribunal find that on balance and for the reasons set out in the findings of fact, the claimant **was** sent the email.

693. While the claimant believes that she did not receive the email, the email has been produced to the Tribunal and includes her in the distribution list. The Tribunal also heard evidence from CI Gill that the email had been sent to the claimant originally.

694. The claimant did not produce any compelling evidence, indeed it was only her oral evidence, to establish that the email had not been received and the Tribunal do not consider that there are any adverse inferences to be drawn from the primary facts to find otherwise

695. On balance the Tribunal find that the claimant has not proven that the email was not sent to her originally when it was sent to the other substantive Sergeants.

696. The claimant has **not** established as a fact the alleged less favourable treatment and thus the claim cannot succeed.

697. **The claim therefore cannot succeed on the facts.**

Did C.I Gill tell the claimant, when she asked about why she was not included in the email about the new sergeant role, that she would not be suitable for it, without discussing it with her. As per email sent by CI Gill on 3rd July 2023 [LOI 3.1.6]

Treatment

698. Counsel for the respondent submits that CI Gill: *"did not explicitly tell the claimant that she would not be suitable for the role but he did make that implication by pointing out the ways in which the requirements of the role did not match the claimant's requirements not to work early turns. To that limited extent the claim is factually made out."*

699. The Tribunal accept that it was clearly implicit within the email from CI Gill on 3 July 2023 [851] that he had considered that she would not be suitable for the role prior to having any discussion with her.

Was this less favourable treatment because of the claimant's disability

700. The claimant does not identify a suitable comparator. A hypothetical comparator would be someone in the claimant's sergeant role who it was known was interested in this vacancy and who was not disabled or did not have the claimant's disability but otherwise was not in materially different circumstances.

701. The Tribunal do not consider it relevant whether this person had replied by email to the expression of interest because CI Gill had made it clear in oral evidence that this was not genuinely a material factor.

702. In terms of the appropriate comparator, the Tribunal consider that this would be someone with the same restrictions as the claimant in terms of the ability to do the role, namely someone who had expressed a desire to reduce their hours and specifically stated that they wanted some flexibility around early turn shifts and also someone who was on the TDR at the point when the expressions of interest were received and had not yet shown that they would be able to be fully operational at the end of an ongoing TDR.

703. The Tribunal have taken into account whether it should draw any adverse inferences from the unreasonable behaviour of CI Gill in not even having a discussion with the claimant on her return from leave but progressing the appointment in her absence while giving her to understand that it would be discussed on her return. This conduct was unreasonable. It reasonably undermined her confidence in her senior managers and the respondent and their desire to treat her fairly and support her. The claimant had been misled about the intended purpose of the meeting to discuss the role with her on her return from annual leave.

704. Further, CI Gill had in his email on 7 August 2023 (page 1069) attempted to assert to the claimant's representative that the claimant had not expressed an interest in the role (page 1069 of the bundle) while he accepted under cross examination that he was aware of her interest and clearly whether she sent an email or not, was not a consideration for him. This was therefore deliberately misleading and unfortunate. That sort of failure to be open and candid engenders distrust and causes real hurt.

705. The Tribunal consider that CI Gill had set out what the role would involve and accept on balance his evidence that he thought that the claimant, once she had reflected, would not pursue her interest in it.

706. There was unfavourable treatment however the claimant does not identify an actual comparator to substantiate her complaint that this was because of her disability.

707. Given the underhand way in which this process was managed, the Tribunal find that an adverse inference may be drawn that this may have had something to do with her disability however the Tribunal find as set out in its findings of fact, that CI Gill had made up his mind that she would not be suitable for ***reasons relating*** to her disability i.e. the fact she was not fully operational and had expressed concern about working the full set of shifts and full-time hours.

708. This situation was managed poorly however, the Tribunal conclude on balance that CI Gill would have sent the same email in the same way with someone without the claimant's particular disability but in materially the same circumstances, because of the nature of the 6th sergeant role and what he understood to be her limitations.

709. The Tribunal are not persuaded that a hypothetical comparator in not materially different circumstances would have been treated any differently.

710. Having heard all of the evidence, the Tribunal concludes that there is some evidence that could indicate discrimination from adverse inferences to be drawn from the primary findings of fact (namely the failure to discuss the application with her, the disingenuous remarks about the relevance of her not having sent an email to confirm her interest, not discussing her suitability with her and notifying her when someone else had been appointed) but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic

711. This was not pursued, despite the claimant having legal advice, as a section 15 claim however, it would have been better pursued as a something arising from claim.

Detriment

712. The Tribunal accept that a reasonable worker would consider that being told that they were not suitable for a role at their grade, without any discussion, would consider that to be a detriment.

713. **The complaint is not well found and is dismissed.**

Did C.I Gill tell the claimant in an email on 12 June 2023, that he would discuss the role on her return from leave but then appointed someone into the role before she returned? LOI 3.1.7]

Treatment

714. The Tribunal have found that CI Gill did give the claimant the clear impression that on her return from annual leave the role of 6th sergeant would be discussed with her further.

715. The respondent's case is that the 3 July 2023 meeting was "always" intended solely to explain to the claimant why the 6th Sergeant role was not suitable.

716. The claimant submits that this proposition is undermined by their own contemporaneous correspondence. If this had truly been the case, there would be no need for the caution expressed by CI Gill in his email to the claimant's representative on **7 August 2023** (page 1069 of the bundle): *"I think we need to be very careful with wording, [the claimant] was not refused, I sent the job description and what was required… I had sent [the claimant] an email*

about the role and what this entailed, this was on 12/6… [the claimant] did not reply to the email."

717. The claimant submits that this contemporaneous email supports the claimant's understanding that the role was still open for discussion and that she had not been "refused" prior to 3 July 2023. It also suggests that the reason the role was not discussed with her in detail at that meeting was because, according to CI Gill, she had not replied to his earlier email of 12 June 2023, not because a final decision had already been made. Accordingly, the claimant's evidence that she understood the **3 July 2023** meeting to be an opportunity to discuss and potentially progress into the 6th Sergeant role is both reasonable and supported by the respondents' own documents.

718. The Tribunal have little difficulty in concluding, for the reasons set out in its findings of fact, that the claimant was given the clear impression that the role would be discussed with her on her return however someone was appointed to it and the Tribunal accept that this must have been very upsetting for her, humiliating and confusing.

Was this less favourable treatment because of the claimant's disability

719. It is further submitted that the respondents' suggestion that the claimant misunderstood the 6th Sergeant role is inconsistent with how the role was being described at the time of its creation to all Sergeants. This is supported by the evidence of Sgt White, who wrote in her witness statement (page 158, paragraph 88): *"It was not a post of interest to me as it appeared to move away from the front-line policing that I enjoy and as the post provided cover for other Sergeants."*

720. Of the nine tasks outlined in the job specification (page 850 of the bundle), the Tribunal accept the claimant's submission that only one was operational in nature; the remainder were non-operational or administrative duties. It was therefore entirely reasonable for the Claimant to have understood, along with other Sergeants, that the role was not a conventional front-line post.

721. The claimant submits that it is only in the context of defending their refusal to discuss the role with her that the respondents have now re-characterised it as a fully front-line role intended solely to fill operational gaps in the sector.

722. The Tribunal conclude however that the role did include the requirement to assist with PS Gaps across the sector and are persuaded that the priority was to cover operational gaps. This would have required the person to step up and provide cover including front line duties and the claimant was not yet able (and there was not yet a clear time frame within which she would be able) to carry out a front-line operational role. The Tribunal conclude that it was for this reason that she was not considered an appropriate candidate, however while that may well have been a reason for telling her that CI Gill did not consider her to be suitable, it does not explain why she was treated the way she was, which is the complaint.

723. The Tribunal consider that the conduct of the respondent ((namely the failure to discuss the application with her, the disingenuous remarks about the relevance of her not having sent an email to confirm her interest, not discussing her suitability with her and notifying her when someone else had been appointed) reverses the burden of proof such that it is then for the respondent to establish that the conduct was in no way whatsoever because of her disability.

724. The attempt within CI Gill's witness statement to persuade the Tribunal that the respondent's behaviour could be at least in part be explained by the failure by the claimant to formally submit an email with her expression of interest, when this as he accepted in oral evidence was not material, makes no sense if the issue was simply that she was not considered suitable because the job required front line duties and needed someone to be

operational quickly.

725. The reason for the less favourable treatment is not immediately apparent; therefore, it is necessary for the Tribunal to explore the employer's mental processes (conscious or subconscious).

726. Clearly, where the Tribunal finds that the respondent provided false or inaccurate evidence about the reason for the alleged less favourable treatment, this can provide a sound basis for concluding that a prima face case of discrimination has been made out. **: *P2CG Ltd v Davis EAT 0188/20*.**

727. As explained in ***Nagarajan v London Regional Transport 1999 ICR 877, HL*** 'many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an Employment Tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did.'

728. In ***Geller and anor v Yeshurun Hebrew Congregation 2016 ICR 1028, EAT*****,** the EAT held that an employment Tribunal had erroneously approached the question of subconscious discrimination by considering the subjective state of mind of the employer's witnesses, rather than determining whether it could conclude that there had been unconscious discrimination by drawing inferences from objective facts. It had reasoned that G's treatment was non-sex-related on the basis that the respondent's witnesses were honest, truthful and reliable, and had genuinely believed that G's treatment was based on non-sex-related factors. However, the Tribunal had failed to consider the possibility of unconscious or subconscious discrimination. There were findings of primary fact from which an inference of discrimination could potentially be drawn, so it was incumbent on the Tribunal to consider the matter.

729. The Tribunal take into account that CI Gill is a senior police officer and understand the importance of accurate note taking and yet his statement clearly gave a misleading impression of what had been operating on his mind at the time and what was material to the decision to proceed to make an appointment while the claimant was absent on leave. In oral evidence when asked about this by the judge, he gave evidence that had the claimant been a suitable candidate it would not have mattered whether she set out her EOI in an email. There was no explanation given for the misleading impression in his statement that this was a relevant consideration and a reason behind the treatment.

730. This not simply a matter of the conduct being adjudged unfair or unreasonable, but of the claimant being misled, of the respondent in sworn evidence giving the impression that a reason for not considering her appointment was because she had not presented an EOI, the lack of a satisfactory explanation why the respondent could not wait for her return before appointing Sgt Fowler, or meet with her before her leave to explain why they would not be considering her because they thought she was not suitable for the post, why not be transparent? This conduct casts light on the veracity of the employer's assertion that no discriminatory reason whatsoever was actually in play, and that the nature of her particular disability was in no way whatever to do with the way she was treated, it is beyond telling her that she would not be suitable, it is actively misleading her.

731. The Tribunal conclude that there are facts from which it is reasonable to draw and inference adverse to the employer which shifts the burden of proof at the first stage. The employer has not discharged the burden of proof, it has not persuaded the Tribunal that discrimination played no part whatsoever in the decision to by C.I Gill to tell the claimant in an email on 12 June 2023, that the role would be discussed with her return her on her return from leave but then appoint someone into the role without telling her during her absence.

Detriment

732. The Tribunal accept that a reasonable worker would consider that being led to believe that the role would be discussed with them only to return to work to find a colleague had been appointed, would consider that to be a detriment. It was not only humiliating but she had been denied the chance to advocate her suitability for the role, potentially with some adjustment.

733. **The complaint of direct discrimination is well founded and succeeds.**

Discrimination arising from disability: Equality Act 2010 section 15 [LOI 4]

Putting the claimant through the capability process between May 2023 to August 2023 because of something arising from her disabilities of depression and PTSD, namely her sickness absence? [LOI 4.1.1]

Unfavourable Treatment

734. The respondent in written submissions argues that this is not unfavourable treatment because it was a process to consider alternatives for the claimant, that is far too simplistic a view.

735. The Tribunal conclude for reasons set out in the findings of fact, that it was one further formal stage in a process which could ultimately result in her dismissal and it did not need to be invoked in order for alternatives to be considered.

736. The respondent submits that in the event, the claimant was not 'put through the capability process'. The respondent submits that the claimant was unaware of the meeting on the 5 May 2023, on 23 June 2023 CI Gill and HR discussed inviting the claimant to a Step 1 capability meeting [836] but she was not aware of this.

737. The Tribunal have found that it had been made clear to the claimant by Inspector Turner the consequences of not completing the TDR. On 23 June 2023 the claimant received the letter inviting her to the Step 2 meeting (840). It states:

"In line with the BTP Capability Policy your attendance is required at a Step Two meeting to discuss your current ill health… Following the meeting, you will receive a letter confirming the outcome, as outlined the Capability Policy."

738. The meeting was arranged for 27 July but was delayed while waiting for the psychiatric report which OH had requested.

739. On 30 June 2023 (p.854) the claimant emails HR, Supt Peters and PI Godhania setting out what she says about a lack of support during the TDR and that she is expected to return to her 6-day working pattern from 3 July which she cannot work and refer to the Step 2:

*"I have been **told I will be moved** on to stage 2 of the capability process by mi- July but I have had very little support in getting me to where I need to be in time…I did make it clear that my request to reduce hours was being made under the Equality Act 2010…"*

740. It is clear that by June the claimant understood, and the letter speaks for itself, that she was going to be subject to Step 2. She was in no doubt that she was being put through the

process.

741. CI Gill sent a reply to her letter on 30 June (page 844) in which he says that while the FWA was refused, that did not mean they would not work with her to see what they could to support her and would have to review the impact on the team, he also stated that they would need to be realistic and would need to extend the RTW and asks when he felt she would be able to **return** to full operational duties and what courses did she require. The claimant replied on 30 June (page 844) to explain how she had carried out very little shadowing because of her leave and suggested a 'minimal of 3 months'.

742. There is then the meeting on **3 July** with CI Gill and PI Godhania (page 874/875) where the claimant feels that she is being told that she has fabricated the lack of support. CI Gill in his evidence in chief confirms that he discussed here next steps including progressing to a Step 2 capability review (w/s 87) and that he had assured her that it did not mean that they would not support her and set out what Step 3 includes and possible outcomes.

743. A RTW plan is proposed as and when medical clearance is obtained and on **4 July 2023** CI Gill confirms that a Step 2 meeting **will take** place and the date will be confirmed.

744. The claimant was on 26 **July (987) invited to a Step 2 meeting** on 7 September.

745. The respondent's argument that the claimant was not being put through the Step 2 process is not the Tribunal consider reasonable. The invitation to Step 2 is part of the Step 2 process.

746. The claimant was put through the capability process between May 2023 and August 2023. As set out in the findings of fact, that policy was being applied to her. On 5 May 2023 at the case conference meeting, it was decided to initiate Step 2 and it was initiated and she was invited to the Step 2 meeting. While the respondent may argue that the Step 2 meeting was to decide whether to move to Step 2, as set out in the findings of fact, it was reasonable for the claimant to understand that she was at the Step 2. She had been told it had been initiated and she was being told about the outcomes of the next step, i.e. Step 3.

Something arising from

747. The respondent accepts the claimant's **sickness absence** and request not to work early shifts was because of the disability.

748. In the claimant's written submissions, it is argued that the respondent treated her unfavourably by escalating her to Step 2 of the Capability Procedure between May and August 2023, as a direct result of her sickness absence and phased return which arose in consequence of her disabilities.

749. On oral submissions the claimant's representative confirmed that they were not seeking to amend the claim and recast it, this complaint as presented is based on **her sickness absence only** however, they argue that the phased return is part of the sickness absence – the phased return is a consequence of the sickness absence.

750. The claimant submits that the claimant had already been placed on Step 1 of the capability process, and instead of reviewing her progress or adjusting that step to account for her ongoing recovery, the respondent proceeded to formal escalation, an action that placed her at serious risk of dismissal. Further, the respondent's decision to initiate Step 2 was not grounded in new medical evidence or any act of misconduct or disengagement but it arose from the continuing impact of the claimant's disabilities, specifically her prolonged absence from full operational duties and the slower pace of her return. These effects are all "something arising from" her PTSD and depression for the purposes of section 15 of the Equality Act 2010. As a result of her previous sickness absence **and** her prolonged absence

from full operational duties, the claimant was ultimately subjected to less favourable treatment than a sergeant who did not share her disabilities

751. Further, it is submitted that these views not only show the respondent's reliance on 'past absence as a proxy for incapability', but they also reflect a rejection of medical clearance.

752. The claimant had been signed fit to return to TDR duties in October 2022 by her GP and two OH reports at pages 443 and 453 of the bundles.

753. The claimant submits that the respondent failed to facilitate her return until 23 January 2023, over three months later and this delay cannot be explained by any medical or operational reason and is consistent with the discriminatory assumptions already outlined. However, as set out in the findings of fact, the Tribunal do not accept that part of the submissions, on balance the Tribunal find that there were concerns about the information available to the respondent about what was required to support the claimant on her return at that point and the further questions asked of OH were reasonable steps to take.

754. The Tribunal accept however that thereafter, Inspector Turner formed a view, that the claimant was unlikely to return to operational duties, certainly by April/May 2023 and he was resistant to extending the TDR.

755. When the Claimant was back at work and still engaging with training and support, further OH advice dated 27 April 2023 (page 634 of the bundle) described her as **"*temporarily* *unfit for frontline duties"*** (Tribunal stress) with no suggestion that she would never return. The same report also flagged that bullying and harassment were contributing to her difficulties. Despite this advice the respondent escalated the capability process, rather than exploring adjustments or investigating the work-place issues raised.

756. The claimant submits that the respondent's rigid mindset is further revealed in the exchange at (page 627) of the bundle in the email to PI Ribchester on 26 April 2023. Which it is submitted reflects an inflexible, binary approach wholly at odds with the duty to accommodate fluctuating disability-related needs.

757. The claimant submits that the escalation to Step 2 of the capability process was not driven by new medical evidence or based on a consideration of the claimant's capability to perform her role, but by discriminatory assumptions relating to her disabilities, including her previous sickness absence as well as her need for support. These are all effects arising from disability, and the treatment was therefore unfavourable within the meaning of section 15 of the Equality Act 2010.

758. At the relevant time, between May and August 2023, the respondent had not obtained any medical advice from the claimant's treating psychiatrist despite OH in the April report making it clear they would need it to assess when she was likely to return to operational duties.

759. The Tribunal find as set out in its findings of fact, that the communications to the claimant and the internal discussions about the claimant, all refer to implementing the next stage in the capability process, if the claimant is unable to return to full operational duties by the end of the TDR.

760. The claimant submits that the respondent in its submissions has overlooked a critical piece of contemporaneous evidence, namely OH's clear acknowledgment that the claimant's difficulties were linked to bullying and harassment, and therefore to a lack of support, rather than to any inherent inability to perform the work required (page 634 of the bundle). By failing to address or resolve these workplace factors, the respondents did not provide the environment in which the claimant could succeed. The issue was not the absence of an

"identifiable timeframe" for a return to operational duties, but rather that the claimant's progression was being hindered by unmanaged interpersonal hostility and a lack of reasonable adjustments to support her reintegration.

761. That is not however the Tribunal find an entirely accurate reading of the report. It does state that the claimant's (not OH's) belief was that work-place issues:

"…are linked with her performance, bullying and harassment." and

"I do not think additional specialist support within BTP will be sufficient as she is also experiencing side effects of her medications which appear to be long term."

762. The claimant had also, set out herself at various times the factors which were impeding her completing of the TDR e.g. on 16 May 2023 (691**)** when she refers to feeling unprepared for the work and issues with her medication.

763. The issues the claimant was experiencing at this time were the Tribunal conclude, multi-faceted however, the claim is that the decision to proceed with the capability process was because of one factor, namely her sickness absence. If the complainant had been that the capability was progressed because of the claimant's inability to return to full operational duties, then consideration of the causes of that would be pertinent to the legitimate aim but that is not how the claim is advanced. The claimant was aware of the ability to amend the claim and had been in receipt of legal advice but did not seek to amend.

764. The respondent submits that the claimant is seeking to add a new "something arising" in consequence of her disability which had not been pleaded.

765. Counsel for the respondent accepted in oral submissions that her written submission were incorrect in that she referred to a second something arising from as pleaded namely the request to remove two early shifts which was not actually the claimant accepted, their pleaded case.

766. The respondent does **not** accept that the capability process was used **because of the claimant's sickness absences.** The respondent asserts that **the** reason the capability process was used was because there was no return date for full operational duties.

767. The Tribunal have considered this very carefully and appreciate the connection the claimant alleges between the perception of her ability to return to work potentially and her history of absences and the extent to which that sickness absence was a factor in the decision-making process to proceed to Step 2.

768. The perception of Inspector Turner, while cynical and formed without obtaining the full medical picture, was a view about the claimant's ability to return to her full operational duties within the agreed TDR, whether that TDR should have been extended is a consideration for the legitimate aim stage (or reasonable adjustments).

769. However, the decision whether to proceed with the Step 2 meeting was made as the respondent points out in its submissions, at a case management conference (page672 – 673) by Supt Peter, CI Gill and HR, the people team.

770. The claimant's level of absence was a reason for implementing the capability process originally in February 2022 (page 363). A reason for implementing the process from May 2023 the Tribunal find, was because the claimant was not yet deemed fit for full operational duties.

