Reserved judgment

Between

Mrs M Baker

Claimant

and

Sussex Police

Respondent

Heard at London South Employment Tribunal on 14-18 & 21-23 November & (in chambers) 24 November 2016

Before Employment Judge Baron

Lay Members: **Mrs S Dengate and Mrs C Upshall**

Representation:

Claimant: ***Anna Lintner***

Respondent: ***Tim Dracass***

JUDGMENT

It is the unanimous judgment of the Tribunal that the claims are dismissed.

REASONS

Introduction

1 The Claimant has been employed as a Police Community Support Officer ('PCSO') by Sussex Police from 31 March 2008 and remains so employed. She has not worked since 28 July 2014 due to absence on sick leave. On 19 May 2015 she presented a claim to the Tribunal making claims under the Equality Act 2010 based upon the protected characteristic of disability, and also claims of victimisation under section 27 of the Act. Further details are set out below.

2 The Claimant, through her then solicitors, had contacted ACAS under the early conciliation procedure on 17 December 2014, and the certificate was issued on 17 January 2015. There was a preliminary hearing for case management purposes on 13 August 2015. It was ordered that there be a further such hearing on 16 October 2015. At that

latter hearing leave was granted to the Claimant to amend her claim. There was a further preliminary hearing on 20 April 2016, and leave was granted to the Claimant to make further amendments to the claim to include allegations relating to matters which had arisen after the claim was first presented to the Tribunal. It is the particulars of claim as so further amended with which we are concerned.[1]

3 The Claimant gave evidence herself, and did not call any other witnesses. Evidence for the Respondent was given by the following witnesses:

Sgt Paul Masterson	Line manager of the Claimant from April 2011 to May 2012
Sgt Danny Russell	Line manager of the Claimant from May 2012 to February 2013
Sgt Stuart Mullins	Line manager of the Claimant from February to May 2013
Sgt Sarah Porter	Line manager of the Claimant from May to November 2013
Sgt Mark Evans	Line manager of the Claimant from November 2013 onwards
Inspector James Scott	The Claimant's second line manager
Chief Inspector Steve Biglands	Heard appeal from the Claimant's first grievance and heard the Claimant's second grievance
Chief Inspector Katherine Woolford	District Commander Rother District January 2012 to December 2013
Katherine Palmer	HR Consultant
Adrian Rutherford	Head of HR Services
Deborah Arnould	HR Consultant

4 We were provided with documents in four lever arch files. We have only taken into account those documents to which we were referred by the witnesses or counsel.

The allegations and issues

5 The solicitors for the parties had helpfully agreed a list of issues for determination by the Tribunal. That document is over 14 pages in length and includes not only the factual allegations, but also the legal questions to be considered. It is too detailed a document to be copied into these reasons, although very helpful to the Tribunal when deliberating. We

[1] Starting at page 90

extracted from that document a summary of the factual allegations being made, and they are as follows:[2]

1	The Respondent treated the Claimant unfavourably by permitting, causing or failing to eliminate criticism, ostracism and/or similar treatment of the Claimant in the period April- October 2012 following her return to work from sick leave.	AF
2	In February-May 2013 the Respondent refused to allow the Claimant to drive her own vehicle whilst working out of Bexhill amounting to less favourable / unfavourable treatment.	D, AF, I, RA
3	The conduct of Inspector Scott and PS Mullins at a meeting on 27 March 2013	H
4	In March 2013 the Respondent instructed the Claimant to stay in Bexhill Police Station while on duty.[3]	AF, RA
5	The conduct of PS Porter at a meeting on 11 November 2013.	H
6	The Respondent's response to the Claimant's requests to attend medical and physiotherapy sessions and be granted leave between 12 September and 25 November 2013 amounted to less favourable / unfavourable treatment.	D, AF, I, RA
7	The Respondent's response to the Claimant's request to alter her hours and work breaks in requests made between December 2013 and July 2014 amounted to less favourable / unfavourable treatment.	D, AF, I, RA
8	The conduct of the Respondent's staff in connection with the meeting on 15 July 2014.	H, V
9	In July 2014 the Respondent insisted upon the Claimant changing her jacket whenever entering and exiting from Bexhill Police Station.	AF, I, RA, H, V
10	In July 2014 the Respondent insisted upon the Claimant reporting her whereabouts to an excessive and unnecessary extent whilst working out of Bexhill Police Station.	AF, I, RA, V
11	In July 2014 the Claimant was placed in the redeployment pool.	AF, I, RA, V
12	In July 2014 the Respondent placed the Claimant in	AF, I,

[2] Key to heads of claim with reference to sections of the 2010 Act: D - section 13; AF - section 15; I- section 19; RA - section 20 etc; H - section 26; V - section 27

[3] This was on 15 March 2013 and the allegations are therefore slightly out of chronological order. We have left them as they are being the order agreed with counsel.

	the redeployment pool without warning her that it would be doing so, and without allowing her the opportunity to make representations and/or without considering any material reports on her condition or health.	RA, V
13	Between July 2014 and early January 2015 the Respondent caused the Claimant to remain in the redeployment pool despite requests to postpone this action in order to allow her to recover and/or despite knowing that she was not fit enough to deal with the requirements of being in the pool and/or that she was unlikely to be fit enough to carry out any work and therefore not able to fulfil any role she was considered for.	AF, I, RA, V
14	The Respondent subjected the Claimant to language and conduct expressing or suggesting that she was no longer required in the police force.	AF, V
15	In February 2015 the Respondent provided inaccurate information to the IRMP in connection with the Claimant's reasons for reducing her hours to below 30 per week and/ or failed to make enquiry of the Claimant before submitting incorrect information and/ or failed to submit balanced information to the IRMP.	AF, V
16	In September 2015, when concerns were raised about the accuracy of the above information by the Claimant and enquiry was made by the IRMP, the Respondent continued to assert without qualification that the reason for the reduction in hours had nothing whatsoever to do with the Claimant's ill-health / disability.	AF, V
18	In November 2015 the Respondent refused to reinstate the Claimant's full pay and, further, removed her entitlement to half-pay, pending her ill-health retirement.	AF, RA, V
19	In November 2015 the Respondent refused to exercise its discretion in favour of the Claimant to make an injury award under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.	AF, I, RA, V
17	The Respondent refused to agree to the reasonable suggestion proffered by the Claimant's solicitors in their letter of 3 March 2016.	AF, RA, V

6 The fact of the Claimant's disability is conceded by the Respondent. The Claimant had an accident on ice on 12 February 2012 when she broke her right elbow later resulting in rotator cuff tears to both shoulders. What is in issue before us is when the Claimant became a disabled

person, and when the Respondent knew, or ought reasonably to have been expected to know, that the Claimant was a disabled person.

7 The Claimant relies upon six protected acts for the purposes of her claims of victimisation. The Respondent accepts that they did constitute protected acts. They are as follows:

7.1 The Claimant's email of 1 December 2013 to Inspector Scott;
7.2 The Claimant's second grievance of 24 March 2014;
7.3 The Claimant's email to PS Evans of 29 July 2014;
7.4 The Claimant's letter to Ms Palmer of 27 September 2014;
7.5 The Claimant's third grievance of 29 January 2015;
7.6 The Claimant's original claim form and particulars of claim of 19 May 2015, as amended.

8 There are time issues in respect of various elements of the Claimant's claims. At the preliminary hearing on 16 October 2015 it was decided that issues as to whether there was conduct extending over a period and (if relevant) whether time should be extended as being just and equitable should be decided at this hearing.

9 Although there was an agreed list of issues, we make a general point about the final version of the particulars of claim. Paragraphs 1 to 62 inclusive set out the allegations of fact. Paragraphs 63 to 68 make references to the legal heads of claim. Paragraph 63 refers to claims under section 15 of the Act, and mentions unfavourable treatment because of something arising from the disability. The details of the alleged unfavourable treatment are then set out in 17 sub-paragraphs. However, there is no mention of what the 'something arising' is in respect of each allegation.

