Case No: 2400344/2024

EMPLOYMENT TRIBUNALS

Claimant: Megan Gray

Respondent: Chief Constable of Cumbria Constabulary

Heard at: Manchester **On:** 31st March to 4th April 2025 inclusive

Before: Employment Judge Cline
Mr B Rowen
Dr B Tirohl

Representation
Claimant: Mr David Stephenson, counsel
Respondent: Mr Thomas Wood, counsel

RESERVED JUDGMENT

1) The Claimant's complaint of indirect discrimination on grounds of disability is not well-founded and is dismissed.

2) The Claimant's complaint of harassment related to disability is not well-founded and is dismissed.

3) The Claimant's complaint of constructive discriminatory dismissal is not well-founded and is dismissed.

4) The Claimant's complaint of failure to make reasonable adjustments for disability is well-founded and succeeds in respect of not offering her the METCO role between the period 11th August to 11th September 2023.

5) The remaining complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.

REASONS

Introduction and Background

1) By way of her ET1 claim form and grounds of complaint received by the Tribunal on 19th January 2024, the Claimant, Ms Megan Gray, brings a number of claims (all of which are denied by the Respondent) under the Equality Act 2010 (the 2010 Act), namely:

    a. Indirect discrimination on the grounds of disability (Section 19);
    b. Failure to make reasonable adjustments (Sections 20 and 21);
    c. Harassment related to disability (Section 26); and
    d. Discriminatory constructive dismissal (Section 39(7)(b) in respect of Sections 19, 20, 21 and / or 26).

    It had been decided at an early stage of the proceedings that that this hearing would deal with questions of liability only and, given the issues involved, the number of witnesses and the amount of documentation for a 5-day hearing, this was entirely appropriate.

2) The matter was heard over 5 days and we reserved our decision at the conclusion of the fifth day. Both parties were represented by counsel and we thank them both for the calm, sensible and measured manner in which they dealt with the case. We received written and oral submissions from both counsel which were very helpful in summarising their respective cases and, although we may not refer to them all directly here, we considered them carefully when reaching our decision. We were provided with a hearing bundle running to 740 pages, a chronology and a cast list, all of which had been agreed between the parties. Any references to specific pages of the hearing bundle herein will be by way of square brackets, for example [220] or [34-54]. We made it clear to the parties that, given the size of the bundle, it should not be assumed that we would be aware of, or would take into account, any document to which we were not referred during the course of the hearing.

3) We were also provided with witness statements from 5 witnesses:

    a. The Claimant (undated);
    b. Kerry-Anne Travis (12th March 2025, on behalf of the Claimant);
    c. Shannon Parker (7th February 2025, on behalf of the Respondent);
    d. Detective Sergeant James Dickens (27th February 2025, on behalf of

the Respondent)

e. Sergeant Paul Grierson (7th March 2025, on behalf of the Respondent); and
f. Inspector Stephanie Hadwin (10th March 2025, on behalf of the Respondent).

We heard oral evidence during the course of the hearing from all of these witnesses save for Kerry-Anne Travis, whose evidence, we were told, was not disputed by the Respondent.

4) Very little of the factual background was in dispute between the parties but, where they were not agreed and we were required to make findings, we did so on the balance of probabilities and have set out, to the extent we consider to be required, how we came to those findings. For the avoidance of doubt, we did not find any of the witnesses to have been dishonest or intentionally misleading; we were conscious throughout of the inevitable frailties of human memory and that we were dealing with matters which took place several years ago and which we had to examine in some detail in order to deal justly with the case. When deciding which findings of fact we were required to make, we had regard to the agreed list of issues, which we used to guide us to our various decisions and is (insofar as is relevant) reproduced in the annex attached to this judgment.

Findings of Fact

5) The Claimant commenced employment as a as a special constable between 2011 and 2015 in Barrow-in-Furness and then started her training as a police officer in 2015, completing her 2-year probation period thereafter in Whitehaven. She subsequently moved back to Barrow and continued to work as a police constable for Cumbria Constabulary until her ultimate resignation in mid-2023. We were struck from the Claimant's evidence, both written and oral, how passionate she was about her job, especially about being a response officer and her aspiration for this to be her lifelong career path; as such, we can also accept without hesitation that the events that form the factual basis of this claim have had a significant impact on her mental health and her day-to-day activities.

6) The first relevant incident for our purposes is a road traffic collision on 22nd June 2020 to which the Claimant, along with a colleague, was dispatched whilst on patrol in the vicinity. The details of this incident will not be repeated here but it

was not in dispute that, as a result of her involvement in the aftermath of the collision, the Claimant experienced a significant downturn in her mental health, after which she did not appear to have been included in any debriefing.

7) As a consequence of the decline in her mental health, the Claimant was signed off work on grounds of ill health, namely post-traumatic stress disorder (PTSD), on or about 16th July 2020, remaining off until the end of October 2020, approximately 3½ months later. There was a return-to-work meeting at the end of October, prompted by Nathan Thompson, a human resources (HR) assistant, in an email of 28th September 2020 to Sergeant Grierson [81], wherein he asked Sergeant Grierson to carry out the meeting and keep him up-to-date with progress. Sergeant Grierson replied that he will ensure the relevant paperwork is submitted; by this point, the Claimant had been identified as requiring restricted duties which included being double-crewed until the end of the first week, after which it would be reviewed (email 29th September 2020 at [74-5]). We are told that a return-to-work meeting took place but have not been pointed to any specific written record of that meeting. It was clear that the Claimant was apprehensive about the prospect of attending road traffic collisions and incidents involving sudden deaths and an occupational health (OH) referral was made on 30th October 2020 by Sergeant Grierson [83], who was her first-line manager at the time; this referral sets out the situation and says that the Claimant "would welcome further support with coping mechanisms etc".

8) The resultant OH report is dated 10th November 2020 [319] and we considered it carefully; most notably, it says that the Claimant does not feel that her ongoing talking therapy has been helping her recover and the author, Bridget Barton, recommends further psychological assessment and treatment, alongside restricting the Claimant from attending any emergencies or sudden deaths which are likely to bring about increased anxiousness. She also cautions against the Claimant being in a position of uncertainty and says that, if she can be placed on her usual shifts for support but allocated to tasks or roles that do not require emergency responses, this is likely to be helpful. Notably, the author also says that: "*It will be important to remain flexible to her needs over this next period to prevent any exacerbation of her symptoms. Having some control over her work will be helpful. Have regular one to one's with her to assess her progress and make any reasonable adjustments as deemed necessary*".

9) An email on 13th November from Sergeant Edmondson (a performance and wellbeing sergeant) to Sergeant Grierson, Inspector Hadwin and the Claimant [89] shows consideration of the OH report from a few days previously and Sergeant Edmondson suggests maintaining the double-crewing as a support mechanism (which we note was not actually recommended in the initial OH report) and says that the Claimant is happy to attend immediate response and will inform them if this changes. It is pointed out that the Claimant being restricted to office duties is not something that she wants (and would do more harm than good) and that she is happy with this and feels that the low risk is worth the benefits of near full duties. This arrangement is to remain in place until the end of January 2021. It is noteworthy that Sergeant Edmondson copied in the Claimant and set out the reasoning behind her suggestions, as well as considering the double-crewing option even though this had not been recommended specifically in the OH report. It is also clearly acknowledged in the email that there is a balance to be struck between mitigating the risk to the Claimant of triggering her PTSD symptoms and facilitating her continuation in a role which she clearly wants to continue doing.

10) On 19th November 2020, Inspector Hadwin sent an email [92] to Inspector Latham (the welfare and performance inspector) saying:

> *Regarding the below, I need to ask Jenny to step back from supporting Megan as the additional cook is spoiling the broth. Claire's email is as a result of me receiving messages from Megan on RD's.*
>
> *Megan is finding it very confusing to have conversations with Paul G [Sergeant Grierson] then have to repeat herself to Jenny, who actually then suggests things which would have already been discounted by Paul. I understand Jenny is only trying to help, but her involvement is actually causing Megan setbacks rather than assisting her progress to return to full duties.*

Inspector Latham agrees with this approach and says that he and Sergeant Edmondson are not there to manage individuals but are there to guide and

support line managers, not to do it. As we understood matters, Sergeant Edmondson was not involved directly in the Claimant's support from this stage onwards, nor did Inspector Hadwin appear to seek her advice in any significant respect.

