



EMPLOYMENT TRIBUNALS

Claimant: Jonathan Waring

Respondent: The Chief Constable of West Yorkshire Police

AT A HEARING

Heard at: Leeds **On:** 28th, 29th & 30th January 2026
Before: Employment Judge Lancaster

Representation

Claimant: Mr P Smith, counsel
Respondent: Mr D Penmam, counsel

JUDGMENT

The claim is dismissed

WRITTEN REASONS

1. The decision having been reserved, written reasons are now required,
2. The Claimant is a detective constable who was dismissed, that is required to retire and take ill health retirement, with one month's pay in lieu of notice as at 15th June 2024. He was then aged 45.
3. The claim is, in respect of that dismissal, for discrimination under section 15 of the Equality Act 2010: unfavourable treatment because of something arising in consequence of disability.
4. It is accepted that the Claimant is disabled. He suffers from complex chronic post-traumatic stress disorder (PTSD).
5. For about four years from 2016 the claimant had worked in the indecent Images Unit, as he puts it "immersed in child abuse images and offenders".
6. Compulsory ill-health-retirement is only possible under regulation 81 (1) of the Police Pensions Regulations 2015 where there is an opinion from the selected medical

practitioner (SMP) that the officer is likely to be permanently unfit to perform the ordinary duties of a member of the police force.

7. In this case the SMP, Dr Gidlow, expressly stated that the Claimant was so medically unfit in respect of the condition of PTSD.
8. It is therefore necessarily the case that the subsequent decision to dismiss was because of something arising as a consequence of the Claimant's admitted disability.
9. The relevant treatment in respect of the dismissal is the decision of the Chief Constable, taken on 14th June 2024, to approve medical retirement rather than retention.
10. I find that that decision did constitute unfavourable treatment, notwithstanding the fact that it thereby afforded the Claimant early access to his pension on advantageous terms.
11. I consider that this case is distinguishable from Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65. In that case the relevant treatment was the award of a pension, not the decision as to early retirement.
12. Although in this case the Claimant was entitled to take his pension well before his projected retirement age of 60, it is not necessarily the case that everyone who is compulsorily retired on ill-health grounds may do so. Only officers with more than 2 years' service and who are currently members of a police pension scheme will in fact be automatically entitled to a pension under the Policy. Entitlement to an additional injury benefit award – which the Claimant also successfully applied for – is expressly only available to “officers who have already been medically retired”. I therefore draw a distinction between the decision to retire, rather than to retain, and the subsequent calculation of pension entitlements (if any).
13. Dismissal is ordinarily a detriment. The loss of a career as a police officer upon compulsory retirement is reasonably construed by the Claimant as detrimental or unfavourable treatment.
14. The issue in the case is therefore one of justification. Has the Respondent shown that the dismissal was a proportionate means of achieving a legitimate aim?
15. In weighing the reasonable needs of the employer as against the discriminatory effect of the treatment I must make my own objective assessment as to whether the former outweigh the latter. In so doing I follow the structured approach to this balancing exercise identified by the Supreme Court in Akerman-Livingstone v Aster Communities Ltd. [2015] UKSC 15. That is to ask (1) whether the aim is sufficiently important to justify the treatment; (2) whether there is any rational connection between the aim and the unfavourable treatment or disadvantage suffered; (3) whether the means chosen are no more than is necessary to accomplish the aim (and whether proportionate alternative measures could have been taken without a discriminatory effect); and (4) whether the steps complained of strike a fair balance between the need to accomplish that aim and the detriment suffered,
16. The pleaded legitimate aim is:
 - (i) securing the maintenance of an efficient and effective police force in

accordance with Sections 1(6) and 2(5) Police Reform and Social Responsibility Act 2011 (“the 2011 Act”);

(ii) protecting the health, safety and welfare of the Claimant.