10 Paragraph 64 then refers to three matters alleged to have been direct discrimination within section 13 and mentions specific comparators referred to in paragraphs 12 and 2. Those appear to be erroneous cross-references.

11 Paragraph 65 then alleges that some of the allegations of unfavourable treatment were instances where the Respondent had applied provisions, criteria or practices ('PCPs') which were indirectly discriminatory within section 19 of the 2010 Act. However, none of the alleged PCPs were set out. Similarly, in paragraph 66 there is an allegation that in respect of certain matters the Respondent had failed to comply with its duty in sections 20 and 21 of the Act. Again, however, the alleged PCP/PCPs which the Claimant has to show existed were not specified.

12 Paragraph 67 then refers to certain matters as being acts of harassment. There is no difficulty with that element of the pleading. Further difficulties do arise with paragraph 68. There is a general allegation as follows:

> Further, the matters referred to within these particulars as detriments amounted to victimisation arising from the fact that [the Claimant] had made protected acts referred to above contrary to s27 EqA.

13 It is not certain what were the 'detriments' to which reference was made. Further, no attempt was made to link any particular factual allegation to any one or more of the protected acts.

14 Miss Lintner had not drafted the claims and she provided written submissions limited to matters where she felt able to assist the Tribunal. She did not make supplemental oral submissions. That is not intended to be a criticism of her, but simply a statement of fact. Mr Dracass had prepared an Opening Case Summary prior to the commencement of the hearing and he provided written submissions at the conclusion of the hearing. He also addressed us on the points made by Miss Lintner. We refer to details of those submissions as appropriate when coming to our conclusions below.

15 Mr Dracass made a general point saying that in making so many legal allegations in respect of individual factual allegations the Claimant had taken a scattergun approach, perhaps on the basis that the more claims that were made the greater the possibility of one or more succeeding. It is correct that there are 56 heads of claim arising out of 19 factual allegations. As a consequence it has taken the Tribunal far longer to consider each of the allegations than would have been the case if the claims had been more refined. It is our view that the claims have not been pursued by the Claimant in a proportionate manner. Heed could well have been taken of the general advice of Mummery LJ in *Hendricks* in the Court of Appeal in paragraph 654 of his judgment.[4]

The law

16 Set out below are the material provisions of the Equality Act 2010, without any comment being made upon them. We analyse the various provisions as necessary when considering each of the claims.

> **6 Disability**
> (1) A person (P) has a disability if—
> (a) P has a physical or mental impairment, and
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
>
> **13 Direct discrimination**
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
> (2) . . .
> (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
> (4) – (8) . . .
>
> **15 Discrimination arising from disability**
> (1) A person (A) discriminates against a disabled person (B) if—
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and

[4] [2003] ICR 530 at 544H.

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

. . . ;

disability;

. . . .

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) – (13)

23 Comparison by reference to circumstances

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

(2) The circumstances relating to a case include a person's abilities if—

(a) on a comparison for the purposes of section 13, the protected characteristic is disability;

(b) . . . ;

(3) . . . .

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) . . . .

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—
. . . ;
disability;
gender reassignment;

. . . .

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

39 Employees and applicants

(1) . . . .

(2) An employer (A) must not discriminate against an employee of A's (B)—
(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

(3) . . . .

(4) An employer (A) must not victimise an employee of A's (B)—
(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

123 Time limits

(1) Proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—
(a) the period of 6 months starting with the date of the act to which the proceedings relate, or
(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

(b) – (f) . . . .

212 General interpretation

(1) In this Act—

. . . ;

"detriment" does not, . . . include conduct which amounts to harassment;

(2) – (5) . . .

Schedule 1

Disability: Supplementary provision

Part 1 Determination of disability

Long-term effects

2 (1) The effect of an impairment is long-term if—

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

Schedule 8

Work: Reasonable adjustments

Lack of knowledge of disability, etc.

20 (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) in any other case referred to in this Part of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

Jurisdiction

17 Submissions were made by each of Miss Lintner and Mr Dracass concerning the question of limitation and jurisdiction. The issues before us are whether there was conduct extending over a period in respect of which the last act of which complaint was within the period of three months (as extended by the early conciliation process) or if not whether it is just and equitable to extend time. A distinction was drawn between those matters of which complaint was made in the original particulars of claim, and the further allegations in the amended particulars of claim for

which leave was granted on 20 April 2016. We will deal with each set of allegations in turn.

18 The first set of allegations was contained in the original claim form ultimately presented on 19 May 2015. Those went up to and included allegation 14. Miss Lintner submitted that there was a common thread running through the complaints as originally presented, such thread being that there was a perception that the Claimant was difficult to manage because of her needs as a disabled person, and that culminated in the Respondent causing her to remain in the redeployment pool up to January 2015.

19 Miss Lintner submitted in the alternative that it was just and equitable to extend time in respect of allegations 7 to 13 inclusive because of her having been 'badly let down by Holden & Co Solicitors, who had led her to believe that her claim form ET1 had been submitted on 17 February 2015' and also that she had been unwell from August 2014. Mr Dracass fairly conceded the first point, and so it is not necessary to record what occurred between the Claimant and Holden & Co. It would also be inappropriate because any misleading by Holden & Co of the Claimant may be the subject of other proceedings in another forum. However, having made that concession Mr Dracass made the point that the Tribunal must decide whether the Claimant's complaints would have been in time if the claim had been presented on 17 February 2015 as the Claimant believed had been the case as opposed to 19 May 2015 when it was actually presented. We agree.

20 The Claimant had contacted ACAS under the early conciliation procedure on 17 December 2014. The certificate was issued on 17 January 2015. If the claim had been presented on 17 February 2015 it would have been on the last day by reason of section 140B of the 2010 Act. One therefore looks back from the day upon which contact was made with ACAS. Therefore any matters which occurred before 18 September 2014 would have been out of time, subject to the jurisdiction of the Tribunal to extend time.

21 Mr Dracass submitted that the allegations formed a series of unconnected and isolated incidents or decisions involving a number of different individuals, and there was not a continuing act for the purposes of section 123 of the 2010 Act. Further, he said that if the Tribunal were to find that the decision of which the Claimant was informed by a letter dated 19 September 2014 relating to her remaining in the redeployment pool was not an unlawful act, then what occurred before was not a continuing act ending within the three month period for the purposes of limitation. We find as set out below that that matter was not an unlawful act of discrimination, and therefore any allegations preceding it cannot benefit from the continuing act concept. It is not necessary therefore for us to consider that point.

22 We must therefore consider whether it is just and equitable to extend time. A balancing exercise needs to be carried out. Tribunals often look

to section 33 of the Limitation Act 1980 and *British Coal Corporation v. Keeble* [1997] IRLR 336 EAT. However, the factors mentioned in the statute are not necessarily all relevant in every case. The Tribunal needs to look at the facts of each case and decide whether to exercise its wide discretion, always bearing in mind that there is a time limit and so extending time must be justified by the Claimant. One specific factor to be borne in mind is the prejudice to each of the parties.

23 Mr Dracass submitted that there was a considerable prejudice to the Respondent because of the cost and inconvenience incurred in defending the early claims, and further that the memory of witnesses will have been less cogent because of the delay. He did not seek to argue that there was any other specific prejudice to the Respondent caused by the delay, such as the unavailability of witnesses, or the destruction of material evidence.

24 We have mentioned above that Miss Lintner referred to the Claimant's illness from August 2014. Mr Dracass submitted that that brief submission was inadequate to justify an extension. We find facts material to this point.

25 From March 2012 the Claimant instructed solicitors in connection with a personal injury claim arising from her accident on 12 February 2012 mentioned below. From early 2013 the Claimant was obtaining the advice of her union, and was insisting that she be accompanied at meetings by a union representative. The Claimant had instructed solicitors by August 2014 and on 12 August 2014 a letter was written by them to the Chief Constable suggesting that a settlement agreement be entered into in the context of the termination of the Claimant's employment. The Claimant was by then aware of her right to bring a claim to the Tribunal. The Claimant's explanation to the Tribunal for not presenting a claim by at least August 2014 was that she was still going through the Respondent's grievance process.