11) A further referral to OH was made and the next report from Bridget Barton, dated 1st December 2020 [323], is sent to Inspector Hadwin and Sergeant Grierson. The Claimant is reported to have said that she is doing her response role double-crewed to provide her with support on duty and feels that she is well supported and that work is manageable. There is no recommendation for a further OH report at this stage as the combination of talking therapy and good management support is expected to lead to a full recovery in time. In this context, we were told by Sergeant Grierson that the process by which the risk was managed of the Claimant being dispatched as immediate response to certain emergency incidents that might trigger PTSD symptoms was that, on the daily deployment sheets, comments were made against the Claimant's name for the assistance of control room staff to this effect. It was unclear when exactly this practice began but it seems to have come out of the first OH report on 13th November 2020.

12) On 27th December 2020, there was an email [98] to Inspector Hadwin from Sergeant Burley, who seems to have been one of the relevant sergeants responsible for the Claimant's welfare. We note that this email was sent 26 days after the previous OH report (which had a good prognosis for the Claimant's symptoms) and says as follows:

> *Today I have spoken to Megan who has become upset about work related issues, some of which can be resolved, however, it is clear that she is still struggling regards the tragic RTC that she attended earlier in the year.*
> *Having spoken to her it appears that she has been left in limbo with regards to her counselling sessions and I totally get how this has knocked her out of kilter.*
> *Please can you chase up with OH and find out what their plan is with her and when they are going to re start her sessions before Megan becomes really unwell and unable to cope,. It appears that she has either been forgotten or has been bypassed for others.*

Unfortunately OH have not done many face to face to sessions and Megan finds it difficult to have telephone consultations at work as they are upsetting for her and I understand that too, it maybe that if she cannot attend HQ to speak with Rufus, we can facilitate her having her appointments somewhere that she feels comfortable.

The RTC that she attended is an event that even I would find difficult to cope with and I think that she is an urgent case.

Megan is happy to be at work but at times is clearly struggling and this was evident when I spoke to her, I have asked her if maybe she would like to do another role and she has said that she is interested in the proactive team and with Martin Hayes being off this may be a consideration.

I will leave it with you.

When Inspector Hadwin was asked about this during her evidence, she said that she could not recall if she was at work the day she was sent that email, could not recall if she chased up the therapy sessions, could not recall if she replied to Sergeant Burley and could not recall if she raised the issue with OH; her responses were, in effect, that she thinks she would have done these things but does not know if she actually did. We were not pointed to any documents suggesting that any of these steps were indeed taken. Inspector Hadwin also agreed that this seemed to be an urgent situation and that she would frequently see the Claimant in tears at work, which she attributed to the Claimant's frustration, rather than being symptoms of PTSD. We also note that, in the final paragraph of this email, there is mention of the Claimant showing an interest in an alternative role. At [104], there was an email from Sergeant Burley on 11th January 2021, effectively reporting the situation and raising concern about how the Claimant is managing and whether or not she should be taken off response entirely. At [110], Sergeant Grierson emailed Inspector Hadwin, Sergeant Burley and Sergeant Lennox on 12th January to say that he has spoken to Rufus Harrington, the Respondent's treating psychologist, who has said that the Claimant is at a crucial stage of therapy and should remain double-crewed until the end of January, as well as avoiding road traffic collisions and sudden deaths whilst they try to build some resilience. We note that this was now approximately 7 months after the June 2020 collision and its aftermath which led to the Claimant's PTSD; there was no OH referral at this stage.

13) We had little information about what happened between January and March 2021 but there was a very brief report from Rufus Harrington dated 23rd March 2021 [117]. He says that the Claimant is making progress with her trauma-based cognitive behavioural therapy (CBT), although she should still continue to be double-crewed as they are working through some of the most difficult aspects of the trauma. He is hopeful that the Claimant can return to being single-crewed within 4 weeks, which would be the end of Aril 2021. We do note the Claimant's evidence at paragraph 17 of her witness statement, which was unchallenged, that she had these sessions of CBT with Mr Harrington over the phone whilst she was on duty and that she did not find it helpful that she went straight back to work after each session.

14) The next OH referral is by Sergeant Nield on 22nd April 2021 [337]. He says as follows at [338]:

> *I have recently started to supervise Megan, and I am aware that she is undergoing treatment with OH with Rufus following trauma after being involved in the response to a triple fatal RTC. I`m not fully up to speed with the treatment, or restriction that Megan is subject to. I would like to understand where her treatment is up to, what the recommendations are to manage her, and what restriction should remain in place for her.*

We note that this is the first OH referral since the email of 27th December 2020 from Sergeant Burley saying that she was concerned about the Claimant's progress. The resultant OH report is dated 5th May 2021 [340] and says that the Claimant feels her mood has deteriorated recently; further therapy is recommended and the existing restrictions should remain in place. There is reference to having regular one-to-ones and making any reasonable adjustments where needed. We note that this is now approximately 11 months after the June 2020 incident.

15) On 25th May 2021, the Claimant was on mobile patrol as part of a double crew near to the site of the June 2020 collision and coincidentally witnessed the aftermath of another road traffic incident which clearly had a significant impact

on her mental state. She was then sent home from duty by Inspector Hadwin.

16) At some stage during this period which could not be pinpointed exactly, the Claimant says that she had a discussion with Inspector Hadwin during which Inspector Hadwin said to her that her mental health issues are not Sergeant Burley's problem. Inspector Hadwin denies that she said this and addresses it in her witness statement. We had limited evidence in respect of this allegation save for the Claimant's assertion that the comment was made, which she maintained unwaveringly during cross-examination, and Inspector Hadwin's response in cross-examination (in accordance with paragraphs 30 to 33 of her statement) that she does not recall making such a comment and that the only context in which she may have said it was that a sergeant does not need to know the details of what is being considered but only the outline of the plan.

17) In making a finding in respect of this conversation, we acknowledge without hesitation that a witness being adamant about something does not necessarily mean that it must therefore be true. However, we must decide on the basis of the totality of the evidence before us and what we have is the Claimant's consistent account (set out in detail at paragraph 22 of her witness statement) not being undermined to any cogent degree by Inspector Hadwin's response, which is that she does not recall making such a comment and, in effect, would not say that sort of thing. The fact that Inspector Hadwin told us that the only context in which this may have been said is the exact context in which the Claimant recalls the comment being made is, in our view, supportive of the words being used as outlined by the Claimant. Although we do find that a comment to that effect was made, we accept, nonetheless, that it was most likely a spontaneous and badly-worded explanation to the Claimant of what Sergeant Burley needed to know.

18) The day after the Claimant was sent home after witnessing the aftermath of a collision, on 26th May 2021, the Claimant was rostered by Inspector Hadwin to attend Kendal after a serious road traffic collision had been reported there. We accept that the Claimant was not sent specifically to the accident scene itself but, instead, was sent to cover as backfill for the officers in Kendal who were dealing with the collision. During the course of this shift, the Claimant was asked to accompany a body, presumably from the accident, to a mortuary. The Claimant refused to do this because of the impact on her mental health. It did

not appear to be in dispute by Inspector Hadwin that the Claimant's account is correct; it was also conceded by Inspector Hadwin (as, frankly, we found that it had to be) that there had been a clear breakdown in the system used to prevent the Claimant from being exposed to deceased persons and that this is probably because she was sent out of area and that the Claimant's specific designation on the rota to avoid such circumstances had not found its way to those administering the tasks in Kendal. This was, of course, contrary to the suggested adjustments in the most recent OH report and contrary to the intended operational adjustments that had already been put in place for the Claimant's benefit.

19) At this stage, we note that Inspector Hadwin's witness statement, from paragraph 16, deals with what happened after the earlier incident on 25th May; paragraphs 16 to 18 say as follows:

> *16. Following the incident, I spoke to Megan at length, and she felt reassured by the action that I had taken in terms of following the plan that we had laid out, and that should she find herself in a situation where she could not cope, she could contact me or a supervisor and we would swap her with another officer, so that she could remove herself from the situation. During my conversation with Megan, I focused on what she had achieved in this case, namely that she was able to relay the information for the incident to be logged, however Megan did struggle to see this development as positive. The reason why I chose to focus on the positive aspects with Megan during our conversation was because she had portrayed an ongoing negative effect/outlook in regard to her abilities and her progress, and I wanted to reassure her and encourage her of the positive steps she had taken.*
>
> *17. Up to this point, Megan had been adamant that she wanted to remain on patrol, but in reality, after I had seen her reaction, and having considered the position that her colleague was placed in and of course the implications on the 4 casualties in the car, I felt that this was something that I clearly could not control by way of reasonable adjustments.*

> *18. After this incident, it was apparent to me that Megan was not able to undertake her role in the way that a response officer was expected to, or as the public expected her to. Furthermore, this was putting the Constabulary in a compromised position as although we had allowed for Megan to sit in the van if she witnessed an incident, members of the public were not aware of this adjustment, and to the public, it would appear that Megan was neglecting her duties as she was unable to deal with the casualties, unable to provide medical assistance or the preservation of life.*

20) Paragraph 19 of Inspector Hadwin's statement says that the Kendal incident happened at an unknown time after the 25th May incident but it was established during the course of the hearing (and eventually agreed between the parties) that it happened the very next day after Inspector Hadwin seems to have decided that the Claimant should no longer work in response. She then goes on to say at the end of paragraph 19 that the Claimant continued with her week of nights.