771. In ***Pnaiser v NHS England and anor 2016 IRLR 170, EAT***, Mrs Justice Simler confirmed that Tribunal must first identify whether there was unfavourable treatment and by whom. It must then determine what caused the impugned treatment, or what was the reason for it,

focusing on the conscious or unconscious thought processes of the alleged discriminator. There may be more than one reason or cause for the impugned treatment and, as in a direct discrimination case, the 'something' need not be the main or sole reason for the unfavourable treatment but must have at least a significant (or more than trivial) influence so as to amount to an effective reason for or cause of it. The Tribunal will then have to determine whether the reason or cause is 'something arising in consequence of' the claimant's disability.

772. The case law is clear that all that is required is a loose connection between the claimant's unfavourable treatment and the 'something' that arises in consequence of the disability. This element of the test can be satisfied by a range of causal links: there may be more than one link between the 'something' that causes unfavourable treatment and the disability. This stage of the causation test involves an objective question and does not depend on the subjective motives of the alleged discriminator and thus motive is irrelevant.

773. The Tribunal conclude that the main reason for implementing Step 2 was that it looked by May as if the claimant would not complete the TDR and there was no time frame at that point for when she would be.

774. Counsel submits that if the claimant had been absent for the same period of time but there was a clear indication of the time frame within which she might be operational, the capability procedure would not have been used and thus this allows the Tribunal to determine the reason.

775. The Tribunal accepts, that if there was a time frame for a return to operational duties the capability process may not have been implemented, it depends however how long that time frame was likely to be. It is not a binary answer and it is possible that there were other influences on the positive decision to move forward.

776. However, what is relevant to consider is whether the claimant's history of sickness absence was more than a trivial influence on the decision taken in May to 'initiate' Step 2 (prior to obtaining specialist input from her treating psychiatrist to assist OH in advising on a likely time frame for a return).

777. What was the reason/s, focusing on the conscious or unconscious thought processes of the alleged discriminator/s?

778. The Tribunal take into account that when the decision was made, CI Gill accepted that he did not have full knowledge of the case and yet he was prepared to make that decision along with Supt Peters, HR and OH.

779. Supt Peters does not address in her evidence in chief the meeting on the 5 May 2023 at all, she makes no mention of it. The Tribunal hearing took place 2 years after that meeting which was not minuted. CI Gill signed his witness statement in June 2024, 2 years after the event. He has no personal notes of the meeting.

780. Was the claimant's sickness/absence history discussed?

781. Was a factor in the decision making that the claimant had been absent from June 2021 until June 2022 and then had a previous relapse in July 2022 and then had been absent again until October 2022,when assessing whether to progress down the capability route rather than within Step 1 consider whether the TDR plan needed to be extended for a period and what other adjustments may be required?

782. Inspector Turner the respondent submits was not at the case management conference, however the Tribunal conclude that it is reasonable to infer from the evidence that he had a significant influence on the decision as set out in the findings of fact.

783. On 12 April 2023 (p.593) Insp Turner states unequivocally to CI Gill:

> *"…we will need to forward plan to a case conference in mind. If [the claimant] doesn't return to full operational duties by 25th June,* ***we will*** *need to proceed with stage 2."*

784. It is directional and forceful.

785. On 26 April he sends another email to CI Gill (624) telling him that he has told the claimant that it is "*crucial that she returns by our suggested return plan".*

786. He sends CI Gill on 26 April the email from Sgt White on 25 April (page 630) about the issues with the claimant running the shift on 25 April, referring to it as an 'overview' of the feedback so far albeit it is only one critical account about one shift from someone the claimant had complained about in terms of their behaviour towards her and which the claimant had not had the chance to comment or respond to.

787. On 27 April (page 625) he writes again to CI Gill to tell him that he has been clear with the claimant that if she is not fully operational by 25th June; "***we will need*** *to consider a Step 1* capability *review". (Tribunal stress)*

788. Inspector Turner is the claimant's line manager who is in direct contact with CI Gill and making it clear that he considers and has told the claimant, they will need to conduct a review under the capability process. These are only the documented comments.

789. There are no notes to rebut the inference that the feedback and clear direction from Inspector Turner played no part in their decision-making process, whether conscious or subconscious. At no point does CI Gill correct Inspector Tuner and indicate that whether or not they should proceed to Step 2 meeting is not a decision for him to make or recommend.

790. Inspector Turner had asked what steps are left before moving her to Step 2 when the claimant was due to return from sick leave on 21 September 2022, before they had a RTW plan in place and an agreed TDR and return date and the Tribunal consider that Inspector Turner had by April 2023 formed a view that the claimant would not be returning, that she knew this herself but was wanting to extend the TDR for financial reasons.

791. The Tribunal conclude that Inspector Tuner had a significant influence on the outcome of the meeting. He had formed a view that the claimant knew she would not be able to return and that view the Tribunal infer from his evidence was in turn informed by an impression he formed that she had returned before she was ready in June 2022 because her sick pay was about to be reduced and the fact she was not ready to return was proven by the relapse she had necessitating further absence (w/s para 30). This history around her absence was the Tribunal find, a more than trivial influence on his thought process and clear direction to CI Gill to move the capability process forward before they had a further OH assessment.

792. The Step 1 process had started in part of the length of the sickness absence as per Inspector Turner's w/s (para 18): "…*in early 2022 ,* ***because the claimant had been off sick for seven months*** *and there was no time- frame for when or if she may be fit to return to work, it appears the capability policy applied…"*

793. CI Gill in his oral evidence stated:

> *"…we treat each case on its own merits – someone away from work in 2021, 2022 and step 1 in place – in that meeting, if there was not significant progress, we would look at stage 1…"*

"we had to be mindful, the claimant had returned before and been a relapse, the plan was slow and limited training initially …"

"… there must be a reasonable time frame between step 1 and 2, ***considering it was more than a year later*** *and after meeting a change in duties and we had made adjustments."*

794. There is an absence of notes taken by the respondent at the 5 May and the Tribunal consider that given these are people all too familiar with the importance of notetaking, this is a fact from which an adverse inference may reasonably be drawn as to their discussions at that meeting.

795. The Tribunal accept that if the claimant was on track to complete the TDR there would have been no Step 2 meeting but it does not follow that there was a Step 2 only because there was no clear time frame for her return to full operational duties.

796. CI Gill accepted they could have looked to extend the TDR without involving Step 2, and that option was to be considered at Step 2 along with other adjustments or alternatives so why not do that or at least wait until OH had the specialist advice they needed to give further advice around a possible time frame?

797. If the claimant had not been absent for such a long period prior to coming back to work in January 2023, would that have been a consideration? If she had been absent for only a few months and this was her first attempted phased return would that have made a difference? Step 1 was implemented at the stage it was when she had been off for **7 months,** so length of time was a factor in initiating Step 1.

798. CI Gill in cross examination referred to each case being determined on its own merits i.e. he does not refer to a one size fits all, such as if the TDR is not going to be met there should be a formal review before amending. The circumstances of each case are relevant.

799. What were the relevant factors in this case? CI Gill referred in his cross examination to the claimant having been absent in 2021, 2022 and that the plan had been slow to take into account her previous history of a relapse and that it had been **more than a year** since Step 1.

800. It had been more than a year since Step 1 because Step 1 took place in **March 2022** and then the claimant had returned in **June 2022** but had the relapse (with a return date of October 2022 and actual return in January 2023). By **April 2023** it had been more than a year since the March 2022 Step 1 because of her intervening sickness absence. Had the claimant not had the relapse in June 2022 and returned on a TDR for 5 months but had not completed it by November 2022, it would have been 8 months since the Step 1 and not over a year.

801. On the evidence available, the Tribunal infer from the primary findings of fact, that the claimant's medical history including her past sickness record was a more than trivial influence in its decision making.

Was this because of something arising from the claimant's disability?

802. The claimant's sickness absence was something arising from her disability and this was more than a trivial reason for the decision to proceed with the next stage of the capability process.

Legitimate aim

803. The Equality and Human Rights Commission's Code of Practice on Employment (2011) ('the EHRC Employment Code') sets out guidance on objective justification. The aim pursued

should be legal, should not be discriminatory in itself and should represent a real, objective consideration. Although business needs and economic efficiency may be legitimate aims, the Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (see para 4.29).

804. As to proportionality, the Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective (see para 4.31).

805. In ***Dominique v Toll Global Forwarding Ltd EAT 0308/13*****,** , the EAT held that where there is a link between the reasonable adjustments said to be required and the disadvantages or detriments being considered in the context of indirect discrimination and/or discrimination arising from disability, any failure to comply with the reasonable adjustments duty must be considered 'as part of the balancing exercise in considering questions of justification'. The EAT commented that it was difficult to envisage how a disadvantage that could have been prevented by a reasonable adjustment that had not been made, could in reality, be justified.

806. Eady J cited the Court of Appeal's ruling in ***Hardy & Hansons plc v Lax 2005 ICR 1565****,* CA, to the effect that a critical evaluation of the evidence is required, entailing a weighing of the needs of the employer against the discriminatory impact on the employee. The Tribunal must carry out its own assessment on this matter, as opposed to simply asking what might fall within the band of reasonable responses of the reasonable employer (the test for unfair dismissal under S.98(4) ERA).

807. The Tribunal is respectfully invited to find by the claimant that this treatment was not justified and formed part of a broader failure by the respondent to support the Claimant's recovery or respond proportionately to her disability-related needs.

Aims

808. The claimant accepts that the pleaded aims may be legitimate principles but in submissions argues that whether the treatment was proportionate and it is submitted that it was not.

809. The Tribunal find on balance that the aims are legitimate, which is not disputed by the claimant.

Proportionality Test

810. In deciding whether the treatment was an appropriate and necessary way to achieve those aims and whether something less discriminatory could have been done instead, the Tribunal take into account that the claimant had from the very outset made it clear that she would need to work part time, less than the full time equivalent of 40 hours and early turn shifts would be an issue for her.

811. Had the respondent taken that on board at an early stage and investigated reasonable adjustments with her, even if this was something to be implemented later in the phased return but removing from the TDR the requirement for the claimant to do full time hours, the outcome may have been different. As set out in the findings of fact, the claimant was continually told by Inspector Turner that she could not apply until she had completed the TDR, which the Tribunal accept was self-defeating because the TDR required the claimant to be able to work the full 6 shift pattern including early turns.

812. The Tribunal find that Inspector Turner did make it clear that she had to complete the TDR and get to the point of being able to do full time hours and the 6/4 shift pattern before a

flexible working request would be considered (because she was on a TDR). Inspector Turner was wedded to the idea that the claimant would have to follow the Flexible Working Policy but further complete the TDR and at no point did he engage with her request as something she needed, rather than merely would like, as a reasonable adjustment under the Equality Act 2010 to form part of her TDR plan.

813. The claimant returned after a long absence still vulnerable. The OH report had recommended 6 to 12 months as a return-to-work plan. Inspector Turner and HR had reached an agreement with her to return on a phased return shorter than that, a period of 5 months with reassurances that this was a fluid process, subject to regular reviews and she would be supported with shadowing and monitoring. At no point was she told that 12 months could not operationally, commercially or financially be accommodated.

814. The support promised was not given. There were no proper documented reviews, no review in February or March which were key periods in her early return phase as set out in the findings of fact.

815. The Tribunal find that she was exposed to bullying behaviours and colleagues impatient with the limitations of her return-to-work plan and yet she was not protected from these behaviours and this unsupportive working environment which for someone who needed to regain her confidence after having such profound struggles with her mental health, was crucial. This lack of support contributed to the problems she had reaching the milestones set out in the initial TDR.

816. Inspector Turner did not take those complaints of bullying seriously. He offered only mediation with her putative harassers which she understood she had to attend. She had to change who she shadowed and her annual leave and Sgt Fowler's clashed which reduced the shadowing she could carry out, as it had with Sgt White and her other work commitments and annual leave.

817. CI Gill gave evidence that he understood that Inspector Turner dealt with this situation and when he left and CI Gill was involved in the meetings with the claimant, despite her raising bullying as setting her back in terms of her TDR, he did not check what action Inspector Turner, if any, had taken. He gave evidence that serious misconduct would be sent to 'professional standards' and even if someone had said they were bullied but did not want it dealing with, he would still deal with it:

"I would still have a discussion with the individuals and set standards."

818. Given the concerns raised by the claimant, CI Gill gave evidence that he would absolutely have treated the bullying as having happened but he cannot recall forming any view as to whether it may have impacted on her progress under the TDR but if he had formed that view, he would have changed the TDR. As set out in the findings of fact, the claimant had made this very point and it is recorded in the OH report.

819. The Tribunal take into account the evidence of Mr Drummond- Smith however it was of limited assistance. He was not able to provide any evidence specific to the claimant's case and what if any financial assessment or budgetary issues prevented an extension of her TDR and what period could have been accommodated.

820. The Tribunal conclude on the evidence and the balance of probabilities, that the behaviour of colleagues contributed to the claimant having difficulties regaining her confidence during the TDR and in completing the TDR, the support promised was not given and her request for flexible working not treated as a request for a reasonable adjustment to accommodate her ongoing challenges with for example her medication, even on a temporary basis.

821. It is difficult to envisage how the means to achieve the aims can be proportionate in the face of such failings.

822. The stated aims include ensuring a consistent approach to capability cases across the BTP by reference to the Capability Policy

823. The respondent has not produced evidence however about how the capability process is applied across the respondent. While in principle capable of being a legitimate aim, the evidence of CI Gill is that all cases are treated on their individual circumstances and that the Capability Policy in practice does not need to be followed in order to make adjustments to a TDR plan. The Tribunal is not therefore convinced that in practice there was a consistent approach, how it applied according to CI Gill depended on the circumstances of each case.

824. The remaining aims are:

- Providing the public with an efficient and effective police force
- Protecting the reputation of BTP as a reliable police force
- Ensuring that the Respondent complies with its obligations and requirements as a police force.
- Protecting taxpayers' money and reserving resources

825. The respondent in its submissions does not deal with each of these aims separately but makes submissions which the Tribunal understands apply to all the aims. The Tribunal accept that on the face of it these four aims are capable of being legitimate aims and accept the respondent had those aims.

826. The respondent submits that the claimant had by the relevant period, which must be April/May 2023 and onwards, not been operational for almost 2 years and the evidence available to the respondent was that treating medical and OH practitioners did not know whether she would ever be operational again although they considered she might. By mid-April the claimant was of the view that her medication may not be compatible at all with front line duties and by April 2023 OH advised that there was no time frame for a return to operational duties. The decision in May 2023 therefore to hold a meeting to consider the evidence and whether she was capable for the role or a different role, was clearly a proportionate means of changing its aims to maintain an effective and efficient police force and maintain the public confidence in the force.

The balance

827. The Tribunal have taken into account all the evidence including the evidence around the potential commercial, operational and financial impact of the claimant's extended TDR and not being able to return to operational duties or work the full shift pattern.

828. The impact on the claimant of putting her through the Capability Process and initiating Step 2 the Tribunal conclude, on the evidence as set out in the findings of fact, was significant, she felt under immense pressure and risk that she would be dismissed as a result of being taken through the next stage of the formal Capability Process. There were only 3 steps. CI Gill appreciated in oral evidence this perception of the claimants, as did Supt Peters. A perception it seems to the Tribunal not discussed or taken into account at the time, hence the respondent's submissions that wording in correspondence around 'initiating' Step 2 should not have been taken to mean she was at Step 2.

829. In the circumstances of this case, the claimant had been through Step 1, she had in place a TDR, she had agreed to the terms of that but on the understanding that it would be reviewed, that it was 'fluid' and support would be put in place. However, there was no real commitment to that support in practice and Inspector Turner 'rough plan' for 5 months became a 'firm' plan because he personally considered the Tribunal find, that it was long enough.

830. CI Gill gave evidence that he had located minutes of 1 review meeting the claimant had with Inspector Turner but was unable to locate any others. However, her concerns about those monthly documented reviews having not taken place, did not raise any concerns. CI Gill did not "*think any more about it".* He did not ask Inspector Turner about the reviews he had undertaken before he left and he never bothered to ask HR what meetings they had had with Inspector Turner. No one from HR attended to give evidence as to those meetings and therefore the Tribunal infer that the only meetings are those which were documented (2 May and 11 January 2023 and the discussion in the April email).

831. The claimant felt that she had not had the shadowing experience she needed, she complained of bullying and then due to annual leave, she had limited contact with Sgt Fowler. Those issues were not properly investigated and considered the Tribunal conclude, before the decision was made to move to a Step 2 hearing because, in no small measure, her line manager was clear in his opinion that Step 2 should be initiated and he had already made that clear to CI Gill and the claimant.

832. There was also no clear training plan in place, as set out in the findings of fact.

833. CI Gill applied he said in his evidence, his experience to assess that the original TDR period had been appropriate regardless of having very little experience himself of mental health issues, of the OH advice for a plan of 6 to 12 months and it being apparent that the claimant did require a slower approach.

834. As set out in the findings of fact, the claimant had been assured of a fluid approach and regular reviews and support, she came back into an environment where colleagues vented their frustrations at her and her confidence was badly undermined and her line manager was unreasonably sceptical about her motives in wanting more time to readjust to the role.

835. Another plan was created in July 2023 after the departure of Inspector Turner, a better plan but the respondent felt they needed OH to confirm the claimant was fit to carry out the TDR in her substantive role. It took from April to August to obtain the necessary specialist input but CI Gill had no explanation for the delay. As set out in the findings of fact, Inspector Turner had taken no steps to obtain the necessary OH advice before he left in June and later the claimant's emails in July 2023 with Dr Nixon's details were not forwarded to Ms Asare.

836. The Tribunal conclude that in these circumstances there was a less discriminatory option than putting the claimant through the formal Capability Process between May 2023 to August 2023 and that was to deal with the need for an amendment to the TDR informally, which was as set out in the findings of fact, an option available to them.

837. The claimant wanted them to give her time (page 857) and asked them to confirm that Step 2 will only take place following an extended return to work and if after this period she is deemed not fit for duties. She had complained about how very little of the previous plan had been followed through, that she had received minimal support, no access to all the required training she felt she needed to build her confidence back, no regular meetings to monitor her progress and no discussions about redeployment options or other reasonable adjustments

838. In terms of the impact on the respondent, the respondent could and did extend the plan. They could and did accommodate a further period under the TDR and in fact were prepared for her to work in another department pending confirmation from OH that they could proceed

to implement the plan. There was the Tribunal conclude no apparent urgent need to put her through the penultimate stage of a capability process. Important contact details for her treating psychiatrist were not promptly sent to Ms Asare. The Tribunal were presented with no assessment undertaken by the respondent of the commercial, financial or organisational to manage the claimant's return at this stage through the formal process. Given that the original OH advice had been for a RTW for between 6 to 12 months and the lack of support and problems she had encountered during her TDR, the Tribunal do not consider that on balance the respondent has shown that moving the claimant to Step 2 of the formal process at that stage was reasonably necessary. It has not been proven to be proportionate to achieve the stated aims and it was a source of avoidable and significant distress to the claimant.

839. **The claim is well founded and succeeds**

Arranging a capability meeting on 4 December 2022 while the claimant was waiting to return to work because of (as above) her sickness absence? [LOI 4.1.2]

840. The claimant withdrew this clam in submissions because the claimant did not know about these plans and it could not have been a detriment however the claimant invites the Tribunal to take into account those discussions on how the respondent applied the procedure more generally.

841. The claim is dismissed on withdrawal.

Denying the claimant the opportunity to apply for the new sergeant role because of her sickness absence and/or the request to remove her two early shifts in May 2023 which was because of her disabilities [LOI 4.1.4]

Unfavourable Treatment

842. The claimant had applied in May 2023 to remove her two early shifts. The Tribunal conclude that from the outset, despite being sent an email informing her of the vacancy, there was no consideration by the respondent of whether the claimant could do some or all of this role and when.

843. The respondent in submissions stated that their position is that they understand what the complaint is and while technically they may say that she was 'denied the opportunity to apply' for the role, they appreciate that the complaint is that the post was filled without discussing it with her. The respondent accepts that it was 'in part' but not in total because she wanted to remove the early shifts and the respondent also concede that it was in part also because of her sickness absence and do not resile from that admission.

844. The respondent's position is that the claimant was not considered an appropriate candidate mainly because there was no predicted timeframe within which she would be able to return to her operational role and the high likelihood is that she still required a long-phased return. She also did not want to cover other locations and shifts.

845. The claimant clarified that the complaint is that the claimant was not given the chance to apply and was told there was only one application despite the claimant having expressed an interest in it and there was no discussion with the claimant about her suitability for the role. The respondent did not raise an issue with that clarification of the complaint.

846. The Tribunal conclude that the decision to not consider the claimant's application was in

part, because she wanted to remove early turns but also the Tribunal consider, the prospects of her return to full operational duties is likely to have been influenced by her medical history including her long sickness absence and the previous relapse when she attempted a return to work.

Because of something arising from the disability

847. The respondent confirmed that its defence to this complaint rests on legitimate aim.

legitimate aim

848. The legitimate aims relied upon are:

4.3.4.1 Meeting gaps in the sector, as was contemplated in the design of the role.

4.3.4.2 Providing the public with efficient and effective police force.

4.3.4.3 Protecting the public.

4.3.4.4 Upholding public confidence in the police;

4.3.4.5 Protecting the reputation of BTP as a reliable police force;

4.3.4.6 Protecting taxpayers' money and reserving resources and

4.3.4.7 Ensuring that the Respondent complies with its obligations and requirements as a police force.

849. The claimant does not dispute that the aims are potentially legitimate but focusses on the proportionate response. The Tribunal conclude that the aims are legitimate.