26 The Claimant lodged a grievance on 26 April 2013. It was a document of 16 pages and covered events from July 2011 to March 2013. The outcome to that grievance was issued on 27 September 2013, and the outcome of the Claimant's appeal was issued on 7 November 2013. The Claimant presented a further grievance on 11 March 2014 in respect of which the outcome was provided to the Claimant on 24 June 2014. The Claimant appealed on 8 July 2014, supplemented by full details on 10 July 2014. We have noted in the bundle that it was proposed that there should be an appeal meeting on 14 August 2014. We did not hear evidence on the matter and have to assume that the grievance process was effectively halted following the Claimant going off sick from 28 July 2014.

27 There was no detailed evidence concerning the Claimant's ill health to enable us to conclude that she was unable to present a claim to the Tribunal. Indeed she did not seek to rely on ill health during evidence to any great extent, only saying that she had suffered from a period of

depression. We note that she had been well enough to instruct solicitors in August 2014.

28 We conclude that it would not be just and equitable to extend the time limit. The submission as to the Respondent incurring costs and being caused inconvenience is of less weight following a full hearing than it would have been at a preliminary hearing at which the issue of jurisdiction had to be decided. The Respondent had in any event incurred the costs and suffered the inconvenience of an eight day hearing on the merits of the claims. The Claimant must show why it is just and equitable to extend the time. The allegations in question go back to 2012 and the 'notional' date for presentation of the claim was February 2015. That is too much of a delay without good reason having been shown for it to make it fair to the Respondent to grant an extension. We record that we have noted the statement by the Claimant that she was waiting for the grievance process to be concluded, and we have taken it into account. We have also noted that the taking of legal advice is not as critical to the consideration of an extension of time in this case as it would be if the test were that of reasonable practicability. However, it is a relevant factor.

29 The second set of allegations is contained within the further amended particulars of claim dated 11 April 2016. They are items 15 to 19 in the list of claims.[5] In the addendum to the Grounds of Resistance the Respondent raised the issue of jurisdiction. Mr Dracass submitted that save for the final item, all complaints arose more than three months before the amendment application was made. Although not recorded in the Order of the Tribunal of 21 April 2016 it is apparent from the typed notes of Judge Martin made at the hearing on the preceding day that although Mr Dracass did not oppose the application to amend, the position of the Respondent as to jurisdiction and time limits was reserved.

30 Mr Dracass submitted that allegations 15 to 18 inclusive related to matters which occurred more than three months before the amendment application was made on 11 April 2016. He pointed out that the Claimant was professionally represented from February 2015 by Holden & Co, and from August 2015 by her current solicitors. Further, he said, there had been an earlier amendment to the claim on 16 October 2015. We note that leave was granted pursuant to an application of 3 September 2015.

31 Miss Lintner submitted that it would be just and equitable to extend time in respect of any matters that were proved on the basis that the Claimant was seeking to resolve the disputes through the internal grievance process.

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[5] Item 14 seems to have dropped out of the reckoning at this point, and wholly understandably. We mention it below.

32 We considered this aspect separately. We concluded that it was not just and equitable to extend the time in the particular circumstances. We have already accepted that where there are internal proceedings taking place then that is a factor to be taken into account when considering whether an extension of time is to be garnted. Here the grievance process had stalled, and there was no evidence that the Claimant was seeking to press on with it. Further, in this case the Claimant's solicitors had been instructed, and Employment Tribunal proceedings were already under way. The consideration about saving time and costs, and not damaging the employment relationship further, in not issuing Tribunal proceedings does not apply. We see no reason why any additional factual claims could not have been added timeously. We have again borne in mind that any error by solicitors is of less relevance in cases where the test for an extension of time in the just and equitable one, rather than the one of reasonable practicability.

The structure of decisions

33 We make our findings of fact in the light of the specific factual allegations which are in issue before us, and include essential background facts. We are not making findings on every point ventilated before us. Various matters attained a higher degree of significance in this hearing than was justified, and we will not deal with all of them. We are conscious that we are not recording very many facts in respect of which evidence was given, and not referring to every document mentioned to us. It is simply not necessary to do so.

34 We decided that in the circumstances the most appropriate way of dealing with the decision making process was to consider the factual allegations chronologically and put into groups where possible. We then consider the legal aspects arising from such allegation(s) before moving forward in time.

35 We are also making findings on matters despite our conclusions above as to jurisdiction. We do this for three reasons. The first is that we consider it important for the whole picture to be considered, and for findings to be made before deciding whether the Tribunal had the jurisdiction to consider those matters. Logically of course, that is the wrong way round. Secondly, if we are wrong in respect of jurisdictional matters then the parties will have findings on the merits of the claims. Finally, we heard a considerable volume of evidence and submissions over eight days, and the Claimant remains employed by the Respondent, or was at the date of the hearing. It is only fair to the parties that we consider that evidence and come to conclusions on it in the hope that this will assist them in finding a way forward.

Background

36 As already mentioned, the Claimant was first employed by the Respondent from 31 March 2008. Her employment was on a full-time basis, working 37 hours a week on a shift pattern. At the time of the commencement of her employment she indicated that she would prefer

not to work in either Hastings or Bexhill. She was allocated to Battle, which was a satellite station of Bexhill. We did not go into the matter in great detail, but it is not in dispute that until the Claimant had her accident in February 2012 her performance as an employee was good, and that that was recorded in her annual reviews.

37 Mr Dracass submitted that by the middle of 2012 at the latest the Claimant had lost faith in the Respondent for various reasons. The incidents in question do not form any part of the issues which we have to decide. There was an unfortunate incident in 2011 when PC Cleverley wrongly understood that the Claimant had made a grievance against her, as a result of which PC Cleverley did not speak to the Claimant. Sgt Masterson sought to resolve the situation.

38 The second matter relates to the Claimant's accident on 12 February 2012 when she broke her elbow after slipping on ice or snow in the vicinity of Battle Police Station. The Claimant put some of the blame for her accident on the Respondent as (she said) that Sgt Masterson and Sgt Evans had not properly cleared the snow. In her witness statement, the Claimant also expressed concern about the manner in which the accident was reported.

39 Of more relevance to this case is the Claimant's move to Bexhill. Again, it is not necessary to go into great detail, but while she was away from work because of her injury Sgt Masterson decided that one PCSO was to be moved from Battle to Bexhill in order to allocate resources to where they were more needed. He decided that the person who was to be relocated was the Claimant, and he visited her at home on 24 April 2012 to inform her of that fact.

40 This is not an area in respect of which specific factual findings can be made, but overall it is our impression that from about this time the working relationship between the Claimant and her various successive line managers generally became more difficult.

Fact and knowledge of disability

41 The Respondent has accepted that the Claimant is now a disabled person. As mentioned above, one of the issues before us is when she became a disabled person, and further when each of the individuals involved knew, or ought reasonably to have known of the fact of disability.

42 We were referred to various occupational health reports. The first is dated 12 June 2012. That report stated that it was recommended that there be a phased return to work, with the hours increasing to full hours over the next two months or so. The next report is dated 1 August 2012. There is no indication in either of those reports of the likelihood of there being any long-term injury. The third report is dated 3 September 2012. It states that there was no firm diagnosis or treatment plan, and it was not possible at that stage to say that the Claimant was permanently restricted. The next report is dated 8 October 2012, some six months after the accident. It is apparent that by that date the Claimant was also

suffering with problems in her right shoulder. The prognosis was uncertain, and it was said that it may depend upon surgery. We do not know the date originally planned for the surgery. We do know that the proposed surgery had to be delayed because the Claimant started suffering from respiratory problems. She was admitted to hospital on 15 January 2013, and returned to work on 24 February 2013.