21) The Claimant was moved from her response role around the end of June 2021. This seems to have come about as a consequence largely of a conversation between Chief Inspector Annette McClement and others referred to in her email of 2nd June 2021 [142]. The Claimant was moved to work as a second METCO (Missing Exploited and Trafficked Co-Ordinator) officer, replacing another officer, initially for a temporary period of 3 months. The question of whether this role would become permanent in due course was not resolved at that stage. It is unclear where the Claimant was deployed between this email and the end of June 2021 but it seems to be agreed that she started in METCO (a non-front-line role) at the very end of June 2021. We note that there were two reports, one from Bridget Barton in OH dated 2nd June [347] and one from Dr Ahmad, the Force Medical Advisor, dated 14th June [353], in both of which it is noted that the Claimant should not be working in front line response any longer. Notably, the OH report says that the Claimant agreed that it was the right thing to do to take her off front-line response and the Claimant agreed that she said she had felt that it was a relief that this decision had been taken for her.

22) After being moved into the METCO role, the Claimant's immediate line management changed a number of times in fairly quick succession and, eventually, she was managed by Sergeant Dickens. In summary, between approximately July 2021 and April 2023, the Claimant was working in an ongoing temporary role in METCO which had been deemed by the management team (and agreed by the Claimant herself) as being appropriate in respect of meeting the requirement to minimise the risk of triggering her PTSD symptoms. It was accepted by Sergeant Dickens during his evidence, and reflected in the various performance review summaries, that the Claimant was very conscious of the temporary nature of the METCO role and had asked on a number of occasions whether it was likely to be made permanent and, if so, when. We considered the various medical and OH reports in the bundle relating to this period and the theme, in effect, is that the Claimant considered the METCO role to be ideal for her but she was still experiencing difficulties in rationalising things, which prompted referral for further psychological therapy. It is notable that there do not appear to be any significant references to the Claimant feeling troubled by unpredictability and uncertainty but we take that to be in the context of an overarching understanding that she is affected badly by instability but, during this period, is in a relatively stable position. However, we do know (and it does not appear to be disputed) that the Claimant was always aware of the fundamental uncertainty of this position; this is set out at paragraph 28 of her witness statement. It is also highlighted a number of times by Sergeant Dickens (such as in his email to Inspector Gemma Hannah on 29th December 2022 [198] and the chain that results from that) and in the various performance reviews from January to July 2023, which we considered carefully.

23) We heard quite detailed evidence about the process by which the funding of the METCO role was decided but that will not be set that out here in any detail. What we did note was that this appeared to be a rather cumbersome committee process at a high level of the Constabulary. We had no information about what was said during these committee meetings because no minutes of the meetings were disclosed by the Respondent. In this context, we had no evidence, or frankly even any suggestion by any of the Respondent's witnesses, that the Claimant's position and her need for certainty was ever raised as an issue to be considered when determining the funding of her role in METCO.

24) Matters appear to have come to a head when, during April 2023, the Claimant discovered that a decision had been made to end the funding for the METCO role. We heard detailed evidence in respect of these events but we were not pointed to any evidence as to when the decision was actually made. At [207], an email on 9th May 2023 from Sergeant Travis to Shannon Parker in HR says that she (Sergeant Travis) had spoken to Sergeant Dickens about "the fallout of the situation" after he (Sergeant Dickens) had broken the news to the Claimant before she was able to speak with the Claimant face to face about the fact that the funding for METCO was being withdrawn. This is inconsistent with paragraph 34 of the Claimant's statement, where she says that she was called by Sergeant Travis after her annual leave in March and told that a decision from higher up had been made to move her back to response and asked if she could attend the station that week to discuss her moving back to response. In his statement at paragraph 9, Sergeant Dickens says that he informed the Claimant that the funding was being withdrawn but it is unclear whether the Claimant is said to have known this already by that stage, although he says that he knew that two other posts (CIT and OP Façade) had been offered to her by then (as per Sergeant Travis' email of 9th May [207]). There had also been an email from Chief Inspector Lee Skelton on 14th April [204] asking Sergeant Travis to link in with Shannon Parker about the Claimant's return from CCPT to TPA and, at paragraph 5 of Sergeant Travis' statement, she says that she was asked to discuss with the Claimant the fact that her current role is coming to an end.

25) Standing back, we found it extremely difficult to discern who told the Claimant for the first time that the funding for the METCO role was being discontinued and the oral evidence did not clarify matters. However, we did note that the Claimant's witness statement, at paragraph 34, says that she was called by Sergeant Travis to tell her that a decision had been made to move her back to response; this was not, as far as we could recall, challenged in cross-examination. On the basis of this evidence, the best we feel we can do is to find that there was a very unclear picture as to what the message was, how it was conveyed to the Claimant and by whom but that, on balance, she was told for the first time by Sergeant Travis, who said she was going to be moved back to response as a result of the withdrawal of the METCO funding. We are fortified in this finding by the email from Janine Hazelhurst in OH on 11th May 2023 to Sergeant Travis [218-9] which says the Claimant had been settled but that the

conversation indicating that she is required to return to response has reactivated her trauma symptoms. This email also says that the Claimant is not medically fit from a psychological perspective to return to a response role or CIT (criminal investigation team), where she would be required to interview members of the public. It is not in dispute that the Claimant was extremely distressed upon receiving the news about the ending of her METCO role.

26) As a consequence of the likely change to the Claimant's position, a meeting was arranged via video call on 16th May 2023 between the Claimant, Shannon Parker (from HR) and Sergeant Dickens. The Claimant says at paragraphs 40 and 41 of her statement that the express purpose of the meeting was to provide clarity on the potential way forward but that it was concluded with no certain outcome other than that the METCO role was ending at an unspecified time. There was little disagreement about what was said at this meeting but we note that, at paragraph 11 of her statement, Miss Parker says that she reassured the Claimant that she would not just be put straight out onto patrol without Cumbria Police understanding what specific restrictions she was facing and that OH would be asked to comment. At this stage, the most recent OH report available was from September 2022 and we know that Miss Parker made an OH referral which gave rise to the report dated 1st June 2023 [544] following an assessment on 25th May.

27) In the OH report of 1st June, it is repeated that the Claimant believed she was going to be sent back to response and that this had caused a further traumatic response. The clear conclusion of this report is that the Claimant should remain in the METCO role and, if that is not possible, she is not fit to return to response. Additionally in this report, it is said that the Claimant's mental health condition is likely to be protected by the 2010 Act. It also says that, whilst it is impossible to say whether the restrictions will be permanent in the future, they should be considered permanent at the current time. On 26th May, Detective Chief Inspector James Yallop sent an email [233] to various people, including Miss Parker, expressing concerns about the Claimant's mental health and saying that she should remain in her current role for the foreseeable future if not permanently.

28) On 6th June 2023, a case conference took place by video which was attended by the Claimant, Sergeant Dickens, Shannon Parker, Jannie Hazelhurst (from

OH) and the Claimant's Police Federation representative. There are various accounts of this meeting and we considered the Claimant's witness statement at paragraph 45, Sergeant Dicken's statement at paragraph 11 and Miss Parker's statement at paragraphs 14 to 19; and there are also two summaries in the bundle, one produced by the Respondent [236-237] and one from the Claimant [239-240], accompanied by Sgt Dicken's comments thereon.

29) Paragraph 45 of the Claimant's statement says as follows:

> *On 6 June 2023 a case conference was held. When I initially lodged my claim, I was unsure of the exact date of this case conference and recalled it as being around April or May, and did not have access to any documents because I had left the Force. On reviewing the Force's documents, I now understand this meeting was now held on 6 June 2023 and this is the meeting I refer to in the list of issues paragraph 17(3). This meeting was arranged with Sgt Dickens, my line manager, HR – Shannon Parker, Janine Hazlehurst OH, Maja Labram – Federation rep (as per the grounds of complaint paragraph 28). The purpose of the meeting was to find a way forward with another role, and if there was any further clarification on the METCO role being made permanent [pg.239-240]. I would like to outline the main points of this meeting [pg.232-240, 242-243, 249, 255].*
>
> *(a) Shannon began the meeting, was abrupt the whole way through with no empathy to what the decision had done to my mental health. I became very upset very soon into the meeting as I just couldn't hold back how I was feeling and the build up and anxiety before the meeting. From the very beginning of the meeting it felt the environment was hostile.*
>
> *(b) Shannon was persistent that the METCO role was ending, without giving a time frame as to when which was also extremely stressful. After the phone call was sprung on me, I felt like I was waiting to be told the role was ending next week for example but there was no time frame given.*

(c) I felt Shannon was not understanding the impact on me, was not taking into account that I would not cope in a response role regardless of what everyone else was saying in the meeting, with everyone's view that I should not go back to a response role.