Was the treatment appropriate and reasonably necessary way to achieve those aims

850. The respondent submits that the claimant was given an opportunity to express an interest but she was not seriously considered to be an appropriate candidate and had she applied, would not have been given the role because she had wanted to apply with her suggested flexible working application which removed early turns, there was no realistic timeframe for her return to her operational role and in the short to medium term, the claimant would not have been able to provide the sort of emergency and resilience over required by the role, and the 22 week phased return to work plan drawn up in July was not compatible with the needs of the respondent.

851. The claimant wanted an opportunity to engage in a meaningful way about this role and explore adjustments but this was denied, at the most basic level there was a failure to afford her the dignity of those rights.

852. The claimant submits that it was assumed that she would not work **any** early shifts or travel, which was incorrect, as set out in the findings of fact and such assumptions cannot amount to a proportionate means of achieving a legitimate aim.

853. In terms of willingness to travel the respondent submits that the claimant communicated in advance of and during her phased return that she did not wish to work from any other location than Nottingham. OH in its report of 4 November 2022, in response to the respondent asking whether working from a different location might reduce the change of triggers, advised that "*She is keen to go back to Nottingham Station and we didn't think that a different location would be helpful*" (page 452).

854. In January 2023 during her return-to-work meeting, alternative work at Derby was suggested for the claimant which she did not take up, preferring to stay at Nottingham (page 522). The claimant also gave oral evidence that she preferred at stay at Nottingham due to the location and childcare commitments. The claimant turned down the opportunity to apply for a role in Derby in August 2023 which could accommodate reduced hours and flexible working, citing *"distance to home"* (page 1106).

855. The claimant's stated preference was to work from Nottingham, however she at no point stated that there she would never consider travel and there was no discussion with her regarding this role whether she would be prepared to travel as part of it.

856. The respondent submits that the claimant's submissions do not engage with crucial evidence, that the claimant would not be able to cover front-line duties within any known time-frame, and that the claimant had felt unready to cover shifts alone and that there was no predicted time-scale for her operational return. The claimant on 14 August (page 1062) complained that she had been left during the TDR in her sergeant role, she had been left often on her own covering the team and the area when her shadowing sergeant was on leave which left her in a vulnerable position.

857. The respondent's uncontested evidence was that the role needed to be filled quickly, it was designed to provide resilience in circumstances where resources were stretched very thin.

858. Further, the respondent submits that there is no evidence to support the contention that the claimant could have undertaken the role with adjustments. Conversely, there is strong evidence that the claimant could not have undertaken the role at the time. There was a strong expectation that the person undertaking this role provided flexible cover for frontline sergeants, including sickness and other leave, as well as their own rostered shifts. The claimant it is submitted was unable to undertake front-line duties at the time and had stated her medication which was incompatible with the early turn shift.

859. It is submitted by the respondent that the claimant's submissions at paragraph 179 and 183.3 do not grapple with the respondent's (uncontested) evidence about the resource scarcity at Nottingham which led to the design of the 6th sergeant role (submissions page 58ff, paragraphs 66.1ff).

860. The respondent submits that the Tribunal has before it uncontested evidence showing both from a budgetary and resourcing perspective and from the perspective of a sergeant on the ground, namely Sgt White, that the effectiveness and reputation of the respondent was challenged by its low resilience and budgetary constraints. The Tribunal's task the respondent submits is to determine whether the respondent, in deciding that the claimant was not right for the role at the time, acted proportionately in achieving the aims of 'balancing the books', providing an efficient and effective police force, and upholding its reputation as a reliable police force. Taking into account the purpose and requirements of the 6th sergeant role, the fact that the claimant was at the time non-operational, and the budgetary constraints of the respondent, the Tribunal is asked to find that this was proportionate.

861. The claimant had been performing a non-operational role with the Case File Quality team and had been doing well in that role. It is submitted that the impact on the claimant was outweighed by the impact on the respondent were she enabled to apply.

862. None of the legitimate aims relate to the claimant's historic sickness absence.

863. The Tribunal conclude that none of the aims justify the treatment the claimant received, while they may justify a reasoned and considered refusal of her application, they do not justify the action which was taken, to invite her to apply and then to refuse to offer her an interview

and discuss the role and the requirements with her. She made it clear in her email of 30 June 2023 (p. 844) that she would be willing to look at other proposals;

*"I would be happy to look at taking different shifts off but this has not been discussed and my **ultimate request** is to reduce my working hours (and days) as I do not feel able to follow the current 6 shifts in a row shift pattern"*

864. On 9 August 2023 (page 1039) the claimant put forward more proposals for reducing her hours. The respondent's Inclusion and Diversity Business Partner wrote on 9 August asks for this to be put forward for consideration because it is in line with her GPs recommendation and her original request had been granted prior to maternity leave (page 1042).

865. It was made clear through her federation representative on 2 June 2023 that the claimant wanted to look at options, her request to reduce the 2 early shifts was not the only option (page 776). It was explained to the respondent that she had considered that reducing her hours and removing the 2 early shifts was the better option for the respondent but she was prepared to consider other options.

866. On the 30 June 2023, the claimant sets out a detailed email (page 842) and questions why her application to reduce her hours was agreed before maternity leave and is now refused and;

"I am unable to understand the burden of cost as the shifts I would not be working would not be paid therefore the force would be saving a third of my salary … Insp Ellis did confirm that my team would have access to other sergeants in different sectors on the 2 early shifts per set pf shifts that I would be missing and there is also the 6th sergeant post is being developed for Nottingham, there was no mention of or discussion of 1. Could this job be something that I could do? or 2. Could this job cover some of the early shifts that I would not be rostered for?

*I requested the early shifts off as I felt this would have the least- impact on the team, **I would have been happy to discuss other options such as taking one early and one night off etc.** but there not room for much discussion during my meeting…" Tribunal stress*

867. The Tribunal find that there was no analysis undertaken of the financial impact of her request or alternative options. Indeed, Supt Peters accepted that while costs was put forward as reason for refusing the request for adjusted hours and shift pattern, this was not really the issue and indeed she was unable to provide any real answer to what the financial cost would be.

868. There was no discussion about a trial period (as per the Reasonable Adjustment Guidance) or allocation of some of the duties of the 6th Sergeant role, with the claimant.

869. There was no discussion about whether the claimant could have completed some of the administrative duties of the 6th sergeant role, freeing up more time for the 6th sergeant to cover gaps or whether the claimant and another, could have shared the duties of the 6th sergeant role, even if on a temporary or trial period basis.

870. It is to be born in mind that in terms of making reasonable adjustments, the issue is whether there is a *prospect* of those adjustments working to remove the disadvantage. There does not have to be certainty or even a good prospect of an adjustment removing a disadvantage in order for that adjustment to be regarded as reasonable, it is sufficient that a tribunal concludes that there would have been a chance of alleviating the disadvantage.

871. The claimant makes very valid comments not really engaged with directly by the respondent that meeting sector gaps and protecting the public, could have been achieved by adjusting the role. Upholding public confidence and protecting reputation includes fair and

inclusive treatment of a disabled officer. In terms of taxpayers' money and resources, the respondent lost potential operational contribution from a paid officer who other remained on restricted duties and compliance with its obligations and requirements as a police force requires it to comply with the public sector equality duty and its obligations under the EqA .

872. What is clear to the Tribunal as set out in the findings of fact, is that the respondent and in particular CI Gill was paying it seems only lip service to being willing to consider part time working in a 24/7 sergeant role, he invited her to apply but remained of the view that it would not be possible in that role however for months she was left raising this issue in email after email, in meeting after meeting and making applications which were not given any meaningful consideration as a request for a reasonable adjustment. The medical advice was that the claimant needed reduced hours, she was also a working mum and needed reduced hours for childcare but CI Gill did not consider it was a job that could be done part time, even while Supt Peter had proposed that an option was to amend some of the early turns. There was scope for adjustment which was never explored with the claimant but put off pending discussion at a formal Capability meeting.

873. None of the aims however, the Tribunal conclude justify the refusal of her right to apply for the role. They may have justified a decision not to offer the role, after interview and a proper consideration of adjustments.

874. The attitude from the respondent and the lack of interest in exploring options, was illustrated by the evidence of CI Gill, who gave evidence when asked whether he had even considered how the 6th sergeant role could be adapted answered in cross examination:

"*No, I'm not sure how it could be adjusted operationally."*

875. While telling the claimant on 3 August (page 1064) she could put in another FWA and they would consider it, in cross examination he confirmed that after the TDR in the case quality team, she was told she could not go part time in the 24/7 role: "*yes, very difficult to cover a 24/7 role part time."*

876. The Tribunal note his evidence was that it was difficult, not that it was not possible and yet he accepted in cross examination that he had told the claimant there was **no way the** sergeant role could be worked part time and he made it clear he would not consider part time in Nottingham in her 24/7 role, he did not know if other stations such as Birmingham could and neither he nor HR looked at that. His evidence in cross examination was: *"we cannot have 24/7 sergeant working part time".*

877. CI Gill gave evidence about the difficulties of part time work. He referred to sergeants running the same shift pattern in line with their team for whom they are responsible including heir welfare, review their files and make sure they meet governance requirements. He gave evidence that 5 sergeants are needed to over 5 shifts. If someone is covering another shift, they can only do that on a rest day (RDW) otherwise their team will be without them on their shift. RDW working is paid at 1.5 rate, an additional cost for which they did not have the budget. They had a budget for 5 sergeants and later for the 6th resilience sergeant.

878. Therefore, whether it is due to a disability or childcare, the Tribunal conclude that his mind was closed to the idea of part time working and he made that clear. However, in response to further questions from the panel he then stated that while they could not remove 2 early shifts totally they could have accommodated a later start, they could have offered to reduce hours but not the whole shift and he appeared to have something of an epiphany giving evidence that :

***"now thinking about it** … what we may be able to do is between the early turn shift and late turn shifts, the later turn sergeant starts at 2pm and early turn sergeant would finish at 4/5pm,*

we have a cross over period, if we removed those 3 hours likely to still be a sergeant on duty on the cross over hours, so yes in theory we could probably have removed those hours." Tribunal stress

879. That is reduction of 3 hours on 1 shift.

880. CI Gill confirmed that he had not told the claimant he could look to make those reductions, which is hardly surprising given it was clear he had only just thought of this option when being asked questions by the Tribunal about flexibility. It is clear to this Tribunal that this option had not occurred to him before giving evidence at this hearing and conclude on the evidence that this is because he had no genuine interest in considering the possibility of flexibility, he had closed his mind to that possibility.

881. CI Gill further stated that there was no such cross over for someone staring early turns however he accepted that Inspector Turner had suggested a late start on early turns may be accommodated and in fact Supt Peters had suggested a later start may be accommodated of 8am or 9am on early turns, which would be another 1 or 2 hours reduction.

882. CI Gill never told the claimant that he would consider a reduction in hours in the 24/7 role.

883. The Tribunal considered that CI Gill was evasive in cross examination when on the back of this evidence it was put to him that in 10 mins in the Tribunal he had managed to come up with one solution for the claimant which he had never put to her. He attempted to assert that this was covered by having talked to her about options, this the Tribunal find is nonsense given he was adamant that he had made it clear part time was not an option in the 24/7 role and later accepted he had not given the claimant examples of where they could accommodate reduced hours.

884. Supt Peters in supplemental evidence conceded the possibility that some accommodation could be made to reduce the claimant's shift pattern, removing one shift perhaps or more than that on a more temporary basis. This was not something mentioned to the claimant at the time. In re-examination when CI Gill was asked about removing a whole shift i.e. from 6 to 5 shifts, whether that could be accommodated, he gave evidence not that he had looked at this in any detail at the time but that it would be*; "very difficult to accommodate – there would be a gap in cover – we would have to find how to cover which would be very difficult".*

885. While CI Gill in cross examination attempted to justify his actions by asserting that the claimant had wanted to remove two early turns anyway, which they could not do, he conceded that in his evidence in chief he had understood that by June 2023 (w/s para 80) her ultimate request was to reduce her working hours. This could have been subject to a trial period as per the respondent's own Reasonable Guidance document, but that was not suggested either or indeed the Tribunal conclude, considered.

886. Further in cross examination, CI Gill gave evidence that he had approved the claimant's request for working reduced hours in 2021 and had she returned on that contract, they would have "had to accommodate it", he was not sure how but they would have had to. The Tribunal conclude that his evidence indicates that the respondent would have been prepared to do more to accommodate her part time working in those circumstances, which suggests strongly it could and would have been accommodated.

887. CI Gill also gave evidence is that they could not force a change had the claimant signed the contract in 2021 for part time working, they would have had to "*run with the gaps*" in cover and mitigate them by using for example remote cover from the Birmingham station to 'keep an eye' on incidents at Nottingham or use available local sergeants which they do if someone reports in sick.

888. Similarly, CI Gill did not approach the 6th sergeant role with an open mind, he gave it, the Tribunal consider, no proper consideration at the time. He had closed his mind to any adjustment to this role.

889. CI Gill in evidence stated that he had very little experience of dealing with cases involving employees with mental health conditions.

890. The claimant had proposed further options including in her email on 9 August 2023 (p.1039). In cross examination CI Gill states that by 31 August (page 1114) he had not yet had a chance to review her request, that he had 28 days under respondent's policy to respond to the request for flexible working (page 264) which would expire on 6 September but he could not recall in answer to the Judge if he had made any arrangements to discuss it with the claimant. The Tribunal find on the evidence that CI Gill had not intended to respond but had intended to leave any discussion to the Step 2 capability meeting, which the claimant was clearly extremely worried about and wanted to avoid.

891. On the 14 August CI Gill did not reply to the claimant's 9 August proposals even though she complains in her email of the 14 August (page 1061) that she is stressed, frustrated and tired of fighting and that while everyone keeps stating they will look at options, she has not been given any still and repeats that she wants to return to her 24/7 sergeant role on adjusted hours, she does not say it has to be without 2 early turns. The response from CI Gill is not to put forward any options but he states that she has the right to put forward a request for part time working but cannot guarantee it will be in her sergeant role. From his evidence before this Tribunal, it concludes that CI Gill never intended to grant her request hence he does not give her the reassurance she is seeking, that some accommodation may be possible in her substantive role, although the Tribunal conclude that applying some further thought during this Tribunal hearing, both CI Gill and Supt Peters were able to come up with some possible adjustments.

892. It was clear that she had been performing well in the case quality team (page 1105) but on 15 August 2023 her treating psychiatrist (page1094) , Dr Nixon, diagnosed recurrent major depression, he believed there was good reason for optimism about a fuller perhaps complete recovery over coming months but referred to the need for an agreement of aims including work pattern and total hours and that reasonable adjustments would be central to supporting her recovery.

893. The claimant was admitted into a crisis house for intensive support on 22 August and discharged on 29 August 2023.

894. By 31 August CI Gill had still not taken the time to consider the claimant's proposals for an alternative working pattern in her substantive role (page1114) even though he was aware, referring expressly to this in his email to Supt Peters, that the claimant states the refusal of the FWA were triggers in terms of her mental health. On that same day the claimant attempted suicide (page 1128).

895. The Tribunal accept on balance that the way this 6th sergeant vacancy was managed disrespectful and hurtful and is not justified.

896. The aims do not justify the treatment the claimant was subjected to, the refusal to even give her an interview and listen to what she had to say about what she felt she could do in the role and consider other options such as job share. Whatever she proposed may not have been accepted but with an open mind there may have been some alternatives, however there is simply no justification for the refusal to even interview her, let alone to lead her to believe it would be discussed with her and then appoint someone else before doing so and without giving her advance warning. That conduct is not a proportionate means of achieving the pleaded aims.

897. The impact on the claimant far outweighed any inconvenience having an interview process would have had on the respondent. A less discriminatory option was to hold a fair interview process and consider her application and consider the legitimate aims as part of that process.

898. **The claim is well founded and succeeds**.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs; did those PCPs put the claimant to the following substantial disadvantages; and did the respondent fail to consider the following reasonable adjustments:

A PCP setting the hours and requiring response sergeants at a 24/7 station to return to their full-time duties [LOI 5.2.1]

899. The respondent takes no issue with knowledge of disability.

Was there a PCP?

900. As the claimant points out in submissions (para 195) Nottingham was the only 24/7 station in the sector at the relevant time as confirmed by assistant chief constable Drummond Smith (para 17 w/s).

901. The respondent's position is that there was no requirement to return to full time duties. It is their position that it was made clear that the claimant could apply at any time to make a flexible working application that would reduce her hours and which would apply once she could do operational duties.

902. The Tribunal have found that this was not the case. The claimant was told clearly by Inspector Turner that she could not apply during the TDR and when she did apply this was not, the Tribunal conclude, given any meaningful consideration. It was clear from the respondent's evidence that there was a requirement to work the full 6 shift system and full-time hours.

903. The respondent submits that that during her return-to-work meeting on 11 January 2023, Inspector Turner left open the possibility of reduced hours. However, as the Tribunal as set out in its finding of fact, it was made clear that an application would not be considered during the TDR process.

904. When an application was made, it was rejected (page 832).

905. In terms of after the TDR, CI Gill gave evidence that the respondent: *"cannot have 24/7* sergeant *working part time."*

906. The respondent submits that Supt Peters was asked in examination-in-chief whether, as the person with ultimate decision-making discretion for flexible working applications, she had agreed applications for flexible working. However, Supt Peters gave no examples of how many applications had been agreed, and whether this was before or after the Gold Group and the introduction of the 6-shift pattern, her evidence was vague and she gave no recent examples or details of those applications. The claimant's application had been granted back in 2021 and therefore flexible working had in the past been granted.

907. The respondent's submission that because there may be cases where some flexibility has been permitted that means there is no PCP.

908. The Tribunal has considered IDS Employment Law Brief and the commentary on PCPs:

"In its guidance on the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 SI 2001/2660, which replaced the phrase 'requirement or condition' in the SDA with 'provision, criterion or practice', the Government made it clear that the change in wording was intended to remedy the mischief created by Perera v Civil Service Commission and anor (No.2) 1983 ICR 428, CA*, in which the Court of Appeal held that a 'requirement or condition' was something that must be complied with in the sense that failure to meet it would be an absolute bar to whatever the claimant was seeking. In that case, an interviewing board, in declining to offer the claimant a post, took account of factors such as UK experience, command of the English language, and age. Although these factors were capable of being indirectly discriminatory on the ground of race, the Court took the view that none amounted to a 'requirement' or 'condition' because a poor assessment under one or more of the heads would not be an absolute bar to employing an otherwise highly suitable employee. The effect of this approach was that mere preferences were not caught by the discrimination legislation. Tribunals in both sex and race cases were required to dismiss complaints where, for example, a qualification for a job or a promotion was stated to be 'preferable' or 'desirable', despite the fact that it might be just as disadvantageous to members of the affected group as it would be if it were an absolute requirement. So, arguably, an employer could apply a criterion that was discriminatory but avoid a claim of indirect discrimination by showing that the criterion was not absolute and that someone who did not satisfy it would still be selected in exceptional circumstances.*

Although the rigour of the Perera rule was to some extent mitigated by subsequent case law, the change of wording to PCP removed any doubt as to the correct approach. As the Government stated in its guidance on the change in relation to the SDA, a claimant 'still has to prove, for example, that an employer is applying a specific practice to their disadvantage but she will no longer have to prove that there was a rigid rule in place which was to her disadvantage'. The use of the new wording in the EqA means that the less stringent test now applies to all of the discrimination strands to which the definition of indirect discrimination in S.19 applies."

909. In ***Mair v Chief Constable of the Police Service of Scotland ET Case No. S/4100068/16*** a police officer, brought a claim of indirect sex discrimination based on the refusal of her flexible working application. She had proposed adjustments to her hours of work in order to accommodate her childcare responsibilities. The respondent police force's main objection to the claimant's proposed working pattern was that it would mean that approximately a third of her hours would be worked at a time when her shift colleagues were not on duty. The claimant asserted that the force applied a PCP that police officers must start and finish their shifts within core hours. The force denied that it had a formal policy to this effect. However, the employment Tribunal had regard to evidence given by the force's witnesses who stated variously that there was 'guidance' to this effect, that it was a 'preference'. The Tribunal accepted that, given that a PCP should be widely construed, need not operate as an absolute bar.

910. In ***Hampson v Department of Education and Science 1988 ICR 278, EAT***: EAT also accepted that any test or yardstick applied by an employer was capable of being a requirement or condition:

911. The EHRC Employment Code provides that the term 'provision, criterion or practice' is capable of covering a wide range of conduct, noting: '*The phrase… is not defined by the Act but it should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions' — para 4.5.*

912. The ECHR Employment Code, at para 4.5, states that a PCP can arise from a one-off or

discretionary decision and see ***British Airways plc v Starmer 2005 IRLR 863, EAT*.**

913. The Tribunal find that this 'preference' applied from the date the claimant returned to work in January 2023 until she left.

Did this put the claimant at a substantial disadvantage, compared with persons who are not disabled, in that she found it difficult to carry out the full duties and hours due to all three disabilities.?