43 Our conclusion is that the contents of the report of 8 October 2012 are not such as to show that the Claimant was at that date a disabled person as the condition was not stated as being likely to last beyond 12 months, and by then of course it was less than six months from the accident. Mr Dracass accepted in his submissions that the Claimant became a disabled person within the 2010 Act on the anniversary of the accident, being 12 February 2013. We find that the Respondent knew, or is deemed to have known, at that date that the Claimant was a disabled person. We do not accept that the Claimant had the benefit of the 2010 Act before that date, as the medical reports were not such as to lead the Respondent to believe at the time the impairment to the Claimant was likely to last for more than 12 months.

44 For that reason also, claims arising before 12 February 2013 must fail. Again we consider it appropriate to make findings of fact relating to the allegations made.

April to October 2012

45 This matter is allegation 1 in the table above. It is that for the period from April to October 2012 the Claimant was treated unfavourably by the Respondent permitting, causing or failing to eliminate criticism and/or similar treatment. This of course deals with the period immediately after her return to work when she had been transferred to Bexhill. Sgt Russell was her line manager.

46 These are claims under section 15 of the 2010 Act. The Claimant must therefore show that there was unfavourable treatment (as to which a comparator is not required) and that such treatment was because of something arising in consequence of the Claimant's disability. The point occurs regularly in this case, but details as to what was that something arising in consequence of the disability were not specified by or on behalf of the Claimant despite the fact that she has been represented by solicitors throughout these proceedings. How the claims are framed should have been clearly articulated.

47 The first factual allegation is that another PCSO, Adam Cox, made a comment to the effect that the Claimant was non-operational and another officer should have been sent to Bexhill in place of her. In the absence of evidence to the contrary, we accept the Claimant's evidence that such a comment was made, but we find that Sgt Russell was not made aware of it, and was therefore not in a position to deal with it.

48 We remind ourselves that the claim being made is of the Respondent's failure to deal with these various matters, rather than the fact that they

occurred in the first place. The specific claim has to fail because Sgt Russell was not aware of the comment alleged to have been made.

49 The second factual allegation is that another PCSO, Ray Collins, questioned the Claimant about why she was unable to drive police vehicles, but able to drive her own car. In the Claimant's own witness statement she said that Sgt Russell addressed the issue after she had informed him of it. On the Claimant's own evidence, this matter has to fail. It was in fact addressed.

50 The third factual allegation is that Sgt Russell proposed to change the area in Bexhill allocated to the Claimant. That allegation is not disputed by Sgt Russell and his explanation (which we accept) is that he wished to give the Claimant an area closer to the police station so that she could travel there more easily. The proposal was modified following representations made by the Claimant. The Claimant stayed where she was. Again, the matter was dealt with by Sgt Russell. Further, we fail to see what the unfavourable treatment was of the Claimant for the purposes of section 15.

51 The final matter relates to comments made by some officers about the violent behaviour of the Claimant's nephew. Sgt Russell spoke to some individuals about the matter, but we are left uncertain as to exactly who those individuals were. In the end that point is irrelevant, because there is no evidence before us from which we could possibly conclude that any such comments which were in fact made were made because of something arising in consequence of the Claimant's disability.

52 There is one final point concerning this clutch of allegations. There were discussions between the Claimant and Sgt Russell as a result of which Sgt Russell sent a circular email in terms prepared by the Claimant as follows:

> I just wanted to say that I appreciate all your patience and support that you have shown me during my resettlement in Bexhill during a very difficult time. I fully understand that it is not been easy for you, especially knowing that the need was for an operational officer. This at times weighs heavy on my shoulders, but at this time, I have to be guided by occupational health and my medical team and can only work within the constraints of my injuries. Some at times have questioned this and quite openly made their thoughts known. This, I feel has not helped by situation and I can only suggest that if anyone has any concerns then please speak to Sgt Dan Russell (within the boundaries of confidentiality).

53 We find as a general point that Sgt Russell was more than willing to seek to assist the Claimant in resolving any difficulties which she was experiencing after her return to work of the nature set out above.

Refusal to allow the Claimant to drive her own vehicle.

54 This is allegation number 2 and is the first allegation which is made under a variety of legal heads of claim. The allegation is that the Respondent refused to allow the Claimant to drive her own vehicle for work purposes. This factual allegation encompasses claims of direct discrimination, a claim under section 15 of the Act, indirect discrimination, and of a failure to make reasonable adjustments. It is

based on the premise that there was a refusal to allow the Claimant to drive her own vehicle during the period February to May 2013. This covers the period from her return to work on 24 February 2013 (having been absent because of respiratory problems) until a subsequent sickness absence from 3 May 2013 so that she could undergo surgery to her right shoulder. Sgt Mullins was her line manager during this period.

55 The then most recent occupational health report prepared following an examination of the Claimant is dated 3 September 2012. In that report Elizabeth Young stated that the Claimant drove her personal car for a short distance when essential, but she found that her arm could spasm and she had to stop driving. There was a specific recommendation that the Claimant do not drive her own car during the course of her work. Sgt Mullins was aware of that report when he met the Claimant on her return to work on 27 February 2013. At that meeting the Claimant specifically asked to be referred again for an occupational health assessment to consider the use of her own car for work.

56 Attempts were made to arrange an occupational health appointment, but the first appointment had to be cancelled because of the Claimant's personal commitments, and before the next appointment date she raised questions about the identity of the person who would examine her. A further appointment had been arranged for 12 April 2013 but she was absent for the period from 11 to 25 April 2013. The consequence was that during the period in question, no further occupational health assessment as to the Claimant's ability to drive for work purposes had been made.

57 Sgt Mullins was not aware of a report of 8 October 2012 prepared in the form of a letter by Dr Massey of the Respondent's occupational health advisers. That letter was prepared without Dr Massey having examined the Claimant and was based upon reports provided by the Claimant's own GP. The letter specifically states that Dr Massey had not been able to assess the Claimant's functional status and it was difficult for him to comment on the kind of modified duties she could perform. Dr Massey then said the following:

> If PCSO Baker has now resumed driving in her personal life, and feels confident as to her ability to have full and consistent control of the vehicle, then I can see no reason why she would not be able to return to driving on a basic permit in the course of their duties.

58 The Claimant and her union representative, Mr Fuller, met Chief Inspector Woolford on 18 March 2013. No contemporaneous authoritative notes were made of that meeting. The Claimant and Mr Fuller thought it had been agreed that the Claimant would be allowed to drive a car provided that she could demonstrate she had the appropriate insurance cover. The issue having been raised with Sgt Mullins, he sent an email to Mr Fuller on 24 March 2013 saying that he could not sanction the use of the Claimant's own car for work purposes until the issue of her being able to control the vehicle had been resolved by occupational health.

59 The issue was further discussed at the meeting on 27 March 2013 mentioned below. At that meeting Sgt Mullins reiterated that it would not be possible for the Claimant to use her own car for work purposes until it had been approved by occupational health. At that date it was anticipated that the Claimant would have an occupational health assessment on 12 April 2013, but we have mentioned that that appointment did not take place.

60 What occurred is alleged to have been an act of direct discrimination. What we must consider is whether there is evidence from which we could reasonably conclude that the Claimant was treated less favourably than a non-disabled person was, or would have been, and that the reason for such treatment was the Claimant's disability. In accordance with section 23 of the 2010 Act, there must be no material difference between the Claimant and the comparator, including abilities. We were not addressed on this issue by Miss Lintner. No specific comparator who had the same abilities but was not disabled was mentioned.

61 It is not up to the Tribunal to make a case for the Claimant. However, we have considered the position of a hypothetical comparator. Such a person must be somebody who had the same abilities as the Claimant, and in respect of whom occupational health advice had been provided that s/he should not be allowed to drive their own car for work purposes without a further occupational health assessment, but is not disabled. We have absolutely no reason to believe that Sgt Mullins would have treated such a person in any different way. We have noted the points made on behalf the Respondent that it owed a duty of care to the Claimant and members of the public to ensure that the Claimant would not be a danger to herself or others while driving.

62 The next head of claim is under section 15 of the 2010 Act. Again no submissions were made on this point by Miss Lintner. The Claimant must show that she was treated unfavourably because of something arising in consequence of the disability. We will accept for present purposes that not being allowed to drive her own car for work purposes was unfavourable treatment. However, we were not addressed on the issue as to what was the something arising in consequence of the disability. Again it is not our function to make a case for the Claimant.