17. Whilst Mr Smith is right to point out that the focus of this case has not been at all upon that first reason, I do not consider that significant. Compliance with the statutory duty imposed on the Chief Constable is obviously both legitimate and important. It is that objective which underlies the Policy on compulsory ill-health retirement which permits the dismissal of an officer who is no longer capable of providing efficient and effective service.
18. The key issue is therefore whether the application of that Policy in this case is sufficient justification for termination. Whilst scrutiny of the Policy as a whole would indicate that it is indeed proportionate, it does allow for a series of responses to individual circumstances, and it is governed by the objective to “retain the officer in the force wherever practicable”. In that context I accept that the protection of the health, safety and welfare of the individual officer suffering incapability is the material consideration. I am satisfied that this aim is sufficiently important, in appropriate circumstances, to justify dismissal in furtherance of the ill-health retirement Policy.
19. The ill-health retirement Policy is, not surprisingly, robust. It incorporates requirements for scrutiny of the collated information medical and otherwise, including input from the officer concerned.
20. The Claimant had had a period of long-term sickness absence for 124 work days between 19th December 2020 and 21st April 2023, but had returned to work because of the financial implications of going onto reduced sick pay had he remained off work. He remained in work until 19th February 2024, when the referral was made to the SMP to assess whether his incapacity was likely to be permanent. At this point he was entitled to receive full sick pay pending the outcome of that assessment irrespective of the ordinary considerations as to absence in any roiling period.
21. The Claimant returned to work in April 2023 on a phased return into a new role, a “High Harm Officer” working in the prison establishment and was referred to OH on 2nd May 2023. This report stated that the problems, although continuing, were not with the current role but were the result of historic work that he had done in the past. A stress risk assessment and monitoring of the situation were recommended. The Claimant did also make a successful request for flexible working which allowed for later start times and time off for hospital appointments.
22. In October 2023, dissatisfied with what he understandably felt to have been previous inadequate telephone responses from OH to his situation, the Claimant filled in a disability assessment form. This led to a face-to-face appointment with the Force Medical Adviser (FMA), Dr, Dayani, on 8th November 2023. The FMA recommended a referral to a consultant psychiatrist and also raised the possibility of ill-health-retirement. This suggestion was clearly a shock to the Claimant, as is recorded in the contemporaneous exchanges between his supervisor and HR.
23. The Claimant was seen by Dr Miz Abbas, on a MS Teams appointment, on 26th January 2024. She reported on 28th January 2024, unequivocally confirming – it would appear for the first time - that PTSD was the correct diagnosis. Her key conclusions were:

“66. In my opinion Mr Waring meets the diagnostic criteria for ICD 11: 6B40 Post-Traumatic Stress Disorder.

67. Although he is in work currently, he is struggling in the policing environment where he often encounters triggers.

68. Mr Waring’s symptoms result in disturbed sleep, so he is often tired at work. He experiences panic attacks at work, which can disrupt his workflow.

79. Mr Waring has not yet had optimum pharmacological interventions. With robust pharmacological treatment I would expect some further recovery over coming months. He has already shown some improvement on 100mg of sertraline.

80. However, due to the long duration that Mr Waring has been symptomatic and the fact that he is currently in work where he encounters daily triggers, it is less clear if he will make a full recovery.

6 (sic). Mr Waring has been symptomatic for 6 years, although treatment has only been over the last 12 months, with pharmacological options still available to him. He does however fall into the category of patients who is likely to go on to develop a chronic course.

81. Mr Waring is currently in work, where he encounters daily triggers to his symptoms. He remains significantly symptomatic. Sadly, Mr Waring was unable to remain on sick leave due to financial reasons and this will have a delayed impact on any recovery. There is a risk of deterioration due to the nature of police work.”

24. On receipt of this report the FMA, on 1st February 2024, recommended a referral to the SMP, I do not accept Mr Smith’s submission that the terms of this recommendation are perverse. The FMA’s summary of Dr Abbas’s report was that: “Overall due to the duration of the symptoms and the continued exposure to policing, Dr Abbas is of the opinion that the chance of recovery is small”. That is, objectively a legitimate interpretation of the totality of her conclusions.

25. In any event the FMA’s opinion is not determinative, it merely initiates the SMP process. Referral from the FMA following an OH appointment is a permitted gateway under the Policy.

26. This triggered the completion of form SMP 1 by an Employee Relations Advisor, in this case Lorraine Jenkinson, in consultation with the officer, and it was then submitted for review to the Assistant Head of Employee Relations, Emma Walton. She confirmed that the criteria for referral were properly satisfied before agreeing to authorise this course.

27. The SMP, Dr Gidlow, then assessed the Claimant over MS Teams with his consent and reported on 28th April 2024. He agreed in his accompanying letter (“written narrative assessment” under the Policy) with what he properly identified as Dr Abbas’s conclusion that “it is unlikely he will return to any of the duties of a police officer, and that any return would or could lead to an exacerbation of his symptoms of post-traumatic stress disorder. As mentioned he already has regular dark thoughts.”