914. Section 212(1) EqA states that substantial means 'more than minor or trivial'.

915. If the requirement was that the claimant had to return to full time duties, the respondent accepts that this would place the claimant at a substantial disadvantage

916. The respondent does not assert lack of knowledge of the pleaded disadvantage.

Adjustments: Did the respondent fail to allow the claimant to undertake alternative duties, including working in a team that was not front-line, or work alternative rotas from 2 June 2023 to 14 August 2023. [LOI – not numbered]

917. This would be an adjustment to the duties not to the hours. The claimant had been offered other roles such as the position in Derby. She did not have to return to the duties in the 24/7 role but if she was to remain as a 24/7 sergeant she was required to return to the full operational duties.

918. From the outset of her TDR the claimant was interested in reducing her hours so that she would not at the end of her TDR have to work a full-time rota. During the period May to July 2023, she did have to work full time hours and the 6/4 shift pattern but used her own annual leave to avoid doing so.

919. The Tribunal accept that this put the claimant at a disadvantage, she had to use her leave to reduce her hours but also the Tribunal consider that this fighting to get approval to reduce her hours put her under significant additional strain.

920. The claimant was moved into the CFQT team, but this was only an interim placement pending advice from OH, this was not a change to her substantive role or an offer of an alternative permanent job.

921. Reducing her hours may not have been the only adjustment which would have enabled the claimant to successfully complete her TDR, it could be one of a number of measures to remove a disadvantage.

922. Where a number of adjustments interact or might work in combination to potentially ameliorate the disadvantage suffered by the disabled claimant, it is necessary for the Tribunal to adopt a holistic approach when considering the reasonableness of the adjustments overall : ***Burke v The College of Law and anor 2012 EWCA Civ 37, CA*.**

923. The Tribunal consider that with a more supportive TDR process, proper reviews, and a process which was reviewed and extended when the claimant expressed concern that she needed more time and had not had sufficient support from colleagues or shadowing, that there was a very real prospect that combined with reduced hours, she may have been able to return to work at the end of the extended TDR if not before, had the initial TDR been more supportive.

924. In terms of effectiveness, there only needs to be a prospect of an adjustment removing a disadvantage. The focus of the Tribunal must be on whether the adjustment would, or might,

be effective in removing or reducing the disadvantage and while a measure that taken on its own it may be ineffective nevertheless be one of several adjustments which, when taken together, could remove or reduce the disadvantage experienced by the disabled person.

925. The Tribunal consider that an adjustment to her hours of work should have formed part of a discussion in January 2023 when she first raised that this is what she would require as part of a package of measures to build back her confidence toward a return to her substantive role

926. Whie the Tribunal heard a lot of evidence about how difficult it is to accommodate someone who cannot work the full set of shifts, (which fully supports the finding that this was a PCP), however what the Tribunal found compelling was CI Gill's oral evidence in which , after months of the claimant in her words 'fighting' to have her application dealt with and attempting to propose various alternatives, he suddenly suggested to the Tribunal that it may well have been possible to reduce her hours because of the cross-over between the early turn shift and late turn shifts.

927. The Tribunal conclude that there was a prospect that this could have alleviated the disadvantage whether of itself or with other measures and relieved the stress and anxiety of returning full time and in doing so helped the claimant build back her confidence and return to her substantive role at the end of an extended TDR. The respondent could extend the TDR and did so but failed to give her any comfort about a reduction in her hours and failed to explore options such as this with her.

928. Given the nature of her health condition, the Tribunal conclude that the lack of certainly put her at a disadvantage as compared to someone without her disability or without her particular disability.

929. Given the creation of the 6th sergeant role, the Tribunal are not convinced that this could not have also opened up the possibility of a few more hours being covered or some job share where she could cover the more administrative tasks (even on a temporary basis) , that was simply never considered. The Tribunal formed the very clear impression that the respondent approached the request for flexible working at the time with a closed mind to carrying out any meaningful review of what could be accommodated.

930. The claimant made repeated requests to reduce her hours, she was given no clear answers while feeling increasingly desperate. On 8 August 2023 she was still being told that that her latest request was not being stalled (page 1064) and on 14 August 2023 (page 1062) expresses her frustration about still fighting to her application dealt with and is assured that this would be dealt with at the Step 2 meeting in September. While no doubt profoundly sceptical, the Tribunal find that the claimant was still hoping to have her application granted and thus the Tribunal find that the omission was either a continuing act in respect of each request that was made or the omission continued throughout this period from January 2023 until she went off sick in August 2023 and did not return to work.

931. The PCP continued however there was no obligation to make an adjustment after 14th August 2023 until such time as she would be ready return, with adjustments, which she was never able to do.

The claim is well founded and succeeds

PCP: Where a person cannot work full time in the claimant's role they are moved to/through the capability procedure LOI 5.2.3

932. The claimant submits that she was unable to sustain full time working and therefore she was subject to the Capability Process.

933. The respondent submits that the Capability Procedure was used not because of anybody's inability to work full time but where somebody could not carry out the substantive duties of their role.

934. The Tribunal conclude as set out in the findings of fact, that it was the case that being operational and capable of doing the job of 27/4 sergeant role meant covering all 6 shifts and working full time as well as doing the full operational duties. As Inspector Turner made clear:

"*As outlined during our conversation, **the expectation is you do work the full set as per your return plan**, which had approval from OH stop if you're genuinely unable to complete these, I will note that down and arrange a review of your current case with HR/OH to determine the best outcome going forward." [p.676)*

935. The Tribunal find that there was a PCP in place, full time hours over 6 shifts was a requirement even if a preference that would be sufficient, however it was an embedded policy and being operational meant doing the full 6 shifts pattern.

936. Sup Peters gave oral evidence that they were proceeding to Step 2 because this was: "*our process, to discuss reasonable adjustments under the Equality Act 2010..."*

Did this put the claimant at a substantial disadvantage, compared with persons who are not disabled, in that she found it difficult to carry out the full duties and hours due to all three disabilities?

937. As set out above the Tribunal accept that this PCP did put the claimant to a substantial disadvantage regardless of the assertion that it was not punitive. It was a step further to Step 3 and the possible ending of her career as a sergeant with the respondent.

938. In **Fareham College Corporation v Walters 2009 IRLR** the EAT held that:

(1) When considering whether an employer had failed to comply with a duty to make reasonable adjustments, the tribunal should identify non-disabled comparators only where it was appropriate to do so, Environment Agency v Rowan [2008] I.C.R. 218, [2007] 11 WLUK 3 considered. In many cases, the facts would speak for themselves and the identity of the non-disabled comparators would be clearly discernible from the provision, criterion or practice found to be in play. In this case, the provision, criterion or practice identified by the tribunal was F's refusal to permit W a phased return to work. That meant that F required W to return and to resume her work without a phased return. It was entirely clear from this that the comparator group was other employees of F who were not disabled and who were able forthwith to attend work and to carry out the essential tasks required of them. Members of that group were not liable to be dismissed on grounds of disability, whereas because of her disability W could not do her job, could not comply with that criterion and was liable to dismissal. That was in effect what the tribunal was saying when it found that W was, as a result of her disability, "in a position where her return to work was seen by [F] as unusually problematic, such that [it] was not prepared to countenance what were assessed ... to be unacceptable adjustments".

939. The Tribunal conclude that the claimant because of her disability found it more difficult than something without her disability to work to comply with the PCP and that meant that the formal Step 2 was initiated and she was at greater risk of dismissal.

What steps could have been taken to avoid the disadvantage: Adjustments

940. In terms of alternative duties, those were offered to the claimant only after the claimant was moved to the CQFT in July 2023 prior to that she had to use her annual leave to avoid working the full shifts and hours. The same conclusions as above are relevant to this complaint in that the respondent could have avoided using the formal Capability Process and given proper and full consideration to a reduction in her hours of work and adjustment to her shift pattern as part of the Step 1 process.

941. The claimant was working the full hours and shifts but having to use her annual leave to work the hours she was capable of working.

942. CI Gill was clear, as set out in the findings of fact, that the respondent did not have to use the formal Capability Process to make any adjustments to the TDR or implement reasonable adjustment to her working hours and shift pattern. It could have treated the TDR as more fluid and reviewed it as it progressed on a regular basis to ensure it was still fit for purpose.

943. The Tribunal conclude that the respondent could have made adjustments to the claimant's shift pattern and hours. The Tribunal is not convinced that the respondent had opened their minds to the possibilities. During this hearing alone, both CI Gill and Supt Peters mentioned adjustments which they had not explored with the claimant and of themselves may have had a prospect of alleviating the disadvantage. The claimant suffered the ongoing stress and uncertainty of whether the respondent would be prepared to adjust her shift pattern and hours.

944. The Tribunal is not convinced by the respondent's evidence that even further adjustments could not have been accommodated to avoid the disadvantage to enable the claimant to work an amended and reduced shift pattern.

945. **The claim is well founded and succeeds**

Did the lack of an auxiliary aid/service, put the claimant at a substantial disadvantage compared to someone without the claimant's disability: auxiliary aids or service:

Training on return to work around new procedures and systems: did this put the claimant at a substantial disadvantage because it made it difficult for her to react and plan in her role, causing more anxiety and distress because of PTSD and depression when she was still having treatment and taking medication and when it took the claimant longer to adjust to new procedures and routines. During the 5-month return to work plan there was some training around new procedures and systems but not enough for the claimant to be fully operational. [LOI 5.4.1].

946. The Tribunal find that training is an auxiliary aid or service pursuant to section 20 (5) EqA.

947. The claimant's position is that during the 5-month return to work plan there was some training around new procedures and systems but not enough for the claimant to be fully operational.

948. For the reasons set out in the findings of fact, the Tribunal find that there was insufficient training provided during the period January to August. While there was a plan to rectify this as part of the new TDR set out in July 2023 training did not start because the April 2023 OH report had advised that the claimant was temporarily unfit for operational duties and it took until 15 August 2023 for the respondent to organise itself sufficient to obtain the advice from the claimant's treating psychiatrist which OH had asked for.

NICE

949. As set out in the findings of fact, the claimant had received training in the past. Inspector Turner (sup w/s para 40) accepts that there were periodic system updates and changes every 9 months or so and but considered that these would have been small changes and there are guidance documents on the intranet. However, he clearly recognised that she needed upskilling because he arranged it for her on 3 May 2023. However, his evidence is that he

could not recall what updates would have taken place and the Tribunal therefore accept that it would be understandable for the claimant to be concerned about how significant the changes were and about using the system again after such an extended absence and given the nature of her illness.

950. At her return work interview on 11 January 2023 (page 506) the claimant had asked for NICHE system training. Inspector Turner in his supplemental statement accepted there were likely to have been at least 3 updates to the system (para 3-40) and the Tribunal accept the claimant's submission that this was not arranged until May 2023 even though she was due to start leading shifts from 23 April 2023.

951. On the 12 April (page 600) the claimant emails Sgt Wilson:

"*I was very confused as well, seeing very old crimes and with no workflow, I was trying to get them off the officers list. May be as I am not registered as a team sgt yet it shows me all the crimes? I did stop once I had run myself in several circles. Definitely need some niche input (which I have asked for). "*

952. To which Sgt Wilson replies:

"I forgot must of Niche after only 3 months off so it's to be expected". (page 600|)

953. There is then the feedback from Sgt White on 25 April (631) in which she complains.

"I worry she doesn't understand the PC role, therefore trying to bring her up to speed on the Sgt stuff is twice as hard…"

954. The Tribunal conclude that not having NICHE training earlier had caused her additional anxiety and stress and made it more difficult to do her role.

New Operations

955. Inspector Turner's evidence (supp w/s para 23 – 30) is that a fully operational sergeant would be expected to be aware of these operations and deploy their resources to meet the requirements and that someone away for a period would update by shadowing an operational sergeant and refers to the claimant's extended period of shadowing. However, he was made aware of the difficulties she had shadowing Sgt White and then there were then issues with her leave clashing with Sgt Fowler's. As set out in the findings of fact the claimant had difficulty locating information about the current operations and sitting in on briefings would not have given the background to operations which had been ongoing for some months.

Command and control/ Control works

956. The respondent submits that control works had not changed during her absence, all she had to do was refamiliarise herself during her shadowing however as set out in the findings of fact the Tribunal conclude that the claimant had difficulty in getting up to speed with the changes.

ERO – Evidential Review Officer

957. As set out in detail in the findings of fact, the Tribunal conclude that ERO training would have been beneficial for the claimant and while counsel submits it was a 'good to have', the Tribunal conclude that it was ' beneficial' and that the absence of having it in good time before she would be leading shifts, was another factor which undermined her confidence and made it more difficult for her to adjust back into the role. The impact of this on the claimant resulted in training being included within a Stress Action Plan on 2 May 2023 (page 652).

958. The Tribunal find that further training and a clear training schedule could and should have

been put in place. The new TDR put in place by CI Gill was by comparison much more considered, clear and structured including with respect to training. On 1 September 2023, T/Inspectors Kane in an email stated that the claimant was off sick and when fit to return she need several courses to get up to speed, he recognised that the need for her to receive 'upskilling'.

Substantial disadvantage'

959. The claimant submits that during the 5 month plan, the claimant was at a substantial disadvantage because the amount of training that was provided made it difficult for her to react and plan in her role, causing more anxiety and distress because of PTSD and depression when she was still having treatment and taking medication and when it took the claimant longer to adjust to new procedures and routines.

960. The Tribunal conclude that given the nature of the claimant's condition, the length of her absence, the fact that she was raising training right from the date of her return, if it was not clear to Inspector Turner than it should have been clear that what the claimant required a clear and agreed plan of training to give her the confidence she needed and the time she needed to get up to speed and retrained.

961. Inspector Tuner was aware from the OH report in November 2022 that the claimant was still on quite a lot of medication and should have appreciated that she may take longer to retrain and process information and after such absence and the nature of her condition need time to familiarise herself with the system and any changes with the right support and at a speed and time she felt she needed it.

962. OH, in January 2023 (page 526) had made it clear that:

"…*she may take slightly longer to re- learn any new information".*

963. The Tribunal conclude that Inspector Turner knew that the claimant was disabled and that the disability was liable to put the employee at the pleaded substantial disadvantage or ought to have known. Had he made proactive enquiries of the claimant about what she needed and when, this would have given her confidence and the time she needed to get back up to speed. If he did not understand, reasonable enquiries would have led him to understand that not providing all the training she needed when she felt she needed it, would put her at a disadvantage because of her disability as compared other employees who were not disabled and who were able to return to work and carry out the essential tasks required of them in their post without or with minimal/less training. Members of that group were not liable to experience the same difficulties the claimant had in performing in her role (reacting and planning in her role), and suffer the anxiety and distress which the claimant experienced.

964. As set out in the findings of fact, Inspector Turner did not make reasonable enquiries because he appears to have operated on the understanding that the onus was on the claimant to identify what she needed. However, she would not have known on returning what had changed and indeed Inspector Turner appeared unsure, having it seems failed himself to made enquiries about precisely what had changed to the various systems and how significant those were.

965. He also failed to check what training was being provided during the shadowing process and just how much effective shadowing was taking place and failed to take prompt action when it appeared the claimant felt unsupported by the Sgt she was shadowing.

966. There was no real assessment of what training she had, how effective that had been and what more could be done and this continued until the new TDR was put into place on 4 July 2023.

967. **The claim is well founded and succeeds.**

A return-to-work plan which incorporated (i) shadowing of other staff, (ii) point of assessment, (iii) measurable goals, and (iv) a provision for review of the plan as the Claimant progressed. [LOI 5.4.2]

968. The claimant complains of not having these auxiliary aids or services in place.

969. The respondent's position is that this auxiliary aid/service was provided, a plan was in place which included shadowing, and provision for a review.

970. The plan did the Tribunal find include those elements in it.

971. The claimant complains that they were in practice not adequate but that is fundamentally a different point. There was shadowing but the issue is that there were issues with who she was shadowing and that she required further shadowing but if the claimant complains that at some stage there should have been more shadowing or changes to the plan, that is not the pleaded case. It was that shadowing should have been included and it was.

972. That she felt bullied during shadowing is dealt with as part of the harassment claim. That she felt the training was inadequate is also dealt with elsewhere.

973. The respondent submits that in terms of measurable goals and points of assessment, the reviews were there to check progress and there was no indication from the claimant or HR that having goals in place would assist the claimant.

974. The plan was discussed with the OH Advisor (page 526) and it was sent to the Head of OH, Judith Sallen who approved it (page 491). The respondent submits that the claimant did not raise wanting or that she would benefit from measurable goals, OH did not advise that this was required or she would be disadvantaged without it and unlike training it is not something which the Tribunal consider it would be reasonable for the respondent to know would put the claimant at a substantial disadvantage and accept that the claimant did not raise this, OH did not raise it and it may reasonably considered that putting in goals may cause the claimant additional stress and anxiety.

975. The Tribunal accept the respondent's submission that Inspector Turner did not and could not reasonably have known that without those aids/service, the claimant would be put to a substantial disadvantage and the Tribunal is not persuaded that the claimant has established that she was put at a substantial disadvantage by in particular not having measurable goals.

976. **The Tribunal conclude that this claim is not made out and if dismissed.**

OH recommended weekly reviews with inspector and daily 'check ins' – is this an auxiliary aid/service which was not provided – did the lack of it cause substantial disadvantage because the claimant needed to discuss when her anxiety was getting too much and the result was other officers losing trust in the claimant to do her job, made claimant feel inadequate, daily life was a struggle, claimant could not complete a return to work. This also did not allow the Inspector to monitor progress of the return-to-work plan [5.4.2].

977. The respondent's position is that weekly reviews and daily 'check ins' did happen but if there were failings, the respondent's position is it had no knowledge of the pleaded disadvantage.

978. As set out in the findings of fact, OH recommended in their 24 January 2023 report daily

and weekly reviews of progress (page 527). However, as set out in the findings of fact, the Tribunal have found that reviews did not take place as regularly as recommended.

979. The Tribunal accept that these reviews do amount to auxiliary aids or services.

980. Reviews around her progress were on balance, the Tribunal accept, important to the success of her return to work hence the recommendation by OH, so that the claimant could raise concerns promptly and ask for more support if needed. The Tribunal accept that more likely than not, it did put her at a substantial disadvantage as compared to someone without a disability or her disabilities returning to work, because as made clear by OH, she needed that level of support. The Tribunal accept that she struggled with feelings of inadequacy as colleagues showed impatience with her progress and this impacted on her health and her progress.

981. Inspector Turner in his w/s (para 64) makes express reference to the RTW being reasonable with regular reviews to monitor her progress and adjust accordingly and goes on to refer to his understanding from OH that what was needed was a review of her work daily and weekly to see how she was coping because her progress may fluctuate daily. Inspector Turner alleges that he implemented those recommendations and checked in more regularly with the claimant. The Tribunal as set out in the findings of fact did not accept his evidence on this and find that he did not provide that recommended level of support. The Tribunal were not impressed with Inspector Turner as a witness of act in a number of key areas.

982. The Tribunal conclude that Inspector Turner knew that the claimant was disabled and that the disability was liable to put the employee at the pleaded substantial disadvantage or ought to have known. Had he made proactive enquiries of the claimant or OH about why they had needed them, doubtless it would have been explained.

983. The Tribunal accept that this formed a package of support measures which the claimant needed to give her confidence and to highlight promptly when she was having difficulties at work.

984. Having that regular support may well have made a significant difference, along with Inspector Turner 'nipping in the bid' the frustrations of her colleagues and having a more supportive style generally.

985. **This claim is well founded.**

Auxiliary service of meetings with HR to discuss options in relation to the stage 1 capability process and explain the stage 1 capability process.

Did it have a substantial disadvantage namely causes uncertainly, anxiety/depression and claimant could not do the role and impacted on her personal life, sleeping etc [LOI 5.4.3].

986. Respondent agrees this did not happen and the respondent's position is it had no knowledge of substantial disadvantage.

987. The Tribunal have considered the claimant's detailed submissions at para 249 to 260.

988. The Step 1 meeting took place with the claimant's wife in March 2022. It was not raised then that the claimant would need to meet with HR to go over what had been discussed at that meeting. The claimant did not raise on her return to work that she did not understand the process. The Tribunal accept the respondent's submissions that the respondent did not know that the claimant felt uncertain or anxious about what the Step 1 process would mean or could

have reasonably that this would place her at substantial disadvantage.

989. What the claimant however seems to be asserting is beyond an explanation of Step 1 and more oversight by HR. However, the Tribunal conclude that the issue was the failure by Inspector Turner, as set out in the OH report, to provide a supportive and regular practice of reviews and maintaining contact, and for him to seek HR advice and support when needed (for example in April 2023) in order to further support the claimant.

990. The Tribunal do not accept that given the plan put in place with HR assistance, and with OH advising on the steps Inspector Turner should take, that it was reasonable for the respondent to have known that without regular meetings with HR, the claimant would be put at a significant disadvantage. The Tribunal consider that this would not have been required, had Inspector Turner done what he was required to do, and that is the failing.