63 The final two heads of claim are indirect discrimination, and a failure to make reasonable adjustments. Both of them require that there be a provision criterion or practice ('PCP'), although the wording of the two provisions is somewhat different. Miss Lintner submitted that the Respondent's refusal to allow the Claimant to drive her own car while on duty was a provision, criterion or practice. The position under section 19 is that the PCP was applied, or would be applied, to others who did not share the characteristic. For a section 20 claim it has to be shown that that PCP put the Claimant at a substantial disadvantage in comparison with persons who are not disabled. Without there being a PCP claims under these sections cannot succeed. We find that a refusal to allow the Claimant to drive her own car on duty was a PCP, at least to the extent

that there must have been approval from Occupational Health first. Although there was no evidence of such PCP being applied to anyone else, we consider that it falls within the category of a requirement. Although the concept of a PCP normally requires that there be evidence of a wider application than simply to the individual in question, there is no reason to doubt that exactly the same requirement would have been imposed on anyone who had previously been advised by Occupational Health not to drive.

64 Miss Lintner also submitted that the refusal to allow the Claimant to drive her car put her at a substantial disadvantage as a disabled person as it was more difficult to get to appointments made to visit people in their own homes. That PCP could not be objectively justified. Mr Dracass submitted that for the purposes of section 20 the Claimant was not at a substantial disadvantage by comparison with persons who are not disabled. Further, it would not be a reasonable adjustment to allow the Claimant to drive without first that having been approved by Occupational Health. Further, he submitted that the PCP did not put disabled persons at a disadvantage generally by comparison with non-disabled persons. In any event, the PCP was justified within section 19(2)(d).

65 We prefer the submissions of Mr Dracass. The disadvantage to the Claimant in not being able to drive in keeping home appointments was no more and no less than would have been the case to someone who was not disabled, but had the same responsibilities as the Claimant. In any event, we find that there was a legitimate aim, being the safety of the Claimant and the public, and that requiring approval of Occupational Health was a proportionate means of achieving that aim. Finally, for the same reason we find that it would not have been a reasonable adjustment to allow the Claimant to drive without that having first been approved by Occupational Health.

66 These claims therefore fail.

Meeting 27 March 2013

67 This is allegation 3 and is a claim only of harassment under section 26 of the 2010 Act relating to the conduct of Sgt Mullins and Inspector Scott. The specific allegations highlighted by Miss Lintner were that Sgt Mullins refused the Claimant's request for support, and that Inspector Scott handed the Claimant a Stage 1 letter.

68 There were three issues which Sgt Mullins and Inspector Scott wished to cover with the Claimant on the day in question. The first was to hand to her a formal letter under Stage 1 of the Respondent's attendance policy. The second was the clarification of her role and her shadowing of PCSO Kemp. The third matter was the issue of the Claimant being able to drive. We need to add further background to understand this matter.

69 The Claimant returned to work following her accident and sent an email to Sgt Russell dated 4 July 2012. She thanked him for his support during her recovery and what she described as "the recent situation". She also

stated that she was pleased that it had been agreed that the Stage 1 formal sickness absence procedure was not necessary, and that her sickness absence would be managed informally. She specifically stated that she had a clear understanding of the policy, and that if she went sick again then the trigger under the Stage 1 process would be implemented. The Claimant was absent from 15 January 2013 until 24 February 2013, and that absence triggered the Stage 1 process which provided that any absence exceeding 21 days was an 'attendance trrigger'. That absence was not related to her disability.

70 Sgt Mullins prepared the relevant letter under the absence procedure on or about 15 March 2013. Following the meeting which Chief Inspector Woolford had with the Claimant on 18 March 2013 Chief inspector Woolford requested that Sgt Mullins delay in delivering the letter to the Claimant because she did not wish to put any more stress on the Claimant. However, delivery of the letter was to be delayed rather than abandoned. Sgt Mullins prepared a further letter dated 25 March 2013.

71 The second matter relates to shadowing PCSO Kemp. The Claimant was at this time unable to fulfil all her duties as a PCSO. Her colleague, PCSO Kemp was about to go on maternity leave. Prior to going on maternity leave PCSO Kemp had been allocated special responsibilities for transferring intelligence data onto a database. By an email of 15 March 2013 Sgt Mullins said that he wished the Claimant to spend a little time shadowing PCSO Kemp. The intention was that the Claimant would take over those responsibilities when PCSO Kemp went on maternity leave. By 27 March 2013 the Claimant had not taken any steps to contact PCSO Kemp as requested.

72 We have already dealt with the question of the Claimant being able to drive her own vehicle above, being the third matter which it was proposed to be discussed at a meeting on 27 March 2013.

73 The other relevant background information relates to a meeting between the Claimant and Sgt Mullins on 1 March 2013. It is not necessary to go into detail about that meeting, but it related to arrangements being made for the Claimant to have a further occupational health assessment, and her ability to carry out her role. Following that meeting the Claimant sent a relatively long email to Sgt Mullins which ended with the following:

> I now feel like I cannot attend any meetings without support.

74 The issue which arose at the outset is that the Claimant should have had support. She maintained to Sgt Mullins and Inspector Scott that she should be allowed support as it was a meeting, but Inspector Scott and Sgt Mullins said that it was not a meeting and she did not need support. The attitude of Sgt Mullins and Inspector Scott was that this was not a formal meeting but a discussion in the ordinary course of day-to-day management of the Claimant. There were discussions about the Claimant shadowing PCSO Kemp, and driving a vehicle on duty. The Stage 1 sickness absence letter was handed to the Claimant.

75 Miss Lintner's submission was that the conduct of Sgt Mullins and Inspector Scott was unwanted, and it related to the Claimant's disability because the purpose of the meeting was present her with a Stage 1 letter. Their conduct, she said, had the effect of creating a hostile and intimidating environment for the Claimant. Mr Dracass submitted that on the facts what occurred did not amount to harassment as defined by section 26. He specifically referred to *Richmond Pharmacology v Dhaliwal* [2009] 336 IRLR. This was a case of race discrimination, and the judgment of Underhill J (as he then was) included the following:

> 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.

76 We must consider the various elements of section 26. The first element is that there must be unwanted conduct. It is apparent from paragraph 8(c) of the amended particulars of claim, the Claimant's witness statement and her notes of the meeting[6] that the complaint is that Sgt Mullins and Inspector Scott held the 'meeting' without the Claimant being accompanied. We accept that that was conduct unwanted by the Claimant. However, section 26 also requires that the conduct must relate to the relevant protected characteristic. We do not accept the submission by Miss Lintner that the failure to allow the Claimant to be accompanied was related to her disability. Miss Lintner said that the purpose of the meeting was to present the Claimant with the Stage 1 letter and that that was because of her 'primarily disability-related absences.' We do not accept that as a fact. The Stage 1 letter was triggered by reason of her absence for over 21 days in January and February 2013 which was for a non-disability -related reason.

77 We have also considered section 26(1)(b). Clearly neither Sgt Mullins nor Inspector Scott intended that the meeting should have any of the effects mentioned in that paragraph. We are not satisfied that the meeting in fact had any of the effects mentioned in that paragraph either, having noted the provisions of subsection (4). In coming to that conclusion we have noted the email/letter to Mr Fuller of 28 March 2013, and also section 26(4)(c). This was a meeting or discussion which took place as part of normal management processes and following earlier discussions. In particular, the Claimant was aware of the likelihood of a formal letter being given to her under the sickness absence procedures.