28. In the formal part of the report, answering the mandatory questions, he confirmed that the Claimant was by reason of PTSD medically unfit for performing the ordinary duties of a member of the police force and that this medical unfitness was likely to be permanent. He further confirmed that the Claimant was at that time also medically unfit to engage in any regular employment averaging annually 30 hours per week, but that this was unlikely to be permanent. He also confirmed when considering the likely effect of this unfitness on future attendance that any return to police duties, including where this might have been limited to specific activities, would be likely to exacerbate his condition, and that he could not see any adjustments which would enable a return to work. Nor could he envisage any improvement to his condition within either a 12 month or a 3 year timescale which would permit his return to police duties.
29. The Claimant did not ever seek to challenge those findings as to his permanent unfitness, as he might have done by way of appeal under the Policy.
30. The opinion of the SMP then triggered the completion of form SMP 2. The first part of this was again completed by an Employee Relations Advisor, on this occasion Jade Mayhew. She was expressly enjoined under the policy to seek to obtain the officer's comments for inclusion on the form, which she did,
31. The Claimant in his original comments frankly recognised that he would have to find alternative employment, with all the problems that that would necessarily entail, and stated:
- “It has taken me a long time to come to terms with the fact that I will never get better whilst working within the organisation”.
32. Following an email exchange when he was invited, by way of an “open question”, to comment expressly on whether he wished to be retired or retained the Claimant further volunteered:
- “Due to my condition and the medical advice that I will not recover whilst I’m serving in the police, also with the high probability that my condition may worsen, I have thought long and hard and confirm that I no longer want to be retained by West Yorkshire Police.”
33. Ms Mayhew also obtained the comments of DCS Dunkerley who confirmed from a senior leadership team perspective (SLT) that the Claimant had “for some time struggled to attend and be at work”, and said that hopefully by retiring he “will have some closure that will finally help his recovery”.
34. Ms Mayhew therefore on 9th May 2024 respectfully requested that the Chief Constable consider medical retirement.
35. The SMP 2 form was then reviewed (“quality checked” under the terms of the Policy) by Ms Walton, who also on 21st May 2024 requested consideration of medical retirement.
36. Finally the matter was reviewed by the Deputy People Director, Mark Topham. On 10th June 2024 he. In an admittedly terse addendum to the SMP 2 form, recommended medical retirement. He then met with the Chief Constable, and on 14th June 2024 that was signed off by him “medical retirement approved as above”.

37. Although reference has been made to the possibility of the Claimant having been redeployed onto limited or restricted duties – for which there is a separate Policy – the pleaded case is that as at June 2024 there was a poor likelihood of the Claimant being able to return in the role of a police officer. In the identified issues at the preliminary hearing the Claimant asserted only that redeployment to a civilian role would have been a less discriminatory means of achieving the asserted legitimate aims. Also, at the start of this hearing, confirmed by the Claimant in evidence, it was accepted that he could not in fact have returned to a police officer's role.
38. The situation is that up until February 2024 the Claimant was indeed working in his substantive post, albeit that even with adjustments or flexible working in place he was struggling. As previously reported to OH his problems were not, however, with his current role. No issue had ever arisen therefore as to possible redeployment to a different police officer's role.
39. I accept that on the commencement of the SMP 2 process, affording access to full sick pay, the Claimant was no doubt advised to take this course. In November 2023 Ms Jenkinson had expressed an opinion that this may become "beneficial" to the Claimant at this point. There is always also always going to be tension between the Respondent referring to Claimant for an assessment as to his permanent incapacity and retaining him in work. Nonetheless the Claimant was then in fact certified as wholly unfit for work by his own GP, and remained so until retirement, and his doctor increased the level of medication. This also fits with the history of the Claimant only having not earlier taken extended sick leave from April 2023 because of the financial pressures of his doing so.
40. The medical advice, acknowledged by the Claimant in his comments in the SMP 2 form, was unequivocally that any return to duties as a police officer would as at June 2024 have been detrimental.
41. Sadly, by this time nothing was going to allay the substantial disadvantage to the Claimant of not being able to continue, and possibly to progress, in his chosen career as a serving police officer
42. The issue in this case is therefore, as was identified before Employment Judge Wade at the preliminary hearing, centred on the availability of alternative civilian roles to which the Claimant might have been redeployed.
43. Under the Policy it is an obligation placed upon Employee Relations to include in the SMP 2 form comments as to whether there are suitable roles for the officer. "Employee Relations" encompasses Ms Mayhew, Miss Walton and Mr Topham.
44. Whilst the Policy and the SMP 2 form are only directly referring to police officers, the obligation on Employee Relations is also to consider alternative civilian roles and not merely his contractual "employment" as a police officer. This proposition I take from DWP v Boyers [2022] EAT 76. There it was held by His Honour Judge Clarke that:
- "it would seriously undermine the protection s15 EqA affords to disabled people if an ET's assessment of proportionality could not extend beyond the terms of the contract of employment on matters such as place of work and the duties to be performed."