991. **The claim is not well founded and is dismissed.**

Should the phased return have been extended and capability process not pursued/advance from around mid-April 2023.s [LOI 5.4.4]

992. The Tribunal accept that the return-to-work plan was an auxiliary aid or service.

993. The claimant confirmed that the complaint is that as the TDR progressed and the claimant highlighted, she was struggling, she was still told she still had to meet the 5-month deadline. The respondent should have extended the plan as per original OH recommendation and paused /not pursued/followed the capability process

994. The claimant complains that the 5-month plan should have been extended, she had accepted a 5-month plan on an understanding there would be regular reviews of it.

995. The Tribunal conclude that as set out in the findings of fact, the claimant was put under pressure to complete the TDR within the 5-month period. Inspector Turner had made it clear and he was being ‘firm’ with her that she had to complete it, even when by April 2023 she was making it clear she did not feel ready. For the reasons set out in the findings of fact the Tribunal conclude that Inspector Turner was wedded to the completion of the TDR within the 5-month period.

996. He was aware that OH (w/s para 64/65) had approved the 5-month plan subject to reviews and to adjust accordingly. This 5-month period was what he had initially considered only a “*rough plan*” however he was resistant to changing it when it became apparent flexibility and extension were needed (w/s para 62).

997. Inspector Turner gave evidence that he had never seen a 12-month plan, and the Tribunal find it was this mindset which meant that he closed his mind to what was reasonable in the claimant’s particular case. The TDR would be extended by CI Gill so a longer TDR could be accommodated but Inspector Turner had a fixed view of how long he would accommodate the claimant and that combined with the other failings, caused the claimant significant anxiety and put her under considerable pressure, it was not the supportive process OH had recommended to give the claimant the best chance of a safe and effective return.

998. By April 2023 OH were advising that they required specialist advice in order to give an estimate of she would be fit for operational duties but no further advise was sought until August 2023.

999. The Tribunal conclude that this plan which was presented to the claimant as something

which would be reviewed and 'fluid', became set in stone in Inspector Turner's mind and that this did put the claimant at a substantial disadvantage as compared to someone returning to work without a disability or without her particular type of disability and that Inspector Turner either knew or should have known that it put her to that disadvantage.

1000. When it became apparent that she needed more time, the Tribunal consider that the plan should have been extended and the capability process not pursued because originally OH had recommended a longer period, of up to 12 months. During the 5-month return to work period the claimant had had to cope with a number of challenges which put her progress back, including the behaviour of colleagues.

1001. The Tribunal conclude that in April 2023, the respondent should have addressed the claimant's concerns and considered in line with the original time frame recommended by OH an extension and sought immediate OH advice, including from her specialist, to give the respondent the best possible understanding of her needs and how to support her. That reassurance should have been provided in April 2023 and for reasons set out in the findings of fact, the Tribunal conclude that this should have been addressed as part of the review process and as an adjustment to the original 'rough' plan and not subjected the claimant to a further formal stage in the capability process.

1002. **The claim is well founded.**

Harassment related to disability (Equality Act 2010 section 26)

1003. The Tribunal have reminded itself that in cases where the discrimination is based on multiple allegations the Tribunal will be expected to take a holistic view to glean the wider picture that may not otherwise be apparent from adopting an overly fragmented approach : ***Fraser v Leicester University and ors EAT 0155/13*****:**

"*74. Given the focus of the Claimant's case before us, we have been particularly mindful of the various cases which have placed emphasis upon the need to look at the broader picture when considering a discrimination complaint built upon multiple allegations. In such cases, whilst the Tribunal would need to make the relevant findings of fact in respect of the individual complaints made, it must also adopt a holistic view of the case, seeing the* wider *picture that may not be apparent from an overly fragmented approach, see Qureshi (supra); Fearon v Chief Constable of Derbyshire [2004] UKEAT/0445/02 ; Rihal v London Borough of Ealing [2004] IRLR 642 ; and X v Y [2013] UKEAT/0322/12 ."*

Was the claimant bullied and harassed by <u>two female sergeants</u>, Jackie Wilson and Helen White, who made her feel unwanted, made it hard for her to ask questions, create a hostile working environment between Feb 2023 and May 2023 and did they in particular [LOI 6.1.1]:

On 3 April 2023 shout the claimant 'down', undermining her and saying things including telling her that she should not be paid the same as them as she was not doing what they were doing [LOI 6.1.1.1.].

Unwanted Conduct

1004. The Tribunal conclude that there was some confusion over the 26 March 2023 or 3 April 2023 shifts but no deliberate wrongdoing by the claimant.

1005. As set out in the findings of fact, the Tribunal find that this conduct did take place not by

both sergeants but by Sgt Wilson although the Tribunal are critical of the behaviour of Sgt White who was passive in that situation and failed to intervene when she witnessed one colleague behave in a bullying manner toward a disabled employee returning from a long absence which she knew was in part due to issues with her mental health.

1006. The Tribunal consider that she was complicit in not intervening, however the allegation is not that she failed to act and was complicit but that had also shouted the claimant 'down' and the Tribunal find this was not the case. This allegations against Sgt White are not made out on the facts. The conduct of Sgt Wilson, as set out in the findings of act, is.

1007. The conduct of Sgt Wilson was unwanted.

Was the Conduct Related to Disability

1008. It is submitted by the respondent that If Sgt Wilson did shout at the claimant on 3 April 2023 or tell her that she should not be paid the same as her, this is not "related to" the claimant's protected characteristic. As in **Unite v Nailard, Aslam and Allen,** this is a situation where it is necessary to consider the mental processes of the alleged harasser to determine whether the conduct in question is related to disability in the manner alleged by the claim.

1009. The respondent submits that the fact the claimant missing shifts or becoming confused about the roster might have been related to disability, and the same is true of the difference in lenience afforded to Sgt Wilson and the claimant about their shifts by management; but that is not sufficient for Sgt Wilson's 'speech' the next day to be found to have been related to disability. The respondent submits that Sg Wilson's mental process must be considered. On the facts, it is submitted that the conduct was related to the fact of being confronted by the claimant about her behaviour in calling her, and to her resentment of management for treating them differently; but not to the claimant's disability itself.

1010. The Tribunal are not persuaded by the respondent's submissions.

1011. Sgt Wilson was frustrated the Tribunal have found, as set out in its detailed findings, because of the special consideration and leniency shown toward the claimant and she knew all too well that this was because the claimant was returning after 2 years of illness related absence on a RTW plan which saw her requiring a phased return.

1012. The comments were connected or related to her disability; they were related to the disability related absence and the need for a return-to-work plan to accommodate that disability.

1013. Sgt Wilson's motive was to vent her frustration onto someone who was psychologically vulnerable about matters which were connected to the adjustments in place for her phased return and the adjustments in place because of her disability and because she was still adjusting to being back in the workplace, it was conduct which the Tribunal consider was related to her disability taking the necessary broad approach. To argue otherwise would be a licence to abuse disabled workers because of the adjustments in place for them where they may inconvenience other workers.

1014. Sgt Wilson's resentment was about the treatment the claimant was receiving. Counsel for the respondent in her written submissions submits that; "*on these facts, JW's conduct was related to the fact of being confronted by C about her behaviour in calling her, and to her resentment of management for treating them differently; but not to disability itself*."

1015. The test pursuant to section 26 does not require the treatment to be because of the disability only that it is 'related' to the protected characteristic, in this case disability.

1016. Causation is a concept that is relevant to direct discrimination only. The EHRC code of practice on employment states that the necessary connection with a protected characteristic can arise where 'the unwanted conduct is related to the protected characteristic but does not take place because of the protected characteristic' para 7.10.

1017. In terms of the burden of proof where the claimant has been subject to bullying for no apparent reason, the shifting burden of proof may be applicable to establish whether the reason for the treatment was her protected characteristic. Before the burden can shift to the respondent, the claimant will need to establish on the balance of probabilities that she has been subjected to unwanted conduct which is the purpose or effect of violating her dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment for her. It is likely that the claimant needs to produce some evidence to suggest that the conduct could be related to her disability.

1018. **Hartley v Foreign and Commonwealth Office services 2016 ICR D17 EAT**: The EAT held that a Tribunal considering the question posed by section 26 (1)(a) must evaluate the evidence in the round, recognising the witnesses were not readily volunteer that a remark was related to a protected characteristic and further held that:

24. A's knowledge or perception of B's characteristic is relevant to the question whether A's conduct relates to a protected characteristic but there is no warrant in the legislation for treating *it as being in any way conclusive. A may, for example, engage in conduct relating to the protected characteristic without knowing that B has that characteristic. A may not even know that B exists. Likewise, A's own perception of whether conduct relates to a protected characteristic cannot be conclusive of that question. A's understanding of the protected characteristic may be incomplete or incorrect, whether from the best of motives or from prejudice or the acceptance of myth.*

25. The Employment Tribunal's Reasons in the case of Ms Brigden concentrated upon her perception of the question whether her remark related to the protected characteristic. I can see no sign in the Employment Tribunal's Reasons that it has asked itself whether, objectively, the remark related to the Claimant's disability. Ms Brigden drew a distinction between the Claimant's tenaciousness, which she attributed to the disability and what she believed to be the Claimant's rudeness and aggression, which she attributed to her personality. But that distinction was not accepted by the Claimant, moreover, the Employment Tribunal had found that by reason of her disability the Claimant could appear rude and could be abrupt and impulsive. The Employment Tribunal's task was to look at the overall picture, including its own findings to the adverse effect of the Claimant's disability and to ask whether Ms Brigden's remark related to the protected characteristic.

1019. Section 26 does not bite on conduct which though it may be unwanted and have the proscribed purpose or effect, is not properly found to have been related to the protected characteristic relied upon.

1020. The Tribunal find the approach of Sgt Wilson to the claimant to be unsympathetic. She failed to consider the claimant's needs as a person returning after a significant period of ill health to a very demanding role and the requirement for her line manager, Inspector Turner, to provide additional support and latitude.

1021. The Tribunal conclude that the comment which was made was related to the claimant's disability, it related to the treatment she was receiving by her line manager which Sgt Wilson resented because was different to the treatment that she and other colleagues were receiving. That difference was because of the claimant's disability.

1022. Sgt Wilson knew that the claimant was on a phased return, she knew that her absence was related to issues concerning the claimant's mental health and the Tribunal find that she was well aware that there was a link between the treatment of which Sgt Wilson was resentful and the claimant's disability but nonetheless she felt justified in expressing that resentment

directly to the claimant and then later directly to her line manager in very clear terms.

1023. The fact that Sgt Wilson considers that she is a straight-talking northern person is not justification for lack of sympathy, lack of patience and a lack of consideration in such circumstances. It is not an excuse or justification and nor does it prevent an unsympathetic attitude causing upset and harm. Straight talking can be delivered with kindness and compassion, this was not. The findings are set out in detail in the findings of fact.

1024. This was a challenging work environment for the claimant to return to, her confidence required building back up and this sort of behaviour the Tribunal accept, from her closest work colleagues, doubtless was a knock to her confidence. Even when giving evidence Sgt Wilson failed to appreciate that her behaviour may have been inappropriate.

1025. Sgt Wilson's frustrations were inappropriately directed at the claimant and this was related to her disability.

Did the conduct have the proscribed purpose or the effect

1026. The EHRC code in deciding the effect of the unwanted conduct states: "*The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place" : para 7.18*

1027. When assessing the subjective element of the test, tribunals should bear in mind that different people have different tolerance levels.

1028. The objective aspect of the test is primarily intended to exclude liability where B is hypersensitive and unreasonably takes offence.

1029. As noted by the EAT in ***Richmond Pharmacology v Dhaliwal 2009 ICR 724, EAT,***

> *'while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the… legislation…) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase'.* It continued '*if, for example, the Tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.'*

1030. ***Punch v Maldon Carers Centre ET Case No.3202677/06*****:** P's manager, L, suggested to her that her crutch was a trip hazard. In the instant case it was reasonable for it to have this effect, given the manager's generally unsympathetic attitude towards P and her failure to consider P's needs as a disabled person. It caused P to feel that bringing a crutch into the office was an issue with L. The Tribunal therefore found unlawful disability harassment.

1031. EAT in ***Driskel v Peninsula Business Services Ltd [2000] IRLR 151*****:** the EAT held that although the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the Tribunal of all the facts, the claimant's subjective perception of the conduct in question must also be considered.

1032. Although the focus will be on the behaviour which complained about as harassment, the conduct of the complainant themselves may not be entirely irrelevant.

1033. It is submitted by the respondent that even if the Tribunal findings' support the claimant's account of the events this does not amount to harassment. Sgt Wilson did not speak to the claimant with the purpose of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. From Sgt Wilson's perspective, the claimant who was a peer, had walked into her office to confront her, and Sgt Wilson felt accused of having done something wrong by telephoning the claimant. She felt that the two of them then had a disagreement, in which each was blunt with the other. The purpose of her speech was to make her point and to suggest that the claimant should take responsibility for her mistakes, but not to violate her dignity or to create the proscribed environment. Nor did Sgt Wilson's conduct have the proscribed effect. It was not reasonable for the claimant to feel that this had violated her dignity or created an intimidating, hostile, degrading, humiliating or off offensive environment for her.

1034. It is submitted that as in **Henderson**, the unpleasant effect of being, or in this case, feeling shouted at, is not sufficient to meet the bar of the statutory test. The claimant went into the office to confront Sgt Wilson. Sgt Wilson responded in kind. The claimant's experience with Sgt Wilson did not prevent her from engaging equally in the conversation, from raising her voice, or from standing over Sgt Wilson and arguing. It is plain from her conduct afterward that she felt upset and angry, but this is not enough to find that the conduct reasonably had the proscribed effect.

1035. The respondent submits that, as set out in **Grant**, the intent of the perpetrator is relevant to determining the effect, and whether it was reasonable. Although the factual matrix in **Pemberton** was different to that here, the principle applies in that the claimant knew that confronting a colleague may end in disagreement, and in the circumstances, it was not reasonable for the proscribed effect to occur.

Subjective element

1036. The Tribunal consider that the claimant was psychologically still fragile. In terms of her own conduct, the claimant went to speak with Sgt Wilson, Sgt Wilson knew the claimant was on a RTW and was working back into her role and that after 2 years away from work, her confidence would require rebuilding.

1037. The claimant was standing but that is of little relevance, it must the Tribunal find, have taken significant effort for the claimant to speak with Sgt Wilson and her intention the Tribunal find was to set reasonable boundaries about respectful ways of engaging. The Tribunal find that she had found Sgt Wilson to have spoken to her in a manner which was unacceptable and not respectful of her rank. The Tribunal find that Sgt Wilson was known to be forthright, was not receptive to the claimant's concerns and how upset she was at her earlier remarks and the claimant's sensibilities held little sway with her.

1038. While Sgt Wilson does not admit to the intending her words having the prescribed effect the Tribunal draw inferences from the surrounding circumstances. It was a comment which arose from Sgt Wilson's personal resentment, she was annoyed at the claimant and more widely at the demands of the role and the ability to take leave and she was aware that the claimant was returning to work on a phased return.

1039. Sgt Wilson went on to send an email to Inspector Turner and her frustration and emotion shouts out from the page.

1040. The Tribunal find, as set out in the findings of fact, that Sgt Wilson said what she said because she was upset and at that time she said it if she did not intend the comments to offend the claimant, to upset her or appear hostile, she was not concerned as to whether they did or not.

1041. The Tribunal have had regard to the first part of the statutory test which involves examining the act from the complainant's perspective.

1042. The Tribunal take into account that the claimant was vulnerable, was struggling with her confidence, feeling unsupported and would later communicate to her line manager that she perceived herself as being bullied. The claimant's reaction at the time is instructive of how she was feeling, and the Tribunal accept that she was immediately upset by it and felt bullied and given the presence of Sgt White and her failure to intervene, felt even more upset.

Objective Element

1043. In terms of the objective test a Tribunal must consider whether it was reasonable for the conduct have the effect on that particular claimant: **Reed and anor v Stedman 199 IRLR 299 EAT.**

1044. The ECHR Employment Code makes the point at paragraph 7.8 that a serious one-off incident can also amount to harassment.

Example: In front of her male colleagues, a female electrician is told by her supervisor that her work is below standard and that, as a woman, she will never be competent to carry it out. The supervisor goes on to suggest that she should instead stay at home to cook and clean for her husband. This could amount to harassment related to sex as such a statement would be self-evidently unwanted and the electrician would not have to object to it before it was deemed to be unlawful harassment

1045. Elias LJ in **Land Registry v Grant [2011] EWCA Civ 769 [2011] ICR 1390** give guidance to the effect that:

"*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."*

1046. The Tribunal take into account the manner in which the comments would have been said. The respondent concedes in submission that it was caused by resentment although attempts to argue that this was not directed at the claimant, which is not accepted. The Tribunal also take into account that Sgt White was present and said nothing, having another colleague present witnessing what was being said would no doubt have added to the feeling of being bullied and isolated and humiliated but regardless of that, the language of Sgt Wilson alone the Tribunal find satisfies both the objective and subjective test

1047. The Tribunal considers that another person subjected to the same conduct would have been upset by it and felt humiliated.

1048. In terms of whether the claimant's dignity was violated, the Tribunal have had regard to the EAT observation in ***Betsi Cadwaladr University Health Board v Hughes and ors EAT 0179/13*** that:

"*violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence'.*

1049. The Tribunal do not consider that this exchange of itself is sufficient to amount to a violation of the claimant's dignity.

1050. In terms of creating the requisite environment, while the claimant felt the Tribunal accept, offended and humiliated, not least given the present of another colleague, this one-off incident the Tribunal considers does not of itself created the requisite 'environment'.

1051. The claimant did file a complaint (page 577) on 3 April in which she refers to being upset and not wanting this conflict.

1052. As a stand-alone act this does not the Tribunal constitute harassment however, it needs to be further considered as part of a holistic approach when considering whether actions collectively amount to harassment.

1053. The Tribunal have further gone on to consider the cumulative effect (below).

On a night shift with Helen White (who claimant was shadowing), did Helen White not answer the claimant' questions about what had changed about the procedures/systems necessitating the claimant asking the duty sergeant.

Did Ms White than the next day slam the door shut and says things including that the previous evening was 'terrible', that the claimant should be demoted to PC, that she made Ms White (who was hoping for a transfer) 'look bad' and that she was putting her move in danger and damaging her reputation [LOI 6.1.1.2]

Unwanted Conduct

1054. The Tribunal have found on a balance of probabilities that Sgt White did not refuse to answer the claimant's questions but her manner was, on balance, not suitable in terms of what the claimant needed. The claimant required a colleague who was open and approachable. The claimant was not reluctant to seek help because she did, from the Duty Officer rather than Sgt White and even from PCs, she wanted support and searched it out.

1055. The claimant had asked to shadow Sgt White, it was her choice however, the Tribunal consider that what Inspector Turner did not do was explain sufficiently clearly to Sgt White what the claimant needed and ensure Sgt White could and was willing to provide that support.

1056. Inspector Tuner in his email of the 19 April 2023 email [page 609] explained that the claimant would during the period 23 April to 21 May, be leading he shift and Sgt White would support her if she had any questions but did not have a meeting with them both. He merely emailed some brief details to Sgt White, he did not spell out the need for patience and the expectations around behaviours more generally, despite the claimant's concerns about the 3 April incident involving Sgt White.

1057. The Tribunal consider on balance that Sgt White did not put herself out to help the claimant and failed to appreciate or be concerned about what support and approach the claimant needed to help her work back into the role. This created a tension and given her lack of confidence, the claimant sought out support elsewhere as set out in detail in the findings of fact.

1058. In terms of the second incident on 25/26 April 2023, as set out in the findings of fact the Tribunal have found that Sgt White did make a comment that the previous evening was terrible or words to that effect, that the claimant should go back to PC duties and learn how to do everything again, had been too slow and had spoken too much with the Duty Officer and PC and is more likely than note to have made a comment about the effect on her reputation and chances of a transfer.

1059. The comments which the claimant complains about and the Tribunal have found were made, were unwanted.

Was the Conduct Related to Disability

1060. Counsel for the respondent submits that the conduct was not “related to” disability. As in **Unite v Nailard**, **Aslam and Allen** this is a situation where it is necessary to consider the mental processes of the alleged harasser to determine whether the conduct in question is related to disability in the manner alleged by the claim. It is submitted that the claimant’s performance on shift led to Sgt White being ordered to take over an incident which might have been related to the claimant’s disability, but that is not sufficient for Sgt White’s words the next day to be found to have been related to disability. It is submitted that Sgt White’s mental process must be considered. On these facts, her conduct was related to the challenge she had received from the claimant about being “controlling”.

1061. It is plain the respondent submits on the facts that Sgt White did not speak to the claimant with the purpose of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The claimant had called Sgt White controlling, and Sgt White set out that she had been ordered to take over. On a later date upon being called controlling for a second time, Sgt White said that from a reputational perspective it is important that she takes over when ordered. The purpose of this was to set out her explanation upon being attacked, and not to violate the claimant’s dignity or to create the proscribed environment.

1062. In terms of the allegation of not answering questions, and whether this was related to disability, the respondent accepts in submissions that Sgt White she knew the claimant was returning after long period of absence and had some awareness of her mental health issues.

1063. The Tribunal balance find that Sgt White was not very supportive in her approach to toward the claimant, she did not refuse to answer questions but was ‘non-committal’ and it seems appeared unwilling to support her. The claimant had reported in her stress risk assessment in May (page 650) that she was "short /snappy” with her when she asked questions but not that she refused to answer them.