78 This claim therefore fails.

Instruction to remain in Bexhill Police Station

79 This is allegation 4. It is a claim under section 15 of the 2010 Act, and also of a failure to make reasonable adjustments. It arises from the email

[6] In the form of an email/letter to Mr Fuller, her UNISON representative, dated 28 March 2013.

dated 15 March 2013 above. The full text of the email from Sgt Mullins to the Claimant is as follows:

> Over the next couple of weeks I'd like you to spend a little time shadowing Sam Kemp to see what she does in relation to submitting CIMS logs from information on serials, as well as helping to manage our ER1 Queue. This is very valuable work, as the District is keen not to drop in it's submissions once Sam goes off on maternity leave and it would be an ideal thing for you to work on. I'm not suggesting that you totally drop the vulnerable victim work but the CIMS work is a higher priority and would mean that you do not have to leave the station and there would be no issues in arranging transport etc. I have already spoken to Sam and she is happy to show you what is involved.

80 The Claimant replied on 18 March, and it is not necessary to set out the whole of that email. The relevant part is as follows:

> Re-: the work with the vulnerables – I now feel that by instructing me not to leave the station you are disabling me from carrying out the valuable work I do with the vulnerable members of the community.

81 The point was discussed at the meeting with Chief Inspector Woolford on 18 March 2013, but we are unable to make detailed findings as to exactly what was said simply because of a lack of evidence. However, on 19 March 2013 Sgt Mullins sent the following email to the Claimant:

> I think that the Chief Inspector has clarified this with you now and that there has never been any suggestion that you couldn't leave the station. We'll arrange a meeting after Easter to confirm what we want you to do and to avoid any future confusion.

82 Miss Lintner submitted that the practical effect of the email was that the Claimant could only work in the police station. Mr Dracass said that the claim was factually flawed.

83 This is a matter with which we can deal very simply. The factual allegation is that the Claimant was instructed not to leave Bexhill Police Station. We find as a fact that no such instruction was ever given. The complaints must therefore fail.

Meeting of 11 November 2013

84 This is allegation 5 and is a further claim solely of harassment. It is not easy to identify exactly what is the matter of which the Claimant complains. Miss Lintner referred briefly to this head of claim in her submissions saying that Sgt Porter was aware that the Claimant wanted advance notice of any meetings although she did not direct us to any relevant evidence. We are not able to make that finding of fact. Mr Dracass replied to the point saying that even if Sgt Porter was aware that the Claimant wanted advance notice of meetings there was no evidence that that was in any way connected with her disability.

85 The amended particulars of claim refer to the unexpected attendance of Inspector Scott as being deceitful, and then allege that the Claimant was subjected to intimidation and bullying by Inspector Scott. However, the list of issues as agreed between the solicitors for the parties simply refer to the conduct of PS Porter. In paragraph 85 of her witness statement

the Claimant refers to having been subject to intimidation and bullying and the minutes starting at page 618B of the bundle.

86 Sgt Porter had taken over the supervision of the Claimant on Sgt Mullins in May 2013. The Claimant was away from work at that time and returned on 12 September 2013. It is not necessary to go into detail, but various management or relationship difficulties had arisen between the Claimant and Sgt Porter. Following various emails Sgt Porter sent an email to the Claimant on 5 November 2013 noting that the Claimant wished for a third person to be present, which did not need to be her union representative, and saying that there will be a meeting on 11 November 2013 at noon.

87 Earlier on 11 November 2013 Inspector Woolford met with Sgt Porter and Inspector Scott and also an HR representative by conference call. The outcome was that Sgt Porter requested support at the forthcoming meeting with the Claimant, and Chief Inspector Woolford instructed inspector Scott to attend. The reason for the request was that by this time Sgt Porter was finding it extremely difficult to manage the Claimant. Inspector Scott did attend, and the Claimant immediately objected to his being present and following a brief discussion he left the meeting. Meeting then continued with Sgt Porter and the Claimant, along with PC Sarah Ellis as notetaker and as support for the Claimant.

88 PC Ellis made notes of the meeting, and those are the ones to which the Claimant refers in her witness statement. Sgt Porter and she signed the notes. Mr Dracass submitted that there is no indication in those notes of anything which could be construed as harassment. We agree with that submission, but also would accept notes of any meeting cannot necessarily properly convey the atmosphere of the meeting.

89 Inspector Scott wrote to the Claimant on 25 November 2013 concerning the issues which had been discussed between her and Sgt Porter at the meeting on 11 November. The Claimant then replied on 1 December 2013 making points about each of the issues which had been discussed. Towards the end of the letter she complained about Inspector Scott having attended the meeting without warning. She said that she felt intimidated and harassed by his actions, but she did not make any complaint about Sgt Porter.

90 We have summarised above the law relating to harassment under section 26 of the 2010 Act. We find is a fact that whatever occurred at the meeting between the Claimant and Sgt Porter had neither the purpose nor the effect of violating the Claimant's dignity or creating such an environment as is set out in paragraph (b) of subsection (1). Mr Dracass further submitted that in any event whatever occurred was not related to the Claimant's disability. If in fact the Claimant is complaining that Sgt Porter did not inform the Claimant of the intention for Inspector Scott to be present, then we agree with that submission.

91 These claims therefore fail.

Medical appointments

92 In the end it transpired that this factual allegation, being number 6, relates to incidents of 3 and 17 October and 22 November 2013. They were not specified in the amended particulars of claim. The Claimant did not give any evidence in her witness statement relating to 3 October 2013. The claims are of direct discrimination, a section 15 claim, indirect discrimination and of a failure to make reasonable adjustments.

93 During this period the Claimant was working on a phased return to work basis, working approximately half her time in the police station, and the other half of her time being allowed for recuperation. She was being paid on a full-time basis.

94 We quote an extract from a document relating to attendance, and such extract was mentioned in an email from Sgt Porter to the Claimant. It is in the form of a question and answer document. The question asked was: "Can my staff member go to the doctor or dentist in work time?" The answer was as follows:

> Time off is unpaid and individuals making such appointments should avoid disrupting their work commitments as far as possible and should make appointments outside working hours unless there is absolutely no alternative.
>
> Requests for time off to attend the doctor/dentist for more regular treatment should be approached with a flexible attitude. It may be necessary to negotiate specific arrangements with the individual concerned. It may be possible for staff to make some appointments in their own time, e.g. day off or annual leave or if that is not possible, make up some of the time taken. Indeed, this flexibility of approach may need to be demonstrated in making reasonable adjustments under the Equality Act.

95 Mr Dracass submitted that as the Claimant has not given any evidence concerning any appointment on 3 October 2013 then that element of the claim must fail. We agree. A claim has to be supported by evidence from the Claimant, and it is not appropriate to seek to pursue a claim simply by cross examination.

96 The facts relating to 17 October 2013 are as follows. At 10:11 hrs the Claimant sent an email to Sgt Porter stating that she had a physiotherapy appointment that day and would have to leave at 12:30, and an appointment with her GP on the following day. In reply Sgt Porter asked whether the Claimant intended to return to work after the appointment, or to take the extra time as annual leave. The response from the Claimant was that she understood that she could attend medical appointments during working hours, that she would return after the physiotherapy appointment, but she then had another appointment later in the afternoon and would have to leave at 14:30 hrs.

97 There was then a further series of emails, and we do not intend to go into great detail. The Claimant was working reduced hours at the time. The general point being made by Sgt Porter was that she would prefer it if at all possible if the Claimant could have medical appointments during the hours when she was not expected to be in the police station, but that Sgt Porter accepted that as the Claimant's working hours increased then it may become more necessary for her to take time off during those

working hours. In those emails the Claimant and Sgt Porter each appeared to be understanding of the position of the other.

98 In respect of this matter the Claimant compares her treatment with a non-disabled colleague, PC Karen Hayes, who it is said was permitted to attend a medical appointment on 18 October 2013. On the limited evidence we accept that PC Hayes was allowed by Sgt Masterson to attend an appointment with her GP on 18 October 2013 during her working hours.

99 On 16 November 2013 the Claimant sent an email to Sgt Porter saying that she had a medical appointment on 22 November 2013. She later clarified that the appointment was at Haywards Heath, and that she may not be back in Bexhill until 2:30 – 3:00 pm. Sgt Porter sent the following email to the Claimant on 21 November 2013:

> As normal, I am happy to authorise you to go to this appointment. Although, as I have indicated to you before, I believe policy suggests your appointments should be attended in your own time, due to the hospital appointment being so far away, I suggest that Sussex Police and yourself go halves. Based on the fact that you anticipate being away from the workplace for nearly 6 hours, Sussex Police will authorise three hours leave with yourself using three hours of A/L or TOIL.