45. Of those involved in the process under the Policy I have only heard evidence from Miss Walton. Mr Topham was scheduled to attend but was unfortunately unable to do because of sudden illness. I have therefore read his witness statement, but he has not been cross-examined. I have not heard from the Chief Constable.
46. Whilst my focus in a dismissal case must necessarily be on the outcome, the decision to require the Claimant to retire, Boyers is also authority, as submitted by Mr Smith, for the proposition that it is open to me to weigh in the balance the procedure by which that outcome was achieved.
47. In this case I find that there was no assessment once the SMP 2 process had commenced as to whether the Claimant might in fact have been redeployed to an available civilian role. It is only Ms Mayhew who refers expressly to redeployment when she says:
- “The view of Dr Gidlow that DC Waring will not be able to undertake any role within the policing environment has obviously ruled out any consideration of other roles within West Yorkshire Police that could be considered for Dc Waring.”
48. Neither Miss Walton nor Mr Topham revisit this question of possible alternative employment. There was therefore no suggestion of any alternative which fell to be considered by him when the matter was put before the Chief Constable.
49. Although I have not heard from her, that is clear documentary evidence as to the reason why Ms Mayhew did not pursue this line of enquiry. That is cumulatively built on, albeit implicitly, with the subsequent review by Miss Walton and Mr Topham. That is, however, her subjective view based on reasons which appeared good to her at the time, and is not determinative of the balancing exercise which I must carry out.
50. However, applying the appropriate level of scrutiny to the failure to consider alternative employment I too conclude, objectively that the now-suggested alternative would not have been proportionate. I find that the totality of the medical evidence is properly to be construed as determining that any continued exposure to work within the police environment, as a serving officer or as a civilian, would continue to be detrimental to the Claimant’s well-being and would hinder his prospects of any recovery. The reference to the “policing environment” is explicit in Dr Abbas’s report.
51. This interpretation of the medical evidence is one that was evidently shared by the Claimant himself at the time when he accepted that he would never get better whilst working within the organisation, and that he did not wish to be retained by West Yorkshire Police. The Claimant did not at any stage of the process himself suggest that he might have been able to fulfil a civilian role without that also exposing him to risk of daily triggers arising out of the fact that he would still be doing “police work”.
52. This case can be factually distinguished from the situation in Boyers. In that case the claimant had been placed on a work trial which, had it been successful, would have secured her continuing employment, albeit at a different place and under varied terms and conditions, without rendering her liable to dismissal when she then refused to return to her original substantive post. The evidence before the Tribunal was that the way in which that work trial was conducted was deficient and that it was prematurely ended, but that the dismissing manager did not consider it her responsibility to re-examine why the trial

had allegedly failed nor to consider any other trials that might have been conducted. The inadequate procedure by which the ultimate decision to dismiss was reached was therefore material to the question of proportionality.

53. Here, there was no alternative civilian employment which could have been trialed at that point when the Claimant was currently signed off as unfit for work, and where the medical evidence was that to undertake work in the police environment would be detrimental. There is therefore no equivalent finding of fact which can be made that the decision not to pursue a work trial was objectively flawed.
54. Following the recorded stages of the decision making within the SMP2 form, I am satisfied that the conclusion that the Claimant should not be retained was explicitly in the context that to do so would be detrimental to his health. There is therefore the required rational link between the achieving of that specific aim and the dismissal.
55. The position might possibly have been different had the aim been solely to maintain an efficient and effective police force, which included the provision of civilian services as well as those of police officers. The Claimant had the skill-set to perform the role of detective constable, and did so until February 2024. He would also therefore have potentially been able to work in a civilian support role, although no specific openings from that time have been identified. This was the position even though, on the medical evidence, his ability to make decisions, evaluate information and to understand and retain facts was permanently compromised, so that his work would have been affected. Had this been the sole consideration it might therefore have been proportionate to delay the decision to dismiss for a period to ascertain if there were any improvement in the Claimant's condition such that a return to work in an alternative civilian role would have been feasible. That is particularly where the PTSD was largely work-induced and where it is arguable that earlier and more effective interventions by HR or better support would have stemmed the deterioration in his symptoms.
56. However, to have retained the Claimant in anticipation of a possible return to work, still in a policing environment, where this was identified a detrimental to his health and recovery is entirely different. In these additional circumstances and taking into account the expressed views of the relevant doctors, the SLT and the Claimant himself termination of all employment with West Yorkshire Police was necessary to accomplish the aim of protecting the Claimant. Retaining him, actually or prospectively in police employment would not have achieved that result.
57. The balancing exercise is therefore in favour of the Respondent. In this context I must take into account that the impact of dismissal upon the Claimant is, to a significant extent, mitigated by the ability to access his pension early, and which would not be affected by his taking alternative employment if and when available.
58. Whilst I have every sympathy with the Claimant, I conclude therefore that the Respondent has objectively made out the defence of justification.

EMPLOYMENT JUDGE LANCASTER

DATE 10th February 2026

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