1064. The claimant needed additional support because of her disability, it was not that Sgt White could not provide the support, she was not sufficiently invested the Tribunal consider in the process of helping the claimant build back her confidence.

1065. The Tribunal do consider that Sgt White’s manner toward the claimant was in part motivated by the claimant’s disability or rather the support that she needed because of it and her limitations at that time.

1066. Sgt White and the claimant had got on well before her absence. The claimant now required patience and support the Tribunal find that Sgt White was not open and approachable and this was because of the claimant’s need for support and because of the challenges for the station.

1067. In terms of the second incident on 25/26 April 2023, while she did not shout, the Tribunal find that Sgt White did make comments as set out in the findings of fact, which were hurtful to the claimant because of the limitations on her ability to do her job which her disability caused, that she was critical of her ability to carry out the role and the comments she made were directly related to the impact of her disability. This was conduct related to her disability, that was her motivation, to point out the limitations caused by her disability and the impact of it.

Did the conduct have the proscribed purpose or the effect

1068. The adverse purpose or effect can be brought about by a single act or combination of events. The **EAT in Reed and anor v Stedman 1999 IRLR 299 EAT** gave this guidance on

the approach Tribunal should adopt:

> *"**25** It seems to us important to stress at the outset that 'sexual harassment' is not defined by statute. It is a colloquial expression which describes one form of discrimination in the workplace made unlawful by s.6 of the Sex Discrimination Act 1975. Because it is not a precise or defined phrase, its use, without regard to s.6, can lead to confusion. Under s.6 it is unlawful to subject a person to a 'detriment' on the grounds of their sex. Sexual harassment is a shorthand for describing a type of detriment. The word detriment is not further defined and its scope is to be defined by the fact-finding Tribunal on a commonsense basis by reference to the facts of each particular case. The question in each case is whether the alleged victim has been subjected to a detriment and, second, was it on the grounds of sex. Motive and intention of the alleged discriminator is not an essential ingredient, as in any other direct discrimination case, although it will often be a relevant factor to take into account. Lack of intent is not a defence.*
>
> ***28** Because it is for each individual to determine what they find unwelcome or offensive, there may be cases where there is a gap between what a Tribunal would regard as acceptable and what the individual in question was prepared to tolerate. It does not follow that because the Tribunal would not have regarded the acts complained of as unacceptable, the complaint must be dismissed. It seems to us that there will be a range of factual situations which may arise, in relation to which there may be difficult problems of proof. **It is particularly important in cases of alleged sexual harassment that the fact-finding Tribunal should not carve up the case into a series of specific incidents and try and measure the harm or detriment in relation to each**. As it has been put in a USA Federal Appeal Court decision (eighth circuit) (USA v Gail Knapp [1992] 955 Federal Reporter, 2nd series at p.564):*
>
> > *'Under the totality of the circumstances analysis, the district court [the fact-finding tribunal] should not carve the work environment into a series of incidents and then measure the harm occurring in each episode. Instead, the trier of fact must keep in mind that "each successive episode has its predecessors, that the impact of the separate incidents may accumulate, and that the work environment created may exceed the sum of the individual episodes." Tribunal stress*

1069. What is necessary therefore when dealing with a combination of events is to adopt a cumulative approach rather measure the effects of each individual incident and carve them up when making an assessment of their impact.

Subjective element

1070. Counsel for the respondent submits that in the circumstances it was not reasonable for the claimant to feel that this incident had violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for her:

1071. The respondent submits that as in **Henderson**, the unpleasant effect of *feeling* as though Sgt White was being "hard ass" (in the claimant's words) is not sufficient to meet the bar of the statutory test. It is plain from her text to her wife at 22:20 that the claimant felt upset about the interaction she had had with Sgt White, but this is not enough to find that the conduct reasonably had the proscribed effect.

1072. It is submitted that as set out in Grant, the intent of the perpetrator is relevant to determining the effect, and whether it was reasonable and to find that Sgt White's speech in the circumstances reasonably had the proscribed effect 'cheapens' the language of the statute. Two peers at work had a disagreement because one has accused the other of being 'controlling'. The claimant came away from the conversation feeling upset; but this is not enough for it to be reasonable that she felt her dignity was violated, or the environment was intimidating, hostile, degrading, humiliating or offensive.

1073. In terms of the first incident of itself, the Tribunal conclude that Sgt White did not intend her actions to have the proscribed effect although she was indifferent to the impact most

likely. Her nature the Tribunal find is such that she more likely than not is not particularly concerned with being likeable and not adverse to her behaviour creating some tension however the Tribunal do not find that it was her intention to violate the claimant's dignity etc, rather she was indifferent as to whether it did.

1074. The claimant had worked with Sgt White before and she knew her character, the Tribunal find however that in her more vulnerable state, and after the events of the 3 April, the claimant was feeling more cautious and less confident in her working relationship with Sgt White and therefore the incident had more of an impact.

1075. **However, when taken with the conduct on the next shift on the 25/26 April and Sgt Wilson's prior conduct,** the Tribunal consider that the combined effect of his conduct (and of the behaviour of the second shift alone) while on balance this was not the intention, there was a disregard for the impact but the effect nonetheless was to have the proscribed effect, it did violate the claimant's dignity and /or create the proscribed environment.

1076. The claimant was quite profoundly affected, this was clear in her oral evidence but also in the messages sent to Lucy Milton and her wife and in the complaint, she would make to Inspector Turner. To raise a complaint about her colleagues was not the Tribunal accept, an easy step for her to take.

1077. In the meeting on 2 May 2023 [page 647] when discussing the impact of the behaviours of Sgt White and Wilson, collectively with respect to the incidents on 3rd and 25/26 April 2023, the claimant describes this has causing the claimant to feel close to a '*relapse*'.

Objective Element

1078. The Tribunal do not consider that Sgt was critical and undermining of the claimant on that shift. The claimant felt that she was meant to be running the shift and the manner of Sgt White the Tribunal accept, was likely to be assertive to the point where the claimant felt it was controlling. For the claimant to make that observation was not the Tribunal consider on balance, unreasonable and did not justify the torrent of criticism the Tribunal find she then received.

1079. If it was appropriate for the claimant to carry out PC duties for a while, this was not something for Sgt White to comment on and indeed, not in the context of a discussion in which the claimant was already feeling belittled and there was tension between them. It was appropriate for Sgt White to make comments about the claimant's RTW and what duties she should be performing. It was not for Sgt White to raise uninvited with the claimant and certainly not in the context of this difficult discussion, the comments which she made. The submission that Sgt White's behaviour was reasonable is not accepted by the Tribunal.

1080. What has to be considered, are the circumstance of the claimant and the surrounding circumstances as set out in detail in the findings of fact. In summary, the claimant was building back her confidence after a long period off sick leave and building up to leading a shift. She had been subjected to an upsetting exchange with Sgt Wilson while Sgt White had observed and done nothing to support the claimant and Sgt White was now making numerous deeply critical remarks and uninvited suggestions in a forthright and direct manner, including that the claimant should step down to do PC duties.

1081. The effect of the behaviours of Sgt Wilson with Sgt White on 3rd April taken with these incidents on 25/26 April, the Tribunal find were to violate the claimant's dignity and/or had the proscribed effect on the environment and that it was reasonable objectively for it to have that effect.

1082. The Tribunal do not conclude that this was the intention, albeit there was a lack of

consideration for the impact.

1083. **The claim of harassment is well founded and succeeds.**

Did Inspector Turner, when the claimant's wife reported the above on 2 April 2023 and also when the claimant reported the above on 22 and 27 April 2023, not take any action?

Unwanted Conduct

1084. Inspector Turner had assured the claimant's wife during their call on 3 April (the parties agreed it happened on the 2 April) that he would handle the situation when she explained the impact of the incident with Sgts' Wilson and White, on the claimant, but she complains that he failed to do so.

1085. The complaint does not relate to the email the claimant sent on 3 April 2023 (page 577).

1086. A meeting did take place on 17 April 2023 however this was, as set out in the findings of fact, in response to the claimant's email of the 12 April where she notifies him that she will not be ready to return to full operational duties by the end of the TRD. It was not the Tribunal find prompted by the concerns over Sgts' Wilson and White communicated by the claimant's wife or the claimant on the 3 April.

1087. At the Teams meeting between the claimant and Inspector Turner on 17 April 2023 Inspector Turner told the claimant that he would speak to the sergeants to set out what he expects from them, namely, to treat her with patience and what they should not be asking the claimant about. However, the Tribunal, as detailed in the findings of fact, have found that he did not send the email or speak to her colleagues has he assured her he would.

1088. The Tribunal conclude that he did not take the concerns of the claimant seriously.

1089. Had Inspector Turner done as he had agreed to do and explained the importance of being patient with the claimant, the events of the 25 and 26 April may not have occurred, however he failed to act. However, this does not appear to be something the claimant was aware of at the time.

22 April 2023

1090. While the allegation refers to a report by the claimant on 22 April 2023, there was no report.

27 April 2023

1091. Upon receipt of the 27 April email Inspector Turner invited the claimant (page 640) to a meeting to discuss her concerns on 2 May 2023 (page 647- 649).

1092. During that meeting they discussed the behaviour of Sgt's Wilson and White, and the claimant had explained that this left her feeling close to a 'relapse'.

1093. As Employment Tribunal out in the findings of fact, Inspector Turner offered to raise the matter with the Sergeants and the claimant asked him not to (page 648). The claimant's request to shadow someone else was granted (page 649). The claimant's request to take leave for the next 2.5 shifts to avoid seeing Sgt White (page 646), was actioned (page 662) albeit the Tribunal observe that it was unreasonable to expect the claimant to continue to work with Sgt White.

1094. The allegation as put is that no action was taken, however as a matter of fact, this is not made out. Some, action, albeit the Tribunal believes inadequate action was taken. The allegation is not that further specific steps should have been taken but were not taken were not taken, it is that 'no action' was taken which is not proven on the facts.

1095. The Tribunal accept that the inadequacy of the action was unwelcome however, the action which was taken was action the claimant had agreed and asked Inspector Turner to take.

Was the Conduct Related to Disability

Failure to act following the 3 April complaint by the claimant's wife.

1096. The Tribunal take into account that Inspector Turner had informed the claimant's wife that he would handle the situation but he did nothing.

1097. He also (although not part of the complaint as pleaded) did nothing after the claimant raised her concerns in her 3 April letter and even after agreeing to speak to the sergeant about expected behaviours on 17 April, did nothing.

1098. The respondent submits that Inspector Turner's conduct in handling the matter as he did was not related to the claimant's disability. It is submitted that it is analogous with the case of Allen: *"if it is asserted that a failure properly to investigate a grievance alleging discrimination constitutes harassment it is not sufficient that the grievance was related to the protected characteristic, the failure properly to investigate the grievance, which constitutes the conduct, must be related to the protected characteristic. Accordingly, it will generally be necessary to consider the mental process of the person who considered the grievance and decide whether the failure to investigate was related to the protected characteristic".* It is submitted that Inspector Tuner took the decisions he took because he thought this was an appropriate response to a complaint of inter-personal conflict between peers, one of whom seemed to feel that it was bullying. Whether or not he was right, this was not a case where, for example, Inspector Turner thought the claimant's disability did not need protecting so he treated her complaint as less important than he might have treated the complaint had she not been disabled. Instead, Inspector Turner acted as he did because this was how he best understood how to handle conflict, and his behaviour was not related to the claimant's disability.

1099. The Tribunal take into account Inspector Turner's evidence that he did not consider that bullying may amount to gross misconduct, an astonishing view for a senior police officer.

1100. The Tribunal also consider whether it is appropriate to draw an inference from the primary findings of fact adverse to the respondent as to whether his motivation was related to the claimant's disability because, despite giving assurances, he failed to take actions he had said he would take and he has no explanation for not doing so.

1101. The Tribunal have found that Inspector Turner's evidence about having spoken to the sergeants about what is acceptable behaviour, was not credible, and his willingness to attempt to actively mislead the Tribunal and try to persuade the Tribunal that he did take this action when its finds he did not, is a serious concern in terms of his credibility and calls into question why he would maintain that he had, if this was not related to a prohibited motivation.

1102. Had Inspector Turner given testimony that he had neglected to act because either he had not actually considered the concerns about bullying to be serious or simply had forgotten and not prioritised it, that may have indicated (although unacceptable) poor management however he falsely maintained the Tribunal find, that he had taken action when he had not. He did not send the promised email, he did not reflect, he did not speak to anyone.

1103. The Tribunal consider in those circumstances it is reasonable to draw an inference adverse to the respondent that Inspector Turner was motivated to do nothing for reasons related to the claimant's disability, possibly considering that she was being overly sensitive (see his comment on her feeling under pressure from peers to get things right: page 624) or not valuing her contribution to the force sufficiently to upset other sergeants who were undertaking a full operational front line role, taking into consideration his cynical views about her motivation for returning to work and wanting to extend her TDR.

Did the conduct have the proscribed purpose or the effect

1104. The Tribunal consider that Inspector Turner did not act in response to the concerns raised by the claimant's wife. (He also did not act in respect of the claimant's email of the 3 April either which is relevant background but not a specific part of the complaint).

1105. On a balance of probabilities, the Tribunal conclude that Inspector Turner held the meeting on 17 April because of the email of the 12 April and the express request for a meeting by the claimant in which she indicated she would not meet the TDR deadline. He then he agreed to speak with the sergeants and did nothing and just where his focus is, and why he held that meeting, is clear in his follow up email that day to PI Gill where he talks about the need to review capability process if she does not meet the TDR rather than explain the challenges she has had with colleagues and the potential impact on her confidence and the effectiveness of the shadowing process so far (page 625).

1106. The Tribunal consider that the lack of action following the call from the claimant's wife showed a lack of concern and a lack of compassion.

1107. However, the Tribunal do not consider that this failure of itself amounted to a violation of the claimant's dignity or created the proscribed environment. At the meeting on the 17 April the claimant does not complain about his lack of action. On the 2 May the claimant did not complain about his lack of action or enquire if he had sent the email as he had agreed to do.

1108. It does not appear that while employed, and prior to disclosure for these proceedings, the claimant was aware that he had not spoken to the sergeants as he agreed to do but, in any event, and regardless of that, the Tribunal are not persuaded that the claimant was upset by that failure at this time.

1109. The Tribunal do not find therefore that the failings intended to or in fact had the proscribed effect.

1110. **This claim is not well founded.**

On 2 May 2023, did Inspector Turner inform the claimant that he would challenge the 2 female colleagues only if the claimant was present and as the claimant was not well enough to do so, did he then take no action? [LOI 6.1.3]

Unwanted Conduct

1111. The Tribunal find that Inspector Turner had given the claimant to understand that in order to deal with the situation they would need to have a mediation meeting with the Sgts at which she reasonably understand from their conversation, she would need to be present. The Tribunal accept that the suggestion was not welcome.

1112. The Tribunal consider once again that the steps he took to deal with this situation were inadequate. There was no reference to HR, who may well have been able to reassure the

claimant about a mediation process which was not confrontational and of ways to support her in that process.

1113. The Tribunal also consider that Inspector Turner should have considered and sought advice from HR on whether, regardless of the claimant's concerns, there should be an investigation into the allegations of the bullying. The Tribunal find that Inspector Turner gave no consideration to this whatsoever and took no action, leaving two sergeants to potentially continue to bully a disabled colleague finding it a challenge to adjust back into the workplace. HR could have at least put in place workplace training to address behaviours going forward.

1114. The claimant asked to shadow another inspector, that was her suggestion which he agreed to but astonishingly he did expect her to continue to shadow Sgt While for a few more shifts while that could be arranged which was insensitive at best and at worst potentially exposed the claimant to further harm.

1115. It was poor management of the situation and the Tribunal accept on balance it was unwanted conduct.

Was the Conduct Related to Disability

1116. The respondent submits that this was not harassment. Their submissions above are repeated in respect of this complaint, namely that his conduct in handling this matter as he did was not related to her disability. It is submitted that it is analogous with the case of **Allen** and this was not a case where, for example, Inspector Turner thought the claimant's disability did not need protecting so he treated her complaint as less important than he might have treated the complaint had she not been disabled. That might have been related to disability. Instead, he acted as he did because this was how he best understood how to handle conflict, and his behaviour was not related to the claimant's disability (or any) disability.

1117. The Tribunal conclude that while Inspector Turner may have understood himself that mediation required the parties to be in the same room as each other, he took no further steps to consider what should be done including contacting HR and the Tribunal consider this was more likely than not for reasons related to the claimant's disability, possibly considering that she was being overly sensitive (as above) or not valuing her contribution to the force sufficiently to take any further action but focussing rather on her ability to complete the TDR on time.

1118. The Tribunal consider that on balance, the claimant's disability may well have influenced how seriously Inspector Turner viewed her complaints and consider it relevant to draw an adverse inferences from the facts set out above, namely his behaviour when he had assured her that that he would take action to inform the sergeants of appropriate standards of behaviour, when he in fact took no action despite trying to persuade this Tribunal that he had and his cynicism about her ability to return to operational duties, her motives and resistance to reviewing the period of the TDR despite having given her assurances about his support and how fluid the process would be.

1119. The Tribunal conclude that Inspector Turner generally was not as supportive of the claimant as he had assured her (and HR) he would be at the back to the back to work meeting and continued to fail to provide her with the necessary support, including failing to address the April OH report before her left his post in June 2023.

1120. The Tribunal find on balance that the way he managed this situation was related to the claimant's disability.

Did the conduct have the proscribed purpose or the effect.

1121. The claimant did not in her text message to her wife after the discussion with Inspector Turner express feelings which would suggest that she felt her dignity had been violated by the way Inspector Turner had dealt with this issue or of it creating the proscribed environment. Although the Tribunal accept that she was disappointed that there were no other suggestions it does not conclude that subjectively it had the proscribed effects. The claimant asked for another person to shadow and this was accommodated, she did not nor did her union representative request that an investigation was undertaken or any other action at that time and she had, as set out in the findings of fact, remarked on a number of occasions that she wanted to avoid conflict.

1122. The Tribunal conclude that objectively it was not reasonable for the claimant to consider that an option of mediation even understanding that was the only option, and would require her to face the Sgts, of itself violated her dignity at work or created or contributed to the proscribed environment. She did not propose alternatives which were dismissed. The claimant did not ask that Inspector Turner speak to them without her present, perhaps because she was keen to avoid any escalation while wanting him to understand the impact and need for better support.

1123. **The claim is not well founded and is dismissed.**

Did Inspector Turner on 2 May 2023 agree that the claimant could work with another sergeant but inform her that she would have to work a few more shifts with the same female colleagues who had bullied her, first? [LOI 6.1.4]

Unwanted Conduct

1124. During the meeting on 2 May 2023 the claimant asked to shadow a different sergeant, which was agreed. It was clear to Inspector Turner that she did not want to continue to shadow Sgt White. The claimant had expressed concern about further conflict and the claimant was a person who had spent 2 years suffering with her mental health, who had experienced a serious relapse and indicated that due to these behaviours she may suffer another.

1125. The stress risk assessment (page 650) set out that the claimant felt bullied and harassed by the two sergeants and proposed as an immediate action to arrange for her to shadow another sergeant.

1126. The claimant was added to Sergeant Fowler's roster but due to scheduling requirements her new timetable was due to commence in a few days. This meant that she had 3 shifts left to work on Sgt White's roster (or 2.5: the 3 shifts included the shift already underway during the meeting).

1127. The respondent submits that Inspector Turner acted in accordance with what he understood the claimant's wishes to be. She had asked him to avoid confronting the Sergeants about the matter, because she wanted the matter resolved with as little conflict as possible. Until he was asked, he was not to know that she would not want to complete the next couple of shifts as rostered before moving. Once he was asked, he took immediate action.

1128. The Tribunal do not accept those submissions. The claimant was not saying she was comfortable working a few more shifts, she was not. Inspector Turner should have considered how to manage the roster to ensure she was immediately removed from a situation which may have exposed her to further bullying taking into account her personal circumstances and her health. The claimant needed support and she had made it abundantly

clear that not only was she not getting it, but that she felt bullied and harassed.

1129. Inspector Turner gave her no option other to work it and she came up with an alternative. He could have put her on paid leave, arranged training, looked at some options to avoid possible further conflict. The claimant had to use her leave and it also meant that she lost shadowing time during the TDR.

1130. This was unwanted. That is clear because the claimant referred on the 2 May 2023 to it being unreasonable to put her in that position (page 646).

Was the Conduct Related to Disability

1131. The respondent submits that the same reasons as previously submitted, the conduct was not "related to" her disability and the analogy with the **Allen** case is repeated.

1132. It is submitted from Inspector Turner's perspective he acted appropriately in response to a request from a colleague who felt bullied but did not want anyone confronted about it.

1133. The Tribunal do not accept these submissions.

1134. The Tribunal is mindful that section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon.

1135. It would have been obvious to Inspector Turner that not only would the claimant not want to spend more shifts with Sgt White but that she was concerned for her health to continue to do so, she had warned of a 'relapse'. The Employment Tribunal is required to consider the mental process of Inspector Turner in showing such insensitivity and lack of support.