100 These claims are made under four different heads of jurisdiction, and we need to consider each. The complaint as to direct discrimination relates to 17 October 2013 when there is a specific comparator, PC Hayes. Miss Lintner did not make any detailed submissions in relation to this matter. There was no mention of a hypothetical comparator in relation to this incident, nor indeed the others. Mr Dracass submitted that PC Hayes was not a suitable comparator because she was a serving police officer, and not a PCSO, and also she was working full hours as opposed to the reduced hours being worked by the Claimant. Sgt Masterson had also said that there was a difference in that PC Hayes remained on duty whilst attending the doctor's appointment. We treat that latter point with some scepticism. Mr Dracass also submitted that even if PC Hayes were a suitable comparator, then there was no less favourable treatment because the Claimant was allowed time off for medical appointments during her paid hours.

101 We accept that PC Hayes is not a suitable comparator because police officers are engaged under different terms from PCSOs, although we were not supplied with details. Further, the Claimant was working on a phased return to work basis whereas PC Hayes was working normal hours. We also fail to see what less favourable treatment there was. Both the Claimant and PC Hayes were allowed to attend medical appointments during the hours for which they were being paid.

102 The next head of claim is section 15. Miss Lintner submitted that working recuperative hours was something that arose in consequence of the Claimant's disability. We accept that submission. What we do not accept is that being requested to attend medical appointments during her recuperative hours as opposed to those hours when she was working in the police station was unfavourable treatment. That is particularly the

case in the light of the Respondent's practice mentioned above from the 'question and answer' document.

103 The next two heads of claim are of indirect discrimination and a failure to make reasonable adjustments. Miss Lintner submitted that the refusal to allow the Claimant the requested paid time off on the three days in question was a PCP. She did not elaborate further. However Mr Dracass in his submission appeared to suggest that what was intended by the Claimant was that the PCP was that employees were required to attend medical appointments in their own time.

104 We have stood back from these claims. In the end, following the making of a grievance, the Claimant was paid for the three hours in question on 22 November 2013, and therefore the issue really is academic. The only remedy available in this respect, and indeed in connection with the other elements of the Claimant's claims, is compensation for injury to feelings, and any such award must be very small in this respect.

105 We accept that the policy as cited above amounted to a PCP. We also accept that it put, or was likely to put, the Claimant and other disabled people at a disadvantage because of the increased need to attend medical appointments. We find that in respect of 17 October 2013 the Claimant was not in fact at any disadvantage. However, the Claimant was initially at a disadvantage in respect of 22 November 2013 in that she was not paid. It would have been a reasonable adjustment to have paid her at least for that absence.

106 That small claim would have succeeded

Variation in hours between December 2013 and July 2014

107 This is allegation number 7. In early 2012, before the Claimant had her accident, she had discussed with Sgt Masterson and Inspector Scott a reduction in working hours to support her disabled mother due to a deterioration in her mother's health. The change had been approved by Inspector Scott, but the Claimant had her accident before the necessary application was formally submitted.

108 In December 2013 the Claimant was trying to obtain access to the Respondent's Reasonable Adjustment Record Form ('RARF'), and also the Flexible Work Application Form. Sgt Evans sent her an email with the intranet links on 18 December 2013. The Claimant completed that latter form requesting a reduction to 28.5 hours working three ten hour shifts. She set out the pattern of days she preferred (which is not an issue) and said the following:

> My request for the reduction in hours is to support my dependent relative and find a positive work/life balance.
>
> I think the change in hours will help me to find a good work life balance and enable me to give it my best when I'm at work free from some of the stress of my personal commitments (dependent relative). This would have a positive effect on not only myself but the team as well which would ultimately improve productivity and service. I aim to manage my own workload and structure my date complete my tasks.

109 On 30 December 2013 Sgt Evans returned the form to the Claimant refusing the application stating on the form that the Claimant had requested a refreshment break of 30 minutes during the proposed shifts of ten hours. In a covering email Sgt Evans suggested that the Claimant should have a break of 45 minutes. On 2 January 2014 the Claimant proposed another shift pattern allowing for a 45 minute break. However, the total length of the shift was then in excess of 10 hours. Eventually a pattern was agreed of three shifts of 10 hours each to include a 45 minute break, with an additional short shift every six weeks.

110 In her submissions Miss Lintner referred to PCSO Phillips as being a comparator. As a consequence of the request being made by the Claimant Sgt Evans discovered that PCSO Phillips was working a ten hour shift with only a 30 minute break. In an email of 6 January 2014 he said that Inspector Scott had instructed PS Masterson, who was responsible for PCSO Phillips, to review that pattern. The shift pattern for PCSO Phiilips was not changed for some months.

111 Miss Lintner submitted that the Respondent's requirement for PCSOs to have a break of 45 minutes where the shift was for nine hours or longer was a PCP, and that put the Claimant at a substantial disadvantage because she did not feel able to work for more than 30 hours, and that the PCP required her to work for 28.75 hours. It would have been a reasonable adjustment for the Claimant to have been allowed to work the shift pattern she wanted, and also the requirement could not be objectively justified.

112 Mr Dracass submitted that the reasons for refusing to agree to the Claimant's initial request were reasonable and non-discriminatory. Any PCP was not to the disadvantage of the Claimant as a disabled person.

113 There is a claim of direct discrimination. PCSO Phillips is the comparator. Although we were not provided with dates we find that PCSO was allowed to work non-compliant shifts for a period after it was discovered by Sgt Evans that she was only taking breaks of 30 minutes. There is nothing from which we could reasonably conclude that the reason for any difference in treatment was because of the Claimant's disability. The direct discrimination claim fails.

114 Miss Lintner did not specifically identify in her brief submissions on this point what was the 'something arising' for the purposes of the claim under section 15, and on what basis it is being suggested that the Claimant was being treated unfavourably.

115 We accept that there was a PCP that PCSOs working shifts longer than nine hours were to have a break of 45 minutes. That on its face is a neutral practice. We entirely fail to understand how that put disabled people, and the Claimant, at a particular disadvantage by comparison with non-disabled people for the purposes of section 19, or put the Claimant at a substantial disadvantage for the purposes of section 20.

116 Those claims therefore fail.

Meeting 15 July 2014 and redeployment issues

117 This heading covers the conduct of the Respondent's staff at a meeting on 15 July 2014, and the placing and retention of the Claimant in the redeployment pool. These are claims 8, 11 and 12 in the list of issues with which we will deal together. These are claims of harassment and victimisation in relation to the meeting, and other heads of claim in relation to the redeployment pool. The meeting was attended by the Claimant and her union representative, Sgt Evans and Ms Palmer from HR. The complaint as set out by Miss Lintner in her submissions is that the Claimant was not warned in advance that the question of redeployment was to be discussed. It was important for her, said Miss Lintner, to know about the topics for discussion.

118 We are not sure that we have all the relevant documentation, but in any event we have not been able to find it. We know that by 8 July 2014 the Claimant was aware that there was to be a meeting on 15 July, and she referred to it as a 'health review meeting'. We also find that she knew that her future employment was to be discussed at the meeting because she said as much in an email of 15 July timed at 12:17 hrs. She was also aware that the issue of redeployment was in the air generally, because Sgt Evans had mentioned it to the Claimant in emails on 27 May and 2 July 2014.

119 We were not provided with any notes of the meeting but there is a record of it in a letter to the Claimant from Sgt Evans of 17 July 2014. We also had the evidence of the Claimant and Sgt Evans. What occurred was slightly confusing. What was decided by Sgt Evans was that there would be a further meeting on 22 August 2014 to review the Claimant's employment following her having had a further appointment with a Consultant. The outcome of that could have been that she was to be placed on the redeployment register on the basis that she would not be able to fulfil the requirements of her contracted role. In the meantime the Claimant was to be informally placed on the register so as to enable her to be considered as a redeployee for a longer period, thereby increasing her chances of finding alternative employment within the Respondent. No objection was raised by the Claimant or her representative to that course of action.