(d) The following roles were discussed, these were suggested by Shannon.

(i) CCTV officer. This was not appropriate as it was 'live tv' and I could have been exposed any incident without notice. This was also – HQ based 1hr15 min motorway drive. At the I was not driving on motorways at the and was still having nightmare about dead bodies.

(ii) Case progression officer – temporary role, Criminal Justise Unit temporary role and had no stability. This would not alleviate the stress. I could have been given any case, including drink drivers or RTC.

(iii) Mental health PC (uniformed role) – again this a temporary role and not appropriate as I would be attending people in crisis with a mental health practitioner,

(iv) DFU (digital forensic unit) – based at HQ again this would be a motorway drive (as above). This could have been analysing dead bodies in particular.

(v) MASH role – details unknown, provided later and required training to be a detective (see below).

(vi) I did ask for further details of the MASH role Sgt Dickens and I had already discussed what could be a potential role I could do so that we could make suggestions, such as safeguarding and intelligence department. These options were negated with the reason that I am only seconded from response, and I form part of their numbers so that is where I need to be. I was desperate to

engage with the Force and work with them to find another suitable role so to avoid having to being put back in response.

(vii) Sgt Dickens tried to reason any other option than response for me. Sgt Dickens could see how upset I was, I was crying, in panic and struggling to get my breath and speak through the meeting.

(viii) Sgt Dickens attempted to end the meeting as I was becoming hysterical.

(ix) The meeting ended with there were no other available permanent roles suitable for me other than response.

Even though these roles were discussed I was told that I would have to apply for them as an adjusted officer (even though I was never formally placed as an adjusted officer).

(e) Shannon also stated in this meeting that the role was only for 6 months and indicated I was 'lucky' I had a longer period than I should have originally had. I did say that there was no time frame on the description of the role. Shannon then stated that if the role was to be made permanent now, I would need to re-apply anyway as I had been in a temporary position for longer than 6 months. I could not believe that comment after everyone in the meeting again, agreed I would not cope with response and 'looking at other possible roles' to then come out with but if the one I was doing was made permanent I would need to apply again.

I found this whole meeting to be completely intimidating and hostile. I knew I had no option than to leave. I live on my own, have a mortgage, my life was set up around the stable salary I have had for 8 years. I came away from the meeting feeling I did not matter to the Force; I was just a number to add back to response regardless of what affect it will have on my health. My only option I thought I had was to leave, I started to believe maybe that is what they wanted, how could anyone be so cruel to watch and know someone was going through what I was, and

to then continue that after the meeting was so hurtful after everything I had put into my job even when I was struggling.

30) At paragraph 11 of his statement, Sergeant Dickens says:

On 06 June 2023, a follow up case conference was held. This was after Megan had been through an Occupational Health Assessment and the conference was attended by an Occupational Health Advisor. The focus of this conference was to support Megan and discuss how her redeployment should be managed in light of up-to-date medical advice. The meeting on 16 May 2023, and the case conference, were held over Microsoft Teams (video conferencing software). I felt that this made the meetings feel less personal but was done at Megan's request. Megan was clearly upset by both the meeting and the conference. It is my understanding that Megan was upset because of the outcome of the meeting and the way the message was delivered.

31) Paragraphs 16 to 19 of Shannon Parker's statement say as follows:

14 On the 6 June 2023, an informal case conference was held and attended by me, Megan, her Federation Representative, Occupational Health and Jamie (pages 236-237). We discussed that Megan would now be classed as an adjusted duties officer. I was aware that Megan was struggling with the prospect of her potential return to response, which was her permanent role. I had reassured Megan that she would not be put back out into her full response role due to her policing restrictions confirmed by Occupational Health.

15 I informed Megan that there were potentially other roles throughout the organisation which may be suitable for her, and that we first needed to explore vacancies. I made Megan aware that we intended to redeploy her into a suitable post in accordance with the Limited Duties Policy. The purpose of the meeting was to have a meaningful conversation with Megan about health restrictions and skills. Megan made it clear that she did not want to go into compliance or detective roles. It is important to

note that when exploring potential alternative postings, we first consider what is medically suitable over personal preferences. If a suitable post is found that an individual has expressed they are not interested in, we may still offer the role if it meets medical restrictions.

16 I clarified that there was no guarantee that the METCO role would become permanent, so advised that Megan consider all other potentially suitable roles; however, I did let Megan know that should the METCO role be made permanent during the redeployment process she would be given priority consideration for it. Following this meeting, I contacted Megan's line manager regarding her welfare.

17 Crime Command had a business case that it was putting together to make the METCO PC a permanent role; however, when we were going through the redeployment process with Megan, we were not able to establish a time frame for when this would be or the likelihood that the growth would be approved. I explained to Megan and management within the meeting that the risk of waiting for this decision before exploring redeployment is that Megan could miss out on suitable posting opportunities so it was important to start the process as soon as possible.

18 The purpose of the case conference was to talk through with a medical professional, what we could do to support Megan as an adjusted officer and establish what kind of roles would be suitable. Megan explained she had been re-triggered due to the decision to remove the funding from the METCO role. I explained that this was a business decision. Megan had said the prospect of reviewing her fitness for the Response, Custody Investigation Team PC and Community Beat Officer role had an impact on her mental health and Occupational Health confirmed that Megan was not fit to perform any of those roles. Janine also confirmed Megan was not fit to be deployed to incidents or any response type roles including conducting investigations or interviews.

19 Megan could perform non-uniform roles and, as part of the METCO

role, was working with external stakeholders, representing Cumbria Police at partner meetings and local care homes. On this basis, I considered roles to do with knowledge, risk management, and exploitation to a lesser degree as potentially suitable for Megan. A copy of the matrix can be found at pages 284-287 of the bundle.

32) In light of the above, it does seem fair to say that there is a measure of disagreement about certain aspects of this meeting, both in terms of content and tone. We considered that it was not possible for us to make any cogent findings in respect of the tone of the meeting as we found various words used such as “abrupt”, “persistent” and “lacking empathy” to be entirely subjective notions which are invariably formed by an individual based largely on an emotional response in the moment which can rarely be explored in any useful way in order to give rise to a clear factual position.

33) However, what we did note was largely agreed was that the Claimant was crying uncontrollably from very soon into the meeting and that the meeting continued nonetheless; Miss Parker said in cross-examination that she recognised with hindsight that she probably should have stopped the meeting sooner but then qualified that by saying that she did not know what difference that would have made as, although it was a difficult meeting for the Claimant, it was “useful for all parties”. Sergeant Dickens agreed in oral evidence that the Claimant was very upset throughout the meeting but stopped short in cross-examination of agreeing that Miss Parker had been abrupt or hostile; however, at paragraph 11 of his statement, he says that it is his understanding that the Claimant was upset because of the outcome of the meeting *and the way the message was delivered*. We were quite struck by the lack of intervention by any of the Claimant’s Police Federation representative, a member of OH and Sergeant Dickens (who said in cross-examination that he would have intervened more if he thought it was necessary); this suggested to us that, although it was a meeting of high emotion because of the subject matter being discussed, those present other than the Claimant considered that it should continue. Whether this was beneficial to the Claimant is doubtful as she ultimately disconnected herself from the meeting before it had ended.

34) The Claimant asserts that Miss Parker said during the meeting that she was

"lucky" that the METCO role had been available to her as long as it had been. Miss Parker, in cross-examination, told us that it was very unlikely that she would have said that and Sergeant Dickens said that he did not recall the word being used but did recall a conversation about the METCO role. On balance, given the Claimant's consistent assertion that the word was used, we find that the word "lucky" probably was used by Miss Parker but we are unable to go on to say that this was necessarily said in a way that conveyed any specific meaning and was probably, in reality, a bad choice of words on Miss Parker's part when discussing a delicate situation known to everyone involved.

35) It was common ground that a number of alternative roles were discussed during the meeting but that they were all considered (either by the Claimant or by HR) to be unsuitable for reasons either of geography, their temporary nature or the risk of triggering the Claimant's PTSD symptoms. One other option discussed was the MASH (multi-agency safeguarding hub) role but, after some back-and-forth, that was considered unsuitable because, although the role itself may have been suitable, the required training involved elements that would not be appropriate for the Claimant to undergo given her mental health issues.