1136. The Tribunal consider in the circumstances it is reasonable to draw an adverse inference from the factual matrix, that Inspector Turner as set out above, he did not take any action to prevent the claimant having to work those shifts with sergeant White because of the claimant's disability, he failed to take appropriate action the Tribunal find because he considered that she was being overly sensitive and/or because he attached less concern for the claimant because he had a view that the claimant would not be successful anyway in her TDR, and his 'firm' approach toward her completion of the TDR manifested further in his 'firm' approach toward managing her generally.

1137. There were alternatives he did not suggest, such as paid leave or training but he also did not bother to check the shift patterns of any other sergeants and whether she could have joined them and the behaviour is so egregious, that the Tribunal consider it is appropriate to draw an inference as this motivation. Inspector Turner has not provided any convincing explanation for his conduct.

Did the conduct have the proscribed purpose or the effect.

1138. The respondent submits that it plainly did not have the purpose of violating the claimant's dignity or creating the proscribed environment. If his conduct had that effect, this was not reasonable. He granted the claimant's requests almost as soon as they were made, he moved her to shadow a different sergeant and granted her leave requests. Counsel submits that the for the few hours the claimant thought she would need to work 2.5 shifts with Sgt White she 'no doubt have felt distress' this is not in question; *his reaction is a reasonable one to working with colleagues by whom she feels bullied. However, this reaction is not a reasonable reaction to ET's conduct: he granted her requests immediately and handled the matter in the way she asked him to handle it."*

1139. That it caused distress is not disputed by the respondent. The solution was that the claimant used up her own annual leave to avoid the shifts. He could have assured her that he would make sure that she did not have to work the shifts, look at other shifts patterns, arrange training or even paid leave in the circumstances.

1140. Subjectively the claimant was the Tribunal accept that the claimant's would have been initially distressed and then made a proposal which was granted. She described this conduct at the time as 'unreasonable'. The Tribunal do not find that of itself the claimant felt that her dignity had been violated or itself this give rise to the proscribed environment however, it is important not to carve up acts and avoid a holistic view of the impact of different incidents/ acts.

1141. Objectively the Tribunal conclude that this act of itself did not cause the claimant to feel that her dignity had been violated or created the proscribed environment because she was not forced to work with Sergeant White and her request made on 2 May, was granted. However, the Tribunal do consider that this lack of care and consideration, cumulatively along with other acts, did give rise to the proscribed environment.

1142. This was an individual who needed support and compassion, to help build her confidence after experiencing a long period of serious issues with her mental health and she was met with a lack of patience from colleagues, aggression and a lack of any real compassion or diligence from her line manager on how those concerns were addressed. A line manager who did not even take time to communicate the need for patience amongst her peers despite recognising it seems the importance of doing so and reassuring her that he would. He never sent an email to communicate this, he never spoke to any of them, and rather than accept his failings and apologise to the claimant even now during this hearing, he attempted to persuade the Tribunal (unsuccessfully) that he had taken this step to safeguard the claimant's welfare at work.

1143. The Tribunal find that the accumulation of the behaviours, the approach to resolving the alleged bullying behaviours by only offering mediation, the behaviour of Sgt Wilson and White and now expecting the claimant who had raised a fear of a mental health relapse, being required to continue to work shifts with Sgt White, the Tribunal accept that objectively and subjectively this have the proscribed effects, it violated her dignity and created the proscribed working environment, taking into account the claimant's circumstances. The Tribunal do not conclude that this was the intention, albeit there was a lack of consideration for the impact.

1144. **The claim is well founded and succeeds.**

Did Inspector Turner and CI Gill constantly verbally and in emails, say that the 23 June 2023 was the deadline for the claimant to be fully operational and that if she did not meet it they would pursue her through the capability process [LOI 6.1.6]

Unwanted Conduct

1145. On the facts, the respondent submits that Inspector Turner and CI Gill told the claimant that if she were not operational by 25June 2023 they would **consider** the capability procedure (they did *not* suggest they would "pursue her through" the capability process) as follows:

- ET on **17 April 2023** during a meeting told C that if she wasn't operational on 25 June "*we will need to consider a step 1 capability review"* (page 625).

- ET on **2 May 2023** during a meeting was asked by C what would happen if she was not operational on 25 June. In reply he told her that "*her step 1 capability would be reviewed with a movement towards a step 2 meeting*" (page 648])

- MG on **16 May 2023** during a brief meeting said they would "*be looking at a step 2*" (page 690).

- After the 25 June 2023 date, **on 4 July 2023** MG confirmed that he would invite C the following day to a step 2 meeting (page 898) at which he said they would "*look at alternative roles / options which may be available to you".* This step 2 meeting was organised, postponed twice, and ultimately never held.

1146. The claimant submits that the respondents' focus narrowly on the word "pursue," stating that neither Inspector Turner nor CI Gill used this term. The claimant's case has never been that the precise word was spoken, but that management repeatedly stated, in meetings and emails, that 25 June 2023 was the deadline to be fully operational, failing which she would be moved through the capability process. The term "pursue" in the list of issues reflects the clear intent and action conveyed, not verbatim wording.

Was the Conduct Related to Disability

1147. The respondent concedes that the above communications pass the threshold of being related to disability. Clearly communications about the capability process were related to the claimant's disability.

Did the conduct have the proscribed purpose or the effect

Subjective Element

1148. The respondent submits that above emails and the in-person conversations to which they refer do not constitute harassment. They plainly did not have the "purpose" of violating the claimant's dignity or creating the proscribed environment for her; they were sent in order to keep her appraised and make sure she was clear that the capability procedure would be under consideration. It is appropriate to keep her informed particularly when she has asked for clarity on the procedure.

1149. The respondent submits that the claimant's evidence is that the conduct had the proscribed effect because she had the date "looming" over her and was worried that if she missed that date, she would be one step closer to dismissal. These feelings are that it is submitted "understandable".

1150. The Tribunal are mindful that any employee who is not capable of performing their work and subject to a capability process may feel that the process creates an intimidating or hostile etc working environment. However, that will not be objectively reasonable if that process is managed appropriately.

1151. The Tribunal accept that initially the claimant agreed to a return-to-work plan which she was assured would be reviewed and would be fluid. This is not what happened. It became a firm plan and Inspector Turner, decided to take a 'firm' approach to completion of what he admitted had only been a rough plan he had proposed, a plan which OH approved such to review and the support they recommended. The Tribunal consider that his approach was motivated in part but his cynical view that the claimant knew she would never be fit to return to operational duties and was motivated by financial reasons to remain in work. That view is not supported but the OH reports or the evidence of her treating psychiatrist Dr Nixon. It was uniformed but the Tribunal find informed his thinking and his behaviours.

1152. Inspector Turner took the Tribunal consider an approach whereby if the claimant did not meet the TDR and was fully operational, the original TDR would **not** be reviewed without first moving her along the process to Step 2 with the possibility later of Step 3 and dismissal.

1153. Edwards Lauren talked in the January return to work meeting (page 519) about the approach that they would take after the first month, namely have a review with OH at the end of it, check everything was going smoothly and check the claimant was happy to progress to the next point.

1154. The Tribunal find that what was presented to the claimant at that meeting was not delivered. She had been advised that she could have a safe word to use with her colleagues if she felt overwhelmed and there was discussion about what she may want Inspector Turner to let her colleagues know so that they were understanding.

1155. In practice Inspector Turner did not carry out monthly documented reviews, colleagues were impatient and frustrated with her, he did not make time to sit down with Sgt White and the claimant to discuss the role of Sgt White during the shadowing process, when the claimant felt bullied he was slow to respond, setting up a meeting on 17 April after being made aware of how upset she was on 3 April only because the Tribunal find she was saying that she would not complete the TDR in the time he had allocated, not communicating with her colleagues and failing to consider whether the problems she had encountered in the building back of her confidence meant that she needed more time and was clear that he was not prepared to consider what she may further need (or reflect on what he had failed to do to support her) unless they moved her through the capability process.

1156. The Tribunal conclude that the ongoing message that if she was not operational by the end of the original TDR she would be taken through the Capability Process,(the semantics around whether she was 'moved' or 'pursued' are not relevant), did the Tribunal find subjectivity create the proscribed effect from 17 April when she explained she was not confident about being fully operational by June 2025 and expressed concerns about her medication after and she had raised problems with the conduct of her colleagues on 3 April. Before evening sitting down with the claimant to understand if she has had the necessary support, and how long she felt she may require with her medication to feel more confident, Inspector Turner messaged CI Gill to state "*we will **need** to proceed with step" (Tribunal stress)* if she is not fully operational by 25 June.

1157. It was made abundantly clear, the Tribunal conclude, when talking to Inspector Turner that 25 June had become a hard deadline, regardless of what support the claimant had actually had during the phased return, the effect of her medication or what obstacles she was facing in working relationships or the time she had managed to have shadowing colleagues. Inspector Turner was determined to take a 'firm' line, meanwhile she had the worry about being told she could not apply for flexible working and having to get advice and support from Mr Found only for her application to be given no meaningful consideration before Inspector Turner rejected it.

1158. The Tribunal do not find on the evidence that Inspector Turner intended to cause the proscribed effects but he acted regardless of whether they had that effect or not.

1159. The claimant the Tribunal conclude was from around 17 April now in a state of anxiety and distress about the pending June date. Taking all the circumstances into account, the Tribunal consider that this ongoing message about a firm June date or face the next step in the formal Capability Process, which may ultimately result in her dismissal from a job she loved, did have the proscribed effect, of itself and further, the cumulatively with the other acts of harassment, it created the proscribed environment.

1160. It was clear in his email of the 4 May 2023 (676) that she was expected to be return to

the full set of shifts as per the original TDR.

Objective Element

1161. The respondent submits that when considering whether the effect was reasonable, the Tribunal must consider whether it was reasonable for the *conduct* to have the effect. Even if the Tribunal finds that a longer phased return could have been implemented, or that the claimant was understandably worried about being found incapable of her role, once management had determined that if the phased return was not successful then it might be time to review the Capability Process, it was reasonable and appropriate to tell the claimant about that when she had asked. Even if telling her about it upset her, it cannot be reasonable that being told about this violated her dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for her.

1162. The Tribunal conclude however that it was not reasonable for the respondent to have taken a position, which was made clear to the claimant, that June was a hard deadline and the Tribunal find that this was Inspector Turner's position and that this was made clear to the claimant. She was never told that by June if the TDR was not completed, they may look to extend it without moving her through the Capability Process, to the next stage. That was not an option and the Tribunal find it should have been. OH, had never recommended a 5-month firm deadline, that was the 'rough plan' Inspector Turner put to her and the Tribunal consider that he mislead her into agreeing with assurances of support and taking a fluid approach and reviewing it, when it appears he had no intention of doing so.

1163. She had agreed to shorter period on the promise of monthly documents reviews and support when she needed it, measures promised in January which were not provided and then put under sustained and unremitting pressure by Inspector Turner to complete it in 5 months.

1164. The Tribunal accept that objectively and subjectively this had the proscribed effects, it violated her dignity and created the proscribed working environment, taking into account the claimant's circumstances. The Tribunal do not conclude that this was the intention of Inspector Turner, albeit find that he showed no real concern for the effect, but nonetheless the Tribunal find that it did have the proscribed effect on the claimant.

1165. **The claim is well founded and succeeds.**

Did CI Gill say on 3 July 2023 that the claimant was fabricating the lack of support, telling her he did not believe what she was saying about the lack of support she has received (meeting 3 July 2023)? [LOI 6.1.7]

Unwanted Conduct

1166. The Tribunal have found, for the reasons set out in his findings of fact, that CI Gill did not say that the claimant had fabricated or lied about the lack of support and or that did not believe what she was saying. This may well have been the claimant's perception; however, the Tribunal do not find that this was said. CI Gill had not agreed with the claimant and no doubt expressed his belief that support had been provided and while she may have felt he was doubting the veracity of what she was saying, the Tribunal find that it was reasonable to point out that there had been a level of support.

Was the Conduct Related to Disability

1167. Counsel argues that the intention of CI Gill is relevant and that the conduct even if

established, was not "related to" disability and as per the **Allen** case, his thought process must be considered. It is submitted that it is plain he acted as he did because he had noticed that the claimant had omitted relevant factual detail at other time for example, when she complained she was not sent the 6th sergeant role details and he also felt she was not entirely accurate when she complained of the total absence of *any* support. It was important for him to be clear about what support was and was not offered. There is no evidence to suggest he did this for any reason related to C's disability.

1168. The Tribunal consider that had CI Gill done as alleged, and accused the claimant of lying about the support she had received which relates to the adjustments she needed for her disability, what was said may not have been motivated by the disability however, the support required to related to the disability and CI Gill knew that, however an accusation that someone is lying about the adjustments which have been made for their disability the Tribunal find, would have the sufficient connection to the protected characteristic particularly where as in this case the perception of the employee is that it was related to her disability and need for adjustments and that had such an allegation been made it would objectively be reasonable for the claimant to be offended by that accusation. While counsel asserts it was reasonable to challenge her perception of the support provided, counsel does not go so far as to say it would be unreasonable not to be offended if an outright accusation of fabrication/lying had been made.

Did the conduct have the proscribed purpose or the effect

1169. It was not put to CI Gill that he intended what he said to have the proscribed effect and the Tribunal do not conclude that this was his intention but rather he genuinely disagreed with the claimant's perception.

1170. Where the conduct has the effect but not the purpose of violating dignity, the Employment Tribunal is required to consider the perception of the claimant, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.

1171. While the Tribunal is mindful that it needs to avoid a fragmented approach and therefore must look holistically at whether conduct amounts to harassment, looking at this in isolation at this stage, the Tribunal conclude that being told that CI Gill did not accept that the criticisms were fair or words to that effect, while the claimant may have felt upset objectively, even taking into account her personal circumstances, it was not reasonable for such a comment to have the proscribed effect and the Tribunal do not accept that it did have the proscribed effect. While it may have upset her but she did not express that to CI Gill, PI Godhania or HR, while she was prepared to raise concerns, but rather thanked them for listening to her.

1172. CI Gill was challenging the claimant's perception about a lack of support, while his view may objectively be partisan and failed to take into account exactly what happened in practice and while that may have upset the claimant, she does not allege that he spoke to her in a manner which was overbearing or aggressive and while there are deficiencies in the support it cannot be said objectively that Inspector Turner provided no support for the claimant.

1173. The Tribunal accept that she felt he did not believe her and she was offended, the Tribunal do not accept that it was objectively reasonable however for the conduct to have that effect even taking into account holistically the other acts of harassment which have been made out.

1174. **The claim is not well founded and is dismissed.**

Did Superintendent Peters, despite offering the claimant support during her maternity leave during a home visit in 2021, then inform her when she went to her for help in 2023, that she had to go 'through the ranks' [LOI 6.1.8]

Unwanted Conduct

1175. The Tribunal have found that Supt Peters did inform the claimant to go through the ranks when she contacted her.

Was the Conduct Related to Disability

1176. The claimant contacted Superintendent Peters because she was concerned that she would not be fit to return to full operational duties after the end of TDR put in place by Inspector Turner and felt that she was not being adequately supported. However, as set out in the findings of fact it was not made clear by her why she was contacting Supt Peters and the claimant had made it very clear that it would be fine if Supt Peters was not available to speak with her. Supt Peters checked whether there was any reason why the claimant felt she could not turn to CI Gill and checked whether the claimant had support from her BTP maternity "buddy", and the claimant said she did. Supt Peters then arranged for CI Gill to contact the claimant.

1177. The claimant repeatedly said that it would be fine if Supt Peters could not speak, thanked her for organising for CI Gill to contact her, and confirmed that she was due to speak to him

1178. While the purpose of contacting Supt Peters, the Tribunal accept, was related to her disability namely her ability to return to full operational duties (because of her disability) and while Supt Peters may well and on a balance of probabilities, have suspected that this is why the claimant was calling (given the claimant's last comment when she had seen her in the station), the Tribunal conclude that the conduct of Supt Peters was not related to the claimant's disability. Supt Peters the Tribunal accept was observing the chain of command as she would have with anyone else who had reached out to her outside of the chain of command, regardless of whether it was disability related.

1179. The Tribunal find that Supt Peters was not motivated by the claimant's disability and there are not adverse inferences the Tribunal consider it is reasonable to draw from the factual matric to conclude that the claimant's disability was what motivated Supt Peter's to redirect the claimant to CI Gill.

1180. Although the reason for contacting Superintendent Peters was related to the claimant's disability, the way in which Supt Peters dealt with that approach the Tribunal conclude was not related to the claimant's disability

Did the conduct have the proscribed purpose or the effect.

1181. Supt Peters was not dismissive of the claimant. The claimant did not raise any clear concerns with her but the claimant reassured Supt Peters that she would speak with CI Gill and it was a pleasant exchange.

1182. The Tribunal accept that the claimant at this stage was incredibly distressed about her situation and the fact that she reached out to Supt Peters was an indication of the desperation she was feeling by this stage. However, Supt Peters did reply to check the claimant had support from the maternity support network and did inform the claimant that she would pass the details to CI Gill for him to contact her and sought to give some reassurance to the claimant by stating; "he *is lovely*…".

1183. Although appreciative of the importance of rank and respecting the authority of others, Supt Peters was aware that the claimant was returning after a long period of problems with the mental health and the Tribunal consider that in the circumstances it would have been a more supportive measure to at least been prepared to have a conversation with the claimant to understand what the issues were and what had led her to exceptionally, to step outside the usual hierarchy.

1184. While the Tribunal except that the claimant was disappointed by the response, in terms of whether the claimant considered the conduct of Supt Peters had violated her dignity or had otherwise had the prescribed effect on the working environment, in terms of the subjective element the Tribunal have considered how the claimant ended the conversation with Supt Peters, confirming the steps that she was going to take to speak to CI Gill.

1185. The Tribunal accept the claimant felt that she had no one else to turn to and that this would have contributed to her feelings of helplessness or what she describes in evidence in chief in chief at paragraph 113 as *"feeling so hopeless and worthless that I felt that my family will be better off without me".*

1186. The Tribunal is conscious that when assessing whether conduct amounts to harassment it is not about separating out each act but considering the overall impact.

1187. The adverse purpose or effect can be brought about by a single act or combination of acts.

1188. The claimant gave evidence in cross-examination that she felt Supt Peter's texts violated her dignity, however there is no impression of that from her responses to Supt Peters, quite the opposite, she expresses gratitude. The Tribunal is mindful of the need to not take a fragmented approached, but at this stage, considering only this conduct, the Tribunal conclude that the exchange did not have the proscribed effect and, in any event, even taking into account her circumstances, it would not be reasonable subjectivity for it to have to have.

1189. Nonetheless the Tribunal do not find any evidence from which to draw an inference that superintendent Peters responded in the way that she did for any reason relating to the claimant's disability or responded as she did with the purpose of violating the claimant's dignity or creating a proscribed environment.

1190. The Tribunal conclude that the claimant was upset by the Supt Peters not being prepared to speak with her however, the Tribunal do not consider that in the circumstances, given what the claimant had said in those messages and manner in which Supt Peters replied, that it was reasonable for it to have the proscribed effect for it to have contributed overall to a proscribed environment.

1191. The feeling of worthless was the result of a combination of factors however, the Tribunal conclude that it is not objectively reasonable for this conduct by Supt Peters to have contributed to a violation of her dignity at work or the proscribed environment and it was not conduct related to her disability in any event.

1192. **The claimant is not well founded and is dismissed.**

Jurisdiction: Time limit

1193. ACAS conciliation took place between 4 November to 6 November 2023.

1194. The claim was filed on 8 November 2023.

1195. Acts on or after 5 August 2023 were presented within the primary time limit.

Time Limit

1196. ***123 Time limits***

(1) proceedings][1] on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or(b) such other period as the employment Tribunal thinks just and equitable.
(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period.
(b) failure to do something is to be treated as occurring when the person in question decided on it.
(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

1197. **In *Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA***, the Court of Appeal made it clear that it is not appropriate for employment tribunals to take too literal an approach to the question of what amounts to 'continuing acts' by focusing on whether the concepts of 'policy, rule, scheme, regime or practice' fit the facts of the particular case. Those concepts are merely examples of when an act extends over a period and should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period'.

1198. In exercising their discretion to allow out-of-time claims to proceed, tribunals may have regard to the checklist contained in section 33 of the Limitation Act 1980 as modified by the EAT in ***British Coal Corporation v* Keeble *and ors 1997 IRLR 336, EAT***. Section 33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case, in particular,

- the length of,
- reasons for, the delay.
- the extent to which the cogency of the evidence is likely to be affected by the delay.
- the extent to which the party sued has cooperated with any requests for information.
- the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action.
- and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

1199. In ***Department of Constitutional Affairs v Jones 2008 IRLR 128, CA***, the Court of Appeal emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case.

1200. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other.

The claims

1201. There is one complaint of direct discrimination which relates to the conduct of C.I Gill when he told the claimant in an email on 12 June 2023, that he would discuss the 6th sergeant role on her return from leave but then appointed someone into the role before she returned however, she was not aware of this appointment having been made until 3 July 2023.

1202. If the relevant act is taken as the communication on 12 June 2023, the primary 3-month time limit expired on 11 September 2023. The claim was filed about 2 months outside the primary time limit.

1203. The Tribunal take into account that the decision to appoint someone else without discussing the role with the claimant was not disclosed to her until 3 July 2023 and if this was treated, at least on just and equitable grounds, as an appropriate date by which to consider the time limit, the last day to issue the claim would be 2 October 2023.

1204. By 22 August 2023, the claimant's mental health had declined rapidly and she was admitted to a mental health crisis house from 22 to 29 August 2023.

1205. On 31 August 2023, the claimant took a very serious overdose resulting in hospitalisation (page 1149).

1206. On 12 September the claimant was detained under the Mental Health Act and remained an inpatient in a psychiatric hospital until 28 March 2024.

1207. It is submitted and not contested by the respondent, that the claim was filed as soon as the claimant had the functional ability to give instructions.

1208. The Tribunal take into account the delay (as a stand-alone claim) but also the extenuating circumstances which prevented the claimant from presenting a claim before November

1209. The claimant submits in any event, that all the alleged discriminatory acts of the respondent amount to a continuing course of conduct lasting until 14 August 2023 and are therefore all brought in time.

1210. The Tribunal take into account that CI Gill was involved in the decisions around the capability process, and while this is the only act of direct discrimination and thus different in nature from the other proven acts, the Tribunal take into account the proximity of all the treatment and are persuaded that it is part of an ongoing state of affairs, namely an ongoing situation in which the claimant, as a disabled police sergeant was subject to a succession of discriminatory acts all related to her attempts to return to her role and attempts to secure a reduction in hours or shift pattern or alternative role.

1211. The Tribunal also take into account that the respondent was able to respond to the allegation. CI Gill was able to recall and give evidence about what had happened which was largely set out in contemporaneous documents.

1212. The Tribunal consider the relative prejudice of any extension of time. The Tribunal accept the importance to the claimant of pursuing and calling to account those responsible for the treatment she received during the period from her return on the TDR until her sickness absence in August 2023. The respondent pleads no forensic prejudice.

1213. The prejudice the Tribunal find weighs firmly in favour of the claimant. If it does not form part a continuing act, nonetheless it is just and equitable to extend time.

1214. The Tribunal take into account that the harassment complaints concerning Sgt Wilson and White relate to events in March and April 2023. The last act being 26 April 2023, and the time limit for bringing the claim would therefore expire on 25 July 2023.

1215. The Tribunal take into account the claimant's circumstances as above. That circa 4 weeks later the claimant's health had declined rapidly but also take into account the fact that the claimant was throughout her return to work on medication and adjusting to being back at work and finding it a struggle to cope with conflict with her colleagues.

1216. The claimant was concerned to avoid conflict with her colleagues because she did not feel mentally well enough to deal with it, she had however raised the bullying at the time and in some detail but the respondent chose not to investigate. The only option was mediation and she understood she would need to be present and she did not feel capable of being involved in that process but the respondent did not take the complaints seriously at the time. This claim did not come as a surprise to them; they were aware of her complaints but chose not to investigate.

1217. It was an incredibly difficult time during which the claimant was not being adequately supported in her return-to-work plan, which was also a cause of considerable strain for the claimant.

1218. In terms of relative prejudice, Sgt Wilson and White attended and gave their full account of the events.

1219. In terms of prejudice, the Tribunal consider again it weighs clearly in the claimant's favour. These complaints were and remain important to the claimant. While the claimant was hospitalised the claimant's wife, was still trying to raise these issues about her treatment with the respondent on her behalf.

1220. In September and October, the claimant's wife contacted the respondent about raising a grievance. On 19 October 2023 HR wrote and with reference to the allegations of bullying stated that when the claimant was well enough to raise it formally they could investigate (page 1142).

1221. The Tribunal consider that the acts of Inspector Turner in terms of expecting the claimant to continue to shadow Sgt White despite her allegations of bullying on 2 May 2023, was the Tribunal consider a continuation of unsupportive and discriminatory treatment of the claimant. In any event and for the same reasons set out above, the Tribunal consider that it would be just and equitable if not part of a continuing state of affairs, to extend time. Inspector Turner attended and gave his account of the events and conceded that he had never checked the shift pattern of other colleagues. The documents record the claimant expressing her feelings about the expectation that she continue to shadow Sgt White. It is not in dispute that the claimant took annual leave to avoid this. The respondent is not the Tribunal consider prejudiced by the delay in terms of its ability to answer to this claim.

1222. The Tribunal consider that in terms of the treatment in respect of imposing the 23 June 2023 TDR deadline, this was also part of the same ongoing situation or continuing state of affairs regarding the treatment of the claimant but in any event and for the same reasons as set out above, the Tribunal if not part of also continuing act, consider that it is just and equitable to extend time to allow this complaint.

1223. These are serious acts amounting to a continuing state of affairs where the claimant was unsupported and harassed during a period when she should have been supported during her phased return for which the respondent is ultimately responsible.

1224. CI Gill and Inspector Turner were senior members of the respondent's police force with management responsibility for the claimant, their conduct and attitude toward the claimant formed a continuing course of conduct. The Tribunal consider that the failings to support the claimant through the TDR process formed part of that same conduct, while being put under pressure to meet a 'rough' plan for a TDR put together by Inspector Turner there was a failure

to support her through that process.

1225. The section 13, 15 and harassment complaints the Tribunal consider are all part of that same continuing state of affairs, around the treatment of the claimant during the TDR process.

1226. In terms of the reasonable adjustment claims, in Matuszowicz v Kingston Upon Hull City Council [2009] ICR 1170, it was held that time for the purposes of the 3-month time limit for this claim starts to run either when UGL did an act inconsistent with the making of the adjustment, or at the end of the period in which it might reasonably have been expected to make that adjustment.

1227. The failure to make an adjustment to the requirement for response sergeants at a 24/7 station to return to their full-time duties and application of the capability policy, continued up to when the claimant went absent on sick leave on 14 August 2023 and inadequate training continued through the 5-month TDR. The reasonable adjustments claims, other than inadequate training, were as standalone claims within the primary time limit however, they do the Tribunal consider, also amount to the same continuing state of affairs in terms of the support or lack of it, given to the claimant during her phased return. In any event the Tribunal consider that it is just and equitable to extend time for the reasons set out above taking into account the claimant's health during this period, her desire to avoid conflict and try and work with the respondent to remain in her post, the continued raising of issues and attempts to obtain adjustments .

1228. When weighing up the relative prejudice, the respondent has been able to deal with these complaints, call the relevant witnesses and produce the relevant documents. The Tribunal appreciate how important it is the claimant, including to her mental health, to have these matters ventilated and adjudicated upon.

1229. The law does not require exceptional circumstances before the time limit can be extended on just and equitable grounds it simply requires that an extension of time should be just and equitable: ***Pathan v South London Islamic Centre EAT 0312/13***

1230. The Tribunal consider that it is just and equitable to extend time to allow the time limit to be extended in circumstances where any of these claims have not been brought within the primary time limit.

Approved by:

Employment Judge Broughton

Dated: 15 February 2026

Sent to the parties on

...18 February 2026.....

For the Employment Tribunal

.....

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/"

Appendix 1: List of Issues

1.Time limits

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

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

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

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

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

1.1.4.1 Why were the complaints not made to the Tribunal in time? 1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1. Disability

*2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about: relevant period is **December 2022 to 14 August 2023**? The Tribunal will decide:*

2.1.1 Did she have a physical or mental impairment: 3 disabilities are pleaded: major depressive disorder, PTSD and fibromyalgia.

2.1.2 Did those disabilities have a substantial adverse effect on her ability to carry out day-to-day activities?

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

2.1.4 Would the disability have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the disability long-term? The Tribunal will decide:

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

2.1.5.2 if not, were they likely to recur?

The respondent concedes para 2.1.1. to 2.1.5 above.

2. Direct disability discrimination (Equality Act 2010 section 13)

3.1 Did the respondent do the following things:

*3.1.1 Did Inspector Turner in **January 2023** inform the claimant that she could not reduce her hours or apply to reduce them, while on a*

*phased return during **January to July 2023**?*

~~***3.1.2 Did Inspector Turner leave the claimant off an email sent to the whole team on 26 May 2023?***~~ *Withdrawn by Claimant*

3.1.3 *Did Inspector Turner start a flexible work meeting 30 minutes earlier than had been arranged, on* ***2 June 2023,*** *and not inform the claimant in advance****?***

3.1.4 Did Inspector Turner refuse the claimant's flexible working request verbally on the ***2 June 2023*** *without taking various matters into account including: the claimant's disability and the request as a reasonable adjustment, the fact that it had been previously agreed prior to disability in 2021, other ways to make the request workable e.g. job shares, other shift patterns*

3.1.5 Did C.I Gill and/or Inspector Turner not send to the claimant an email about a new sergeant role which had been sent to all other substantive Sergeants? (This was in ***May or June 2023*** *but the claimant believes it is more likely the latter). The email was later forwarded to the claimant on 5 June 2023.*

3.1.6 *Did C.I Gill tell the claimant, when she asked about why she was not included in the email about the new sergeant role, that she would not be suitable for it, without discussing it with her.* ***As per email sent by CI Gill on 3rd July 2023***

3.1.7 Did C.I Gill tell the claimant in an email on ***12 June 2023****, that he would discuss the role on her return from leave but then appointed*

someone into the role before she returned.

3.2 Was that less favourable treatment?

The claimant has not named an actual comparator. The Claimant relies on a hypothetical comparator.

3.3 If so, was it ***because*** *of the claimant's disability/disabilities?*

3.4 Did the respondent's treatment amount to a detriment?

The respondent does not take issue with the issue of knowledge of disability

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

4.1 Did the respondent treat the claimant unfavourably by:

4.1.1 Putting the claimant through the capability process between ***May 2023 to August 2023*** *because of something arising from her disabilities of depression and PTSD, namely her sickness absence?*

Respondent accepts the claimant's sickness absence and request not to work early shifts was because of the disability.

Respondent does not accept that the capability process was used because of the claimant's absences. The respondent asserts that the reason the capability process was used was because there was no return date for operational duties.

*4.1.2 Arranging a capability meeting on **4 December 2022** while the claimant was waiting to return to work because of (as above) her sickness absence?*

Respondent's position is that this did not happen – there was only a discussion about having one and not because of her sickness absence but because of her capability.

~~*4.1.3 Arranging a capability meeting in **May 2023** so the claimant could understand the capability process. The 'something arising' is her sickness absence (as above)*~~ *Withdrawn by Claimant*

*4.1.4 Denying the claimant the opportunity to apply for the new sergeant role; because of her sickness absence and/or the request to remove her two early shifts in **May 2023** which was because of her disabilities.*

Respondent's position is that they understand what the complaint is and while technically they may say she was denied the opportunity to apply for the role, they appreciate the complaint is that the post was filled – respondent accepts that it was 'in part but not in total because she wanted to remove the early shifts' and the respondent have also conceded that it was in part also because of her sickness absence and do not resile from that admission.

Claimant clarified that the complaint is that the claimant was not given the chance to apply and was told there was only one application despite the claimant having expressed an interest in it and there was no discussion with the claimant about her suitability for the role. The respondent did not raise an issue with that clarification of the complaint.

The respondent confirmed that its defence to this complaint rests on legitimate aim.

4.3 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

4.3.1 In relation to 4.1.1 above:

4.3.1.1 Ensuring a consistent approach to capability cases across the BTP by reference to the Capability Policy;

4.3.1.2 Protecting taxpayers' money and reserving resources;

4.3.1.3 Providing the public with an efficient and effective police force;

4.3.1.4 Protecting the reputation of BTP as a reliable police force; and

4.3.1.5 Ensuring that the Respondent complies with its obligations and requirements as a police force.

4.3.2 In relation to 4.1.2 above:

4.3.2.1 Ensuring a consistent approach to capability cases across the BTP by reference to the Capability Policy;

4.3.2.2 Protecting taxpayers' money and reserving resources;

4.3.2.3 Providing the public with an efficient and effective police force;

4.3.2.4 Protecting the reputation of BTP as a reliable police force; and

4.3.2.5 Ensuring that the Respondent complies with its obligations and requirements as a police force.

4.3.3 4.1.3 above withdrawn by Claimant

4.3.4 In relation to 4.1.4 above:

4.3.4.1 Meeting gaps in the sector, as was contemplated in the design of the role;

4.3.4.2 Providing the public with an efficient and effective police force;

4.3.4.3 Protecting the public;

4.3.4.4 Upholding public confidence in the police;

4.3.4.5 Protecting the reputation of BTP as a reliable police force;

4.3.4.6 Protecting taxpayers' money and reserving resources and

4.3.4.7 Ensuring that the Respondent complies with its obligations and requirements as a police force.

4.4 The Tribunal will decide in particular:

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

4.4.2 could something less discriminatory have been done instead;

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

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

5. ***Reasonable Adjustments (Equality Act 2010 sections 20 & 21)***

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

5.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs; did those PCPs put the claimant to the following substantial disadvantages; and did the respondent fail to consider the following reasonable adjustments:

5.2.1 ~~A PCP setting the hours and requiring the claimant to return to the full duties of her role.~~ A PCP setting the hours and requiring response sergeants at a 24/7 station to return to their full-time duties Amended by Claimant

Respondent's position is that there was no requirement to return to full time duties – it is their position that it was made clear that the claimant could apply at any time to make a flexible working application that would reduce her hours and which would apply once she could do operational duties.

Did this put the claimant at a substantial disadvantage, compared with persons who are not disabled, in that she found it difficult to carry out the full duties and hours due to all three disabilities.

If the requirement was that the claimant had to return to full time duties, the respondent accepts that this would place the claimant at a substantial disadvantage.

Respondent does not assert lack of knowledge of the pleaded disadvantage.

Did the respondent fail to allow the claimant to undertake alternative duties, including working in a team that was not front-line, or work alternative rotas from 2 June 2023 to 14 August 2023.

Respondent's position on the adjustments is:

i. Failing to allow claimant to undertake alternative duties: respondent position is that it is not clear how this is an adjustment to the pleaded PCP.
ii. Failing to allow claimant to work in a team that was not front line: again respondent position is not clear how this is an adjustment to the pleaded PCP of being required to work full time.
iii. Alternative rotas; respondent position is the claimant was told she did not have to return, once she was operational, to work full-time. She was asked to work full time in the last phase of return to work plan, she carried out that phase in June and did work an alternate rota and was not full time.

~~5.2.2 A PCP of not allowing external companions to meetings.~~

~~Did the refusal to allow the claimant to have a friend to accompany the claimant to a meeting on 2 May 2023 put her at a substantial disadvantage due to her depression as compared with persons who are not disabled in that the claimant needed support to articulate her concerns, she felt unheard and needed the support of a friend.~~

~~Did the respondent fail to allow the claimant to have a friend accompany her.~~ Withdrawn by Claimant

5.2.3

PCP: Where a person cannot work full time in the claimant's role they are moved to/through the capability procedure.

Did this exacerbate the Claimant's depression, particularly because her medication impacted her sleep and general functioning.

Did the respondent fail to offer the claimant alternative duties and reduced hours before August 2023.

Respondent unclear how this is different to 5.2.1.

Claimant accepts that it is the same as 5.2.1. and as claimant was moved to the case management team, the date should be 31 July 2023 and not August – respondent has no objection to changing the date to 31 July 2023.

~~*5.2.4 A PCP that the claimant had to be back to full time hours from 14 May 2023 and fully operational by June 2023.*~~

~~*Did this cause the claimant severe fatigue/anxiety/exacerbated depression, when the claimant could not achieve the date set.*~~

~~*Did the respondent fail to implement a longer phased return of up to a year before requiring full-time work.*~~ *Withdrawn by Claimant*

*5.4 Did the lack of an **auxiliary aid/service,** put the claimant at a substantial disadvantage compared to someone without the claimant's disability: auxiliary aids or service:*

*5.4.1 **Training on return to work** around new procedures and systems: did this put the claimant at a substantial disadvantage because it made it difficult for her to react and plan in her role, causing more anxiety and distress because of PTSD and depression when she was still having treatment and taking medication and when it took the claimant longer to adjust to new procedures and routines. No training was provided despite claimant requesting this from Inspector Turner from January 2023 until August 2023.*

Claimant clarified that the position is that during the 5 month return to work plan there was some training around new procedures and systems but not enough for the claimant to be fully operational.

Training on the new procedures and systems include:

i. Niche; systems had changed since claimant used them.
ii. Command and control: been significant changes during claimant's absence.
iii. ERO
iv. New operations in station.

Respondent has no objection to clarification of claim.

Application granted by R to adduce further evidence in chief

Respondent may take issue with substantial disadvantage.

5.4.2 – ***A return to work plan which incorporated (i) shadowing of other staff, (ii) point of assessment, (iii) measurable goals, and (iv) a provision for review of the plan as the Claimant progressed****.*

5.4.2 OH recommended ***weekly reviews with inspector and daily 'check ins'*** *– is this an auxiliary aid/service which was not provided – did the lack of it cause substantial disadvantage because the claimant* ***needed to discuss when her anxiety was getting too much and the result was other officers losing trust in the claimant to do her job, made claimant feel inadequate,*** *daily life was a struggle, claimant could not complete a return to work. This also did not allow the Inspector to monitor progress of the return to work plan.*

Respondent's position is that weekly reviews and daily check ins did happen but if there were failings, the respondent's position is at had no knowledge of disadvantage.

5.4.3 ***Auxiliary service of meetings with*** *HR to discuss options in relation to the stage 1 capability process and explain the stage 1 capability process. Did it have a substantial disadvantage namely causes uncertainly, anxiety/depression and claimant could not do the role and impacted on her personal life, sleeping etc.*

Respondent agrees this did not happen – respondent's position is it had no knowledge of substantial disadvantage.

5.5.4 OH recommended a 6- 12 month phased return. Claimant was told she had to be back to full time hours from 14 May 2023 and fully operational by June 2023. Was the phased return of 6 to 12 month an auxiliary aid/service which cause the claimant severe fatigue/anxiety/exacerbated depression, when the claimant could not achieve the date set.

Respondent's position is that it does not accept substantial disadvantage whether the complaint is that the claimant should originally have been given a 6 – 12 month plan or as things 'spooled out' it should have been extended, and the respondent acted accordingly and the plan was extended and a new plan was put into place.

Claimant confirmed that the complaint is the latter, as the claimant progressed and highlighted she was struggling, she was still told she had to meet the 5-month deadline. The respondent should have extended the plan as per original OH recommendation and paused /not pursued/followed the capability process

Claimant complains the 5 month plan should have been extended, she had accepted 5 month on understanding there would be regular reviews of it.

Parties agreed that the claim is now clarified ultimately as: phased return should have been extended and capability process not pursued/advanced, from around mid-April 2023.

Insp. Turner to be allowed to address in supplemental evidence in chief.

5.5 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

5.6 What steps could have been taken to avoid the disadvantage? (See those specified under 5.2 above)

5.7 Was it reasonable for the respondent to have to take those steps and when?

5.8 Did the respondent fail to take those steps?

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

6.1 Did the respondent do the following things:

6.1.1 Was the claimant bullied and harassed by two female sergeants, Jackie Wilson and Helen White, who made her feel unwanted, made it hard for her to ask questions, create a hostile working environment between Feb 2023 and May 2023 and did they in particular:

*6.1.1.1 On **24 March 2023** shout the claimant 'down', undermining her and saying things including telling her that she should not be paid the same as them as she was not doing what they were doing*

6.1.1.2 On a night shift with Helen White (who the claimant was shadowing), did Helen White not answer the claimant's questions about what had changed about the procedures/systems necessitating the claimant asking the duty sergeant. Did Ms White than the next day slam the door shut and says things including that the previous evening was 'terrible', that the claimant should be demoted to PC, that she made Ms White (who was hoping for a transfer) 'look bad' and that she was putting her move in danger and damaging her reputation

6.1.2 Did Inspector Turner when the claimant's wife reported the above on 2 April 2023 and also when the claimant reported the above on 22 and 27 April 2023, not take any action?

6.1.3 On 2 May 2023, did Inspector Turner inform the claimant that he would challenge the 2 female colleagues only if the claimant was present and as the claimant was not well enough to do so, did he then take no action?

6.1.4 Did Inspector Turner on 2 May 2023 agree that the claimant could work with another sergeant but inform her that she would have to work a few more shifts with the same female colleagues who had bullied her, first?

~~6.1.5 Did CI Gill when the bullying was reported to him agree with the bullying by saying 'It is right that any abstraction will cause additional strain'~~ Withdrawn by Claimant

6.1.6 Did Inspector Turner and CI Gill constantly verbally and in emails, say that the 23 June 2023 was the deadline for the claimant to be fully operational and that if she did not meet it they would pursue her through the capability process

6.1.7 Did CI Gill say on 3 July 2023 that the claimant was fabricating the lack of support, telling her he did not believe what she was saying about the lack of support she has received (meeting 3 July 2023)?

6.1.8 Did Superintendent Peters, despite offering the claimant support during her maternity leave during a home visit in 2021, then inform her when she went to her for help in 2023, that she had to go 'through the ranks'?

6.2 Did the conduct relate to disability?

6.3 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.4 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Claimant confirmed that the claimant had decided not to pursue a claim of dismissal as act of discrimination however the respondent understands that in terms of remedy, the claimant's claim for compensation is based on loss of employment flowing from the acts of discrimination.