36) There appears to have been no cogent communication between Miss Parker and the Claimant regarding next steps between 9th June and 12th July 2023. On 13th July, Miss Parker said in an email to the Claimant [253-4] that she had been told that the Claimant has been offered a job at BAE Systems and asked if she is still interested in the MASH role. In response, the Claimant confirmed that she had been offered the BAE role and said that this is sad but she feels that she had been pushed into it and had not even thought about leaving but could not carry on with the uncertainty; she asked to remain in METCO until eventually leaving the Force. There is no evidence of any response to this from Miss Parker. On 10th August 2023 at [266], we have the Claimant's resignation letter to Sergeant Dickens, which was then forwarded by him to, amongst others, Detective Superintendent Sally Blaiklock, Gemma Hannah and Shannon Parker.

37) It was suggested throughout the Respondent's case, and by each of their witnesses, that the Claimant was offered the METCO role after funding was agreed to make it permanent on 11th August 2023, the day after she resigned. None of the Respondent's witnesses could point us to any evidence of how they

knew this or who had made the offer to the Claimant, with each saying, in effect, that they had been told this by someone else. The Claimant, by contrast, was clear and adamant that she knew nothing about the position being made permanent until she saw the disclosure within these proceedings and that she was certainly not offered the role at the time. Given this evidence, we found on the balance of probabilities that the role was not offered to the Claimant at any stage.

38) One underlying theme during the hearing was the categorisation of the Claimant as being either subject to recuperative or adjusted duties. The Respondent's policy [681] will not be set out here but we did consider it carefully. What was clear on the Respondent's own evidence was that, once an officer has been on recuperative duties for 6 months (excluding any sickness absence), they should be reviewed with consideration being given to re-categorising them as being on adjusted duties. The evidence was also clear that this policy was not followed by the Respondent in the Claimant's case for a significant period of time in that there was no such review at the 6-month stage and the Claimant was still classed as recuperative by June 2022. It remains unclear as to when the Claimant was actually re-categorised to adjusted duties. Miss Parker and Inspector Hadwin effectively agreed in cross-examination (and seemed to us to have little choice but do so) that they did not know the reason for this failure and seemed to accept that there was a clear breach of their own policy.

39) In this context, however, we had no cogent evidence as to what difference it would have made to the information being sought from OH or HR by the Claimant's line managers or to the advice then provided to them in respect of the Claimant's disability given that the OH reports to which we have referred do all appear to have considered what steps should be taken in respect of the Claimant's symptoms. In other words, we find that, although there was a clear breach of the Respondent's own policy on adjusted duties, we are unable to find that it had any impact on the reality of the Claimant's situation on the specific facts of the case.

The Applicable Law and the List of Issues

40) The law to be applied by the Tribunal in this case was not controversial and was reflected in the agreed final list of issues at [714-7] as well as by both counsel in their written and oral submissions. The relevant parts of the Equality Act 2010

which applied in this matter are set out below. There is, of course, a large body of binding authority that informs a proper understanding of how these provisions are to be applied in any given case but, given that there was no controversy between the parties in this respect, it is not proposed to set out those authorities here; nonetheless, we were confident that the list of issues set out below was an appropriate route to the correct application of these principles.

Indirect Discrimination

41) Section 19 of the 2010 Act says as follows:

> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
>
> > *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
> >
> > *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
> >
> > *(c) it puts, or would put, B at that disadvantage, and*
> >
> > *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

42) One of the protected characteristics is, of course, disability, which is relied upon by the Claimant in this case. It was admitted by the Respondent that the Claimant was, at all relevant times, disabled within the meaning of Section 6 of the 2010 Act as a result of her diagnosis of complex PTSD. However, the Respondent initially denied having the requisite knowledge for the purposes of the claim.

43) In respect of the term "provision, criterion or practice" (commonly abbreviated to PCP), those words are to be given their usual meaning in everyday language. We were conscious of the principles set out by the Court of Appeal in *Ishola v Transport for London [2020] EWCA Civ 112* in respect of establishing a PCP but, as will be seen below, given that the existence of the relevant PCPs in this case was agreed between the parties, we did not consider it necessary to analyse this further.

Failure to Make Reasonable Adjustments

44) Section 20 of the 2010 Act provides (to the extent that is relevant here) that:

> *(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…*

45) Section 21 provides that:

> *(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
>
> *(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

Harassment

46) Section 26 of the 2010 Act 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.

Constructive Discriminatory Dismissal

47) We asked the parties, at the conclusion of the hearing, to clarify their understanding of the law in respect of constructive discriminatory dismissal as it seemed, in our view, that the list of issues did not reflect the position entirely accurately given that the Claimant, as a serving police officer, did not have a contract of employment. Very helpfully, a succinct document was provided after we had reserved our decision which was agreed between both counsel and was said to reflect their understanding of the law as it applied to the Claimant's claim. We were satisfied that this was an accurate statement of the law as we understood it to apply. Paragraphs 6 to 10 of that joint summary of the law say as follows:

6. It is therefore agreed that the test under the Equality Act 2010 is not a contractual one. Accordingly, there is no requirement for the tribunal to consider the implication (or otherwise) of a term relating

to trust and confidence.

7. Although there is no authority strictly on the point, one case indicates the approach. In Wytrzyszczewski v British Airways Plc [2023] EAT 7 the EAT noted at [10] that:

> *Section 39(7)(b) EqA confirms that a discriminatory dismissal contrary to section 39(2)(c) includes a constructive dismissal, by using wording similar to that found in section 95(1)(c) ERA: dismissal "includes a reference to the termination of B's employment … by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice ". This is sometimes called a "constructive discriminatory dismissal" although, again, this expression is not found in the statute. It forms a separate and distinct cause of action to that provided for by section 103A ERA. In a case of this sort, an ET will usually need to decide (among other matters) whether the employer subjected the employee to prohibited discrimination, whether that treatment repudiated the contract of employment (often expressed as a fundamental breach of the implied term of mutual trust and confidence), and whether the employee resigned in consequence of it*

8. Although the reference there is to the contract of employment, that claim also involved an unfair dismissal complaint. That said, the test is clearly "whether the employer subjected the employee to prohibited discrimination, whether that treatment repudiated…" the employment.

9. The question is therefore when conduct is repudiatory. R submits that, although the implied term of trust and confidence is not relevant, to be repudiatory, an employer's conduct must be of equivalent seriousness (destroy or seriously damage the

relationship), hence reference by the EAT to "often expressed as" trust and confidence. Equally, the requirements of affirmation and reason for resignation must also still apply.

10. Finally, in many cases it will be necessary to first identify a dismissal, then ask whether the discrimination had a material influence on the overall repudiatory conduct. In the present case, the only conduct relied upon is discrimination. It will follow that, if the discrimination (if any) was repudiatory, the dismissal will be discriminatory.

48) The list of issues which we used to guide us to our various decisions is, as noted above, reproduced in the attached annex.

49) Although time limits were set out at the start of the list of issues as paragraphs 2 and 3, it was, in our view, appropriate to defer consideration of those issues to the end of the consideration process given that there would normally be no need to consider time limit issues in any detail in respect of any particular aspect of the claim if we have already made findings on the merits such that it would fail in any event.

50) As noted above, the fact of disability for the purposes of Section 6 of the 2010 Act was, quite sensibly, conceded by the Respondent so we did not consider it in any detail save as to ensure that we kept in mind throughout our consideration of the case the particular symptoms which the Claimant described in her written and oral evidence. We noted that, although the Claimant's diagnosis of complex PTSD was not challenged, the parties appear to have used the terms complex PTSD and PTSD interchangeably; whilst this is technically not correct (as they are two distinct conditions, albeit ones whose symptoms do often overlap to a large extent), we did not consider it relevant to our decision-making to resolve this issue.

51) We structured our deliberations and decision-making in accordance with the list of issues and came to the findings set out below.

Findings on the List of Issues

Indirect Discrimination

52) The existence at the relevant time of both the PCPs set out at paragraph 5 of the list of issues was admitted as follows:

(1) A practice of moving officers to any role including frontline policing roles; and / or

(2) A requirement to undertake the full duties of a response officer including, but not limited to, attending scenes of death and / or road traffic collisions.

It was also agreed, in accordance with paragraph 6 of the list, that the Respondent applied both PCPs to persons with whom the Claimant did not share her disability.

53) Moving to paragraph 7, we considered group disadvantage and reminded ourselves that the Claimant has the burden of proving this assertion. It was emphasised on behalf of the Respondent that no evidence was adduced on behalf of the Claimant to the effect that a police officer with complex PTSD is put to a particular disadvantage by the PCPs. Mr Stephenson, on behalf of the Claimant, invited us to take judicial notice of what he argued is a self-evident truth that, as per paragraph 49(a) of his written submissions, "officers with PTSD caused by a fatal RTC [road traffic collision] are likely to find it more difficult to fulfil their full duties as a Response Officer than a non-disabled officer". We were conscious that Mr Stephenson referred to officers with PTSD *caused by a fatal road traffic collision* but that the list of issues refers only to officers with PTSD, with no cause identified. Given that the list of issues had been agreed between the parties and, in any event, identified, in our view, the appropriate group for comparison because the *cause* of the PTSD was not intrinsic to the nature of the disability itself, we considered it appropriate to disregard the reference to the clinical origins of the PTSD when deciding if group disadvantage is satisfied.

54) Taking this approach, we therefore asked ourselves if we could or should take judicial notice of group disadvantage as invited to do so on behalf of the Claimant. We reminded ourselves of the principles set out by the Court of Appeal in *Eweida v British Airways Plc [2010] EWCA Civ 80* and by the Employment Appeal Tribunal in *Pendleton v Derbyshire County Council &*

Anor UKEAT/0238/15/LA and found that it was not possible to find on the balance of probabilities, without any direct evidence, that the Respondent should have been aware that the application of the agreed PCPs may have a particular adverse impact on any officer with complex PTSD given that such a condition can, as we understood it, manifest itself in many different ways.

55) Having found that the Claimant has failed to establish group disadvantage on the evidence before us, we considered it unnecessary to proceed to determine the questions at paragraphs 8, 9 and 10 of the list of issues as the claim for indirect discrimination fails in any event.

Failure to Make Reasonable Adjustments

56) At paragraphs 61 to 63 of his skeleton argument, Mr Wood set out why he concedes on behalf of the Respondent that, from June 2021, they can reasonably be taken to have been aware of both the fact of the Claimant's disability and of the disadvantage caused by the agreed PCPs. This was, in our view, a sensible and appropriate concession given the evidence before us and we noted that it was therefore agreed that the questions posed by paragraphs 11 and 12 of the list of issues (namely knowledge of the Claimant's disability and the application of the PCPs to her) should be resolved in the Claimant's favour.

57) Turning to question 13 (whether the Claimant was put at a substantial disadvantage by the PCPs compared to someone without her disability), we considered that the lengthy history set out above in respect of the Claimant's various OH referrals, and the resulting reports, provided ample evidence that she was at substantial risk of her PTSD symptoms being triggered if required to attend the scene of a traumatic road traffic incident and that she was caused significant anxiety by uncertainty as to whether she would, at some stage, be expected to return to a response role. Given that body of evidence, we found that the agreed PCPs did put the Claimant to a substantial disadvantage.

58) We considered questions 14 and 15 together when deciding what steps the Respondent could have taken to mitigate or remove that disadvantage and whether or not they could reasonably be expected to have taken such steps. We reminded ourselves of the factors to consider when asking if a possible adjustment is reasonable as set out at paragraph 6.28 of the Equality and

Human Rights Commission (EHRC) Employment Statutory Code of Practice, which says:

> *The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:*
> *• whether taking any particular steps would be effective in preventing the substantial disadvantage;*
> *• the practicability of the step;*
> *• the financial and other costs of making the adjustment and the extent of any disruption caused;*
> *• the extent of the employer's financial or other resources;*
> *• the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and*
> *• the type and size of the employer.*

59) In respect of the first PCP (the practice of moving officers to any role including frontline policing roles), it was argued on behalf of the Claimant (at paragraph 41 of Mr Stephenson's closing submissions and in accordance with the list of issues) that the following would have been reasonable adjustments:
    a. Making the Claimant an adjusted officer from 10th November 2020;
    b. Placing the Claimant away from the response office environment;
    c. Placing the Claimant in a suitable role, including being in a role where the week / day is planned and structured and / or working from home and / or a station near to her home address;
    d. Placing the Claimant in a suitable permanent position in which she was not in constant fear of being moved;
    e. Retaining the Claimant in the METCO role on a permanent and / or temporary basis until a suitable role was found; and
    f. The list of issues also included a suggested adjustment not highlighted specifically by Mr Stephenson in his written submissions, namely that of placing the Claimant in the response team, but not to attend deaths or road traffic collisions.

60) Taking each of these suggested adjustments in the same order, we reached

the following conclusions:

a. As set out at paragraphs 38 and 39, we were provided with no cogent evidence that there would have been any difference to the reality of the Claimant's situation (and the steps that were taken by the Respondent in respect of her disability) whether she had been categorised as being on recuperative or adjusted duties at any given point. In reaching this view, we considered section 6 (it would appear incorrectly numbered as section 4 in this document) of the Respondent's *Management of Limited duties for Police Officers Policy & Procedure* [689-692] and noted that, whilst it did differentiate between the nature of adjusted and recuperative duties, it gave no real guidance as to what the practical consequences may be of that differentiation in any given situation. As such, whilst we found that the Respondent had clearly failed to follow its own policy on this issue in respect of the requirement of an annual assessment whilst on adjusted duties, we could not find that following the policy correctly would have made any real difference in preventing the Claimant's disadvantage. We therefore did not find this suggested adjustment to have been reasonable;

b. At paragraph 75 of his skeleton argument, Mr Wood asserted that placing the Claimant away from the response environment would not assist in reducing her exposure to carrying out the full duties of a response officer, which is the relevant PCP. We agreed with this submission: simply not being in physical proximity to the sounds and environment of the response setting may, we accept, provide a less stressful location for the Claimant to work but it would not, in itself, have had any direct impact on the role she was actually carrying out. We therefore did not find this suggested adjustment to have been reasonable;

c. We agreed that, in theory, placing the Claimant in a permanent role which provided a certain level of predictability for her would likely have reduced her levels of anxiety and, therefore, reduce the risk of her PTSD symptoms being triggered. However, we considered very carefully the reality and the practicability of finding such a role within the Respondent's organisation which would have been suitable for the Claimant and reminded ourselves that we had to base any such

assessment on the evidence before us; in this respect, we noted that the Claimant had, at various stages, expressed clear preferences in the context of her disability such as not involving "fast response" or a response environment [173; 224], not dealing directly with members of the public and interviewing them in a criminal investigation role in such a way that may trigger her symptoms [218-9] and doing more "indirect" work [224]. Whilst it is of course not for an employee to dictate to their employer which adjustments are to be made, we did have sympathy with what we found to be genuine attempts on the Respondent's part to balance the Claimant's expressed desire to continue working in response with the disadvantages arising from her disability. We also noted that, ultimately, the Respondent can only be required to place the Claimant in a suitable and available alternative role and we accepted the Respondent's argument that, in all the circumstances prior to her move to METCO, there was no appropriate alternative role available for the Claimant. When she did move to METCO, this appears to have resolved most of the Claimant's concerns save for her need for permanence, which, again, we found that the Respondent could not provide unless and until permanent funding for that role became available. We therefore did not find this suggested adjustment to have been reasonable;

d. As noted above in respect of suggested adjustment (c), we accepted that there were, on the evidence, no viable alternative permanent roles available to which the Claimant could have been moved. We therefore did not find this suggested adjustment to have been reasonable;

e. The METCO role was clearly successful in mitigating the Claimant's concerns about being placed in a response role and, as such, we found it to be a reasonable adjustment in all the circumstances. However, the role did not receive permanent funding until the day after the Claimant's resignation so we accepted that it could only be offered to her on an ongoing temporary basis, which is what did in fact happen; it would not be reasonable, in our view, to expect the Respondent to do anything more than that unless and until permanent funding for the role was made available.

Nonetheless, as set out at paragraphs 36 and 37 above, the role officially received permanent funding on or about 11th August 2023, which was the very next day after the Claimant's resignation, and she was never offered the role during her notice period, which was 4 weeks. Whilst we did not find (and are not suggesting) that it was for the Respondent to seek to convince the Claimant to retract her resignation, where those involved were acutely aware of the Claimant's desire to remain in the METCO role, and there was an apparent universal acceptance that placing her in this role on a permanent basis would alleviate her disadvantage significantly, we found it to be unreasonable that the Respondent did not seek to offer her this role once it became available and she was still working for them. As such, we find that the Respondent failed to make this reasonable adjustment from the 11th August 2023 until the Claimant's effective date of termination, which was 11th September 2023;

f. The fact that the Respondent initially attempted to facilitate the Claimant's remaining on front-line duties without having the worry of being sent to deal with a traumatic scene is not, in itself conclusive evidence that this was a reasonable adjustment. However, given the Claimant's disadvantages and what we found was the delicate balance needed to find a role for her which alleviated those disadvantages but also recognised her desire to remain in response in one form or another, we found that keeping the Claimant in a front-line role but ensuring that she was not, in effect, first response to a potentially traumatic road traffic collision satisfied the requirements of the EHRC Code of Practice highlighted at paragraph 58 above. The fact that this was indeed what was done between October 2020 and June 2021 established, in our view, the practicability of such an adjustment; it also shows that the Respondent did indeed make this reasonable adjustment for the vast majority of the relevant period.

However, as set out at paragraph 18 above, the Claimant was sent to Kendal on 26th May 2021 and the Respondent failed to ensure that she was not sent to a traumatic scene where she was asked to escort a body to the mortuary. There was clearly a failure to implement the adjustment at this juncture. After this incident, the Claimant appears to have been removed from this role and subsequently moved to the

METCO role. For these reasons, we found that there was a failure to make a reasonable adjustment from 26th May 2021 until the Claimant commenced in the METCO role on 28th June 2021.

61) In respect of the second PCP (the requirement to undertake the full duties of a response officer including, but not limited to, attending scenes of death and / or road traffic collisions), it was argued on behalf of the Claimant that there were three reasonable adjustments that could have been made, two of which also applied to the first PCP:

a. Placing the Claimant in a suitable role, including being in a role where the week / day is planned and structured and / or working from home and / or a station near to her home address;
b. Not placing the Claimant in the response team, including not requiring her to attend deaths or road traffic collisions; and
c. Placing the Claimant in a suitable permanent position in which she was not in constant fear of being moved.

62) Having carried out the same analysis as we did in respect of the first PCP for these suggestions in respect of the second PCP, we did not consider suggested adjustments (a) and (c) to be reasonable for the same reasons as set out at paragraph 60 (c) and (d) above in relation to the first PCP. Having reflected on suggested adjustment (b), we found that this was, in practical terms, no more than a rephrasing of suggested adjustment (c) in that it is simply a suggestion that the Claimant should be moved to another role and adds nothing to what is already covered by suggested adjustment (a).

63) In summary, we therefore found that there had been two failures on the part of the Respondent to make reasonable adjustments:

a. Failing to place the Claimant in the response team, but not to attend deaths or road traffic collisions (between 26th May to 28th June 2021); and
b. Failing to offer the Claimant the METCO role *once was it was made permanent* (between 11th August and 11th September 2023).

Harassment

64) We considered each of the factual allegations of harassment relating to

disability as set out at paragraph 17 of the list of issues (repeated at paragraph 48 above) and then considered the questions posed at paragraphs 18 to 21 of the list as required.

65) In respect of the allegation at 17(1) (Inspector Hadwin telling the Claimant in or around May 2021 that her mental health issues were not her sergeant's problem), we found at paragraphs 16 and 17 above that Inspector Hadwin probably did say something to this effect but that it was not meant in a dismissive way and was, rather, a badly-phrased way of saying to the Claimant that her sergeant does not need to know the details of her mental health struggles. As such, whilst we understand entirely why it could be seen as unwanted conduct by the Claimant (and find that it probably was), and that it did relate to the Claimant's disability, we did not find that it had the purpose of violating her dignity or creating a hostile, degrading, humiliating or offensive environment for her. We then went on to consider if the comment had this effect and, given our finding in relation to how and in what context the words were used, we did not consider that, in all the circumstances, it was objectively reasonable for the conduct to have that effect, even keeping in mind the obvious sensitivity of the issue for the Claimant. In reaching this decision, we reminded ourselves of the guidance at paragraph 22 of the Employment Appeal Tribunal's decision in *Richmond Pharmacology v Dhaliwal [2009] ICR 724* (which dealt with the same issue in the context of harassment on the grounds of race):

> *"…not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. 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 cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."*

66) In respect of the allegation at 17(2) (the decision in April 2023 to move the

Claimant back to the response team and the message being delivered in an inappropriate manner), our factual findings are set out at paragraphs 24 and 25 above. We found the first half of this allegation (that the decision was taken to move the Claimant back to response) difficult to reconcile with the evidence as we heard very little about what was actually decided; as such, we were unable to make a positive finding that a decision had been made to move the Claimant back to response, it only being clear to us that the funding for the METCO role had been ended and that, as a consequence, it *may* have been that the Claimant would have returned to response and that this was, effectively, an assumption on her part.

67) In any event, it was clear to us that the Respondent dealt with this matter extremely poorly and that there was no clarity at all as to what the Claimant was told, when and by whom; given the sensitivity of the issue and the Respondent's knowledge of the Claimant's disability, we would have expected a reasonable employer to have considered how to deliver the news to their employee and discuss who would do it. This was clearly unwanted conduct from the Claimant's perspective and we accepted that it did relate to her disability insofar as she had only been moved to METCO in order to mitigate her disability-related disadvantage. However, despite our significant misgivings in respect of how the discussion was dealt with, we were unable to find that it was anything more than a badly-managed series of conversations which had not been co-ordinated at all and, as such, could not reasonably be seen to have had the effect of violating her dignity or creating a hostile, degrading, humiliating or offensive environment for her.

68) We found the third allegation of harassment, in respect of the manner in which the meeting on 6th June 2023 was conducted, somewhat more difficult to analyse. Our factual findings are set out at paragraphs 28 to 35 above and will not be repeated here save to say that even Miss Parker herself seemed to accept that, in retrospect, she should probably have asked the Claimant if she wanted a break given that she was crying throughout almost the whole meeting; however, Miss Parker told us, she did not think that this would have made much of a difference and that it was a meeting that needed to take place in order to discuss the various options for the Claimant moving forward. Whilst we accept that this was a meeting which did need to happen, we were struck by how little consideration there appears to have been of how to make the

meeting manageable for the Claimant and make allowances for the distress that it may cause her. This should, in our view, be a matter of regret for those who attended and conducted the meeting and we find that the failure to stop and allow the Claimant to have a break did constitute unwanted conduct in that respect.

69) The aspect of this allegation which we found difficult was whether or not the conduct related to the Claimant's disability. Whilst we considered that insufficient account was taken of her emotional state during the meeting and we noted that the meeting had been arranged in order to discuss how to move forward in the context of the known difficulties arising from her disability, we were unable to find that this was a sufficient basis upon which to accept that the unwanted conduct *related* to the Claimant's disability. We reminded ourselves that the phrase "related to" should not be given too narrow a meaning; however, where, as we found, the Claimant's disability was rather more the background to the incident than a central feature of it, we did not consider that this aspect of the test was met. In effect, although the effect on the Claimant was related to her disability, the conduct itself, in our view, was not. In reaching this decision, we kept in mind the guidance set out at paragraphs 17 to 28 of the Employment Appeal Tribunal's decision in *Carozzi v University of Hertfordshire et al [2024] EAT 169*.

70) For the sake of completeness, we went on to consider, in case we were wrong about our previous finding, whether the conduct could reasonably be seen to have had the effect of violating the Claimant's dignity or creating a hostile, degrading, humiliating or offensive environment for her; whilst we were very unimpressed with the manner in which the Respondent, and specifically Miss Parker, dealt with the matter as a whole, we came to the somewhat reluctant conclusion that this element of the test was also not established. In reaching our decision on this matter, we again reminded ourselves of the guidance in *Richmond Pharmacology*, cited at paragraph 65 above.

71) We therefore found that none of the three claims of harassment related to disability can succeed.

Constructive Discriminatory Dismissal

72) It will be seen from the discussion above that we found two elements of the claim to have merit, both in respect of a failure to make reasonable adjustments:

    a. Failing to place the Claimant in the response team, but not to attend deaths or road traffic collisions (between 26th May to 28th June 2021); and
    b. Failing to offer the Claimant the METCO role when was it was made permanent (between 11th August and 11th September 2023).

73) It was agreed between the parties (and we were satisfied that this was correct) that any claim for constructive discriminatory dismissal is effectively parasitic upon any free-standing claim for discrimination which has succeeded and we reminded ourselves of the guidance set out in the parties' agreed statement of the law, at paragraph 47 above.

74) It is of course axiomatic that, in order for there to have been a constructive discriminatory dismissal, the Claimant's resignation must have been, as explained in the *Wytrzyszczewski* judgment, "in consequence" of the discriminatory treatment. Considered in this regard, we found that the resignation on 10th August 2023 could not possibly have been in consequence of the failure to make a reasonable adjustment during the period of 26th May to 28th June 2021, which was some 2 years and 2 months previously. Equally, we found it to be self-evident that the resignation could not have been in consequence of the failure to make a reasonable adjustment during the period of 11th August to 11th September 2023 as this was *after* the Claimant resigned.

75) The claim for constructive discriminatory dismissal must, therefore, fail.

Time Limits

76) Having found the two complaints summarised at paragraph 71 above to have succeeded on their merits, we must of course consider if the Tribunal has jurisdiction in respect of each complaint in the context of time limits, the principles not being controversial between the parties and set out at paragraphs 2 and 3 of the list of issues (at paragraph 48 above). It was agreed that any act or omission prior to 9th August 2023 would, on the face of it, be outside the three-month time limit.

77) The failure to make a reasonable adjustment in respect of not offering the Claimant the METCO role covered the period 11th August to 11th September 2023 so was brought in time.

78) The failure to make a reasonable adjustment in respect of the non-attendance at deaths or road traffic collisions covered the period 26th May to 28th June 2021 so is, on the face of it, out of time by over 2 years. We found that there can be no question of conduct extending over a period such that time does not begin to run until the end of that period as we only found there to have been one other act of discrimination over 2 years later.

79) We must therefore consider whether it is just and equitable in all the circumstances to extend time, the burden of establishing this being the Claimant's. We reminded ourselves of the guidance given by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23* to the effect that we must consider all the factors in the case which we consider to be relevant to whether it is just and equitable, in particular the length of, and reasons for, the delay. As noted above, the claim was brought over 2 years outside the time limit. The only reason given for this by the Claimant in her evidence was that she was not aware of her right to bring a claim until given the relevant advice by a Police Federation representative in November 2023; we have no reason to disbelieve this as a fact but it does sit rather awkwardly with knowing that the Claimant was accompanied by a Federation representative at the meeting in June 2023 considered above. Irrespective, in our view, if a lack of knowledge of the right to bring a claim were in itself sufficient grounds to extend time, there would be an extremely low threshold whereby any claimant could simply assert such a lack of knowledge and this would potentially alter the time limit requirements fundamentally. It is, in effect, only one of several factors for us to consider.

80) We also considered the possibility that the Claimant's disability may have been a relevant factor in not bringing her claim in time; however, there was no evidence adduced in this respect and we did not consider it appropriate to make such a finding solely on the basis of an assumption.

81) On the other side of the balancing exercise, it is important to consider whether there is any evidential prejudice caused to the Respondent by the passage of

time. The one issue that did arise in this regard was the absence of clarity in respect of a number of decisions taken by HR and the reasoning behind them; during her evidence, Miss Parker candidly admitted (although she had little choice but to do so) that the failure to keep proper records was a breach of the Respondent's own policy. We therefore found that any prejudice of this nature was of their own making.

82) In light of the above, although we found no evidential prejudice to the Respondent if the time limit is extended, we were also conscious that the burden rests with the Claimant to explain why it would be just and equitable to do so and, where there had been a delay of over 2 years with, in our view, no good reason given for this lengthy delay, we were unable to find that this burden had been discharged. We therefore did not exercise our discretion to extend time in relation to this element of the claim.

Conclusion

83) For the reasons set out above, we found that only one element of the Claimant's claim is well-founded and succeeds, namely the Respondent's failure to make a reasonable adjustment by offering the Claimant the METCO role once permanent funding had been made available; this failure persisted for the period 11th August to 11th September 2023.

Further Directions

6) The parties are encouraged to attempt to resolve questions of remedy between themselves by agreement. By 28 days after the parties receive this judgment, the Claimant's solicitors must write to the Tribunal, for the attention of Employment Judge Cline, either:
    a. With suggested directions for the listing of a remedy hearing, preferably agreed with the Respondent but, if not, a brief explanation as to the areas of disagreement; or
    b. To confirm that the matter has been resolved.

Employment Judge Cline

Date 8th July 2025

JUDGMENT SENT TO THE PARTIES ON

5 August 2025

S Harlow

FOR THE TRIBUNAL OFFICE

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ANNEX

AGREED LIST OF ISSUES (AS RELEVANT)

Introduction

1. The claimant has presented the following complaints:

(1) Indirect disability discrimination, s.19 Equality Act 2010;

(2) Failure to make reasonable adjustments, ss.20-21 Equality Act 2010;

(3) Harassment related to disability, s.26 Equality Act 2010;

(4) Constructive discriminatory dismissal on the basis that the above acts of discrimination amounted to repudiatory breaches of contract by the Respondent and contrary to s.39(2)(C) and (7)(b) of the EqA 2010;

The issues are as follows.

Numbers in square brackets are references to paragraphs within the grounds of complaint [GC] or grounds of resistance [GR].

Time limits

2. Given the date the claim form was presented (19.01.2024) and the dates of early conciliation (08.11.2023 to 20.12.2023), any complaint about any act or omission that took place before 09.08.2023 is potentially out of time, so that the tribunal may not have jurisdiction.

3. Were the discrimination and/or harassment complaints made within the time limit in s.123 Equality Act 2010? The tribunal will decide:

(1) Was the claim made to the tribunal within three

months (plus early conciliation extension) of the act or omission to which the complaint relates?;

(2) If not, was there conduct extending over a period?;

(3) If so, was the claim made to the tribunal within three months (plus early conciliation extension) of the end of that period?;

(4) If not, were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide:

(a) Why were the complaints not made to the tribunal in time?;

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

Liability

Equality Act 2010

Disability

4. At all material times, the claimant was disabled by reason of complex PTSD.

Discrimination

Indirect discrimination

5. A "PCP" is a provision, criterion, or practice. It is agreed that the respondent had the following PCPs [GC.53 / GR.43]:

(1) A practice of moving officers to any role including frontline policing roles; and/or

(2) A requirement to undertake the full duties of a Response Officer including but not limited to attending scenes of death and/or RTCs.

6. It is agreed that the respondent applied the PCP to persons with whom the claimant does not share her disability [GR.43].

7. Did the PCP put, or would it put, persons with the claimant's disability at a particular disadvantage when compared with persons without the claimant's disability? The tribunal will have regard to [GC.54]:

(1) Those persons are more likely to not be able to carry out the full duties of an officer and/or a Response role because they are unlikely to be able to attend/be exposed to traumatic incidents/scenes; and/or

(2) Those persons require certainty as to what work/incidents they will be exposed to.

8. Did the PCP put the claimant at that disadvantage?

9. Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were [GR.44]:

(1) A requirement to cover all outstanding police force roles, which are essential for the job;

(2) To enable the effective accomplishment of the various functions of the police force;

(3) To ensure that the respondent has complied with its obligations to the public;

(4) A requirement to run and provide an efficient and effective service.

10. The tribunal will decide in particular:

(1) Was the PCP an appropriate and reasonably necessary way to achieve those aims?;

(2) Could something less discriminatory have been done instead?;

(3) How should the needs of the claimant and the respondent be balanced?

Failure to make reasonable adjustments

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

12. It is agreed that the respondent had the following PCPs [GC.46 / GR.43]:

(1) A practice of moving officers to any role including frontline policing roles; and

(2) A requirement to undertake the full duties of a Response Officer including but not limited to attending scenes of death and/or RTCs.

13. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that [GC.47]:

(1) She was more likely to not be able to carry out the full duties of an officer and/or a Response role because she was unlikely to be able to attend/be exposed to traumatic incidents/scenes; and/or

(2) She required certainty as to what work/incidents she

would be exposed to.

14. What steps could have been taken the avoid the disadvantage? The claimant suggests [GC.48]:

(1) Placing the claimant in a suitable role including being in a role where the week/day is planned and structured, and/or working from home and/or a station near to her home address;

(2) Not placing the claimant in the Response team including not to attend deaths or RTCs;

(3) Placing the claimant away from the Response office environment;

(4) Placing the claimant in a suitable permanent position in which she was not in constant fear of being moved;

(5) Retaining the claimant in the Child Centred team on a permanent and/or temporary basis until a suitable role was found; and/or

(6) Making the claimant a Restricted and/or Adjusted officer.

15. Was it reasonable for the respondent to have to take those steps and when?

16. Did the respondent fail to take those steps, or any other reasonable steps?

Harassment

17. Did the following occur [GC.58/28]:

(1) In or around May 2021 Inspector Hadwin told the

claimant that her mental health issues were not her sergeant's problems [GC.14];

(2) A decision in April 2023 to move the claimant back to the Response team and the message delivered in an inappropriate manner;

(3) The meeting the claimant attended with HR in or around April/May 2023.

The Claimant avers that:

(a) The meeting was conducted in a heavy handed manner in that HR presented the move as the Claimant have 'no choice' but to move;

(b) The manner in which HR conducted the meeting was abrupt and dismissive;

(c) HR conducted the meeting with no understanding and/or empathy and/or acknowledgement for the Claimant's needs and requirements (and the reason for these);

18. If so, was that unwanted conduct?

19. Did it relate to disability?

20. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating, of offensive environment for the claimant?

21. If not, did it have that effect? The tribunal will take into account:

(1) The claimant's perception;

(2) The other circumstances of the case;

(3) Whether it is reasonable for the conduct to have that effect.