120 The discussion about redeployment which took place may have been unwanted by the Claimant (but we are not making a finding to that effect) but we find that it did not have the purpose or any of the effects set out in section 26 of the 2010 Act. Miss Lintner submitted that what occurred had the effect of creating a hostile and intimidating environment for the Claimant. We cannot trace any evidence from the Claimant to that effect. The Claimant replied to the letter from Sgt Evans on 29 July 2014 saying that being placed in the redeployment pool had come as quite a shock, saying that there had not been any previous discussions. For the reasons set out above we do not accept that that was a genuine statement. The Claimant knew full well of the possibility of the possibility of her being redeployed.

121 The Claimant was formally placed in the redeployment pool with effect from 5 September 2014 following a OH appointment with the Force Medical Adviser on 15 August 2014. The report, in its final form following comments from the Claimant, was provided on 15 September 2014. It stated that the Claimant was keen to explore the possibility of ill health retirement. It also stated that the Claimant was likely to be considered a disabled person, and it recommended that consideration be given to redeploying the Claimant to a non-operational role.

122 The conduct of Sgt Evans is said to have been an act of victimisation, as are the claims relating to the redeployment register. We do not know the nature of the protected act upon which reliance is placed. That head of claim fails in these respects. The heads of claim relating to the redeployment register itself are also brought under section 15, and said to be indirect discrimination and a failure to make reasonable adjustments.

123 Miss Lintner submitted that placing the Claimant in the redeployment pool without waiting for the outcome of her appointment with her Consultant was a PCP and that it placed her at a substantial disadvantage by comparison with non-disabled employees because she would not know of her capabilities, and could not therefore participate fully in the redeployment process. In his written submissions Mr Dracass said that the whole purpose of informally placing the Claimant in the pool was to assist her in retaining employment by the Respondent. Mr Dracass replied to Miss Lintner's submission saying that the Claimant was not in fact at any disadvantage as she was not placed in the 'full' redeployment pool initially, and in fact had an advantage in that she had the benefit of being treated as being in the pool for about a month, without actually being in it. We prefer the submissions of Mr Dracass on the point.

124 As to remaining in the redeployment pool between July 2014 and January 2015, the factual complaint is that the Claimant was at a disadvantage because she was off sick during the period in question and unable to attend any meetings or interviews, and unlikely to be fit enough to fulfil any role for which she would otherwise have been suitable. The Claimant was in fact off sick during the period in question.

125 This complaint relates to the decision of Ms Palmer conveyed in a letter of 19 September 2014. Sgt Evans wrote to the Claimant on 5 September 2014 referring to the meeting on 15 July. He recorded that despite adjustments the Claimant was not able to fulfil the role of a PCSO. Therefore alternatives were to be considered through the redeployment process. It was intended that there would be a further meeting on 22 August 2014 following the OH appointment of 15 August. That meeting was cancelled as the report had not been released by that date. Sgt Evans said that he had reviewed all the available information and concluded that the Claimant could no longer fulfil the role of a PCSO. He stated that therefore the Claimant would be placed in the redeployment

pool until 5 December 2014. If no suitable role became available then the Claimant's employment may be terminated.

126 The Claimant replied on 11 September 2016 protesting that the decision had been made without the latest medical report being available. She said that she wished to be involved in the redeployment process and asked that it be suspended until she was fit to return to work. Ms Palmer then wrote the letter in question. She dealt with various other matters, and then referred to the redeployment process. She reminded the Claimant that she had previously asked for a skills profile to be completed. Ms Palmer said that the redeployment process would continue, and that she would support the Claimant as far as possible.

127 Causing the Claimant to remain in the pool was, said Miss Lintner, a PCP. A reasonable adjustment would have been to suspend the redeployment process until the Claimant was fit to return to work. Mr Dracass replied to the effect that if the redeployment process had been suspended then the Claimant would in fact have been in a worse position as she would not have been made aware of any vacancies which became available.

128 In his written submissions Mr Dracass made the same basic point. He added that Ms Palmer was seeking to ensure that the Claimant did not miss out on any opportunity. He repeated a point already made to the effect that it was incongruous to argue that it was a reasonable adjustment to remove the Claimant from a process designed to help her. Another way of putting it would be that if the Claimant had been excluded from the redeployment pool because when was away from work because of a disability then she may well have a claim (or claims) because of that exclusion.

129 Mr Dracass further submitted that there was no evidence that the Claimant was not fit for <u>any</u> role within the Respondent. He pointed out that the Claimant had failed to complete a skills questionnaire and there was therefore an absence of information about her skills. Mr Dracass also submitted that there was no evidence that the Respondent would impose a requirement that the Claimant attend any meeting or interview as a prerequisite to being redeployed.

130 We were not addressed on the claim under section 15. We find that the absence of the Claimant from work was something arising from her disability, but being placed (or remaining) on the redeployment register was not unfavourable treatment. It was a fact that she was unable to fulfil the role of a PCSO. To seek to redeploy her cannot in our judgment be unfavourable treatment. Nor specifically was it unfavourable treatment for the Claimant to remain on the register while away from her then current role. We accept the submission of Mr Dracass that the purpose was to seek to retain the Claimant in a role which she was capable of fulfilling.

131 We are aware that exceptionally a single act can be a PCP for the purposes of claims of indirect discrimination and of claims under section

20. Normally, of course, one expects to find something wider than a single act. There was no evidence that the Respondent placed others who were away from work due to ill health on the redeployment register during their absence. We do not consider it to be a PCP. If we were to find otherwise then any management decision could easily become a PCP, and the distinction between claims under section 15 and claims under section 20 would become more blurred than it now is.

132 We find further than for the purposes of the indirect discrimination claim and that under section 20 the Claimant was not at a particular or substantial disadvantage within those sections. There was no evidence that any person who was off sick but not disabled would be in any better position that the Claimant. There was no evidence that the Claimant was not able to participate in the redeployment process because of being off sick. We accept the submission of Mr Dracass in relation to section 20 that the purpose of an adjustment is to retain the employee in employment, and that is precisely what the redeployment process was designed to do.

133 These claims therefore fail.

Requirement to wear jacket

134 Allegation 9 is that the Claimant was required to change her jacket on entering and leaving the police station. Again the Claimant alleges that this is in breach of section 15, and was indirect discrimination, a failure to make a reasonable adjustment, harassment and victimisation.

135 The facts are these. The Claimant was of course supplied with a PCSO uniform. However, part of her work involved visiting people away from the police station in circumstances where it would not be appropriate to wear such uniform. Consequently she went for such visits in her own clothes. In her witness statement the Claimant said that at the meeting on 15 July 2014 she was instructed to wear the uniform in the station although the adjustment that she could wear civilian clothes outside the station as per the Occupational Health recommendation would remain.

136 The first OH report is dated 12 June 2012. At that time the Claimant was undertaking office based duties on reduced hours. We were not shown the terms of the referral but it is apparent from the report that the issue of uniform was raised. We do not know why. The recommendation was as follows:

> I recommend that [the Claimant] is not identifiable as a PCSO out of the station.

137 The next report is dated 1 August 2012, and various recommendations were made concerning her work. The above recommendation was repeated, together with the further recommendation that the Claimant be plain clothed but that she could deal with non-confrontational issues. Similar points were made in subsequent reports. The last one before the meeting of 15 July 2014 was dated 6 June 2014. In that report it was simply stated that the Claimant was still not wearing uniform, and that she suffered from discomfort when wearing a stab vest.

138 In his letter to the Claimant of 17 July following the meeting on 15 July 2014 Sgt Evans said that the OH advice was no longer current, and stated that the Claimant had confirmed that she would not have any difficulties in wearing uniform in the office, and further that it had been agreed that she would wear additional civilian clothing outside so as not to be identifiable as a PCSO. In her reply of 29 July 2014 the Claimant said that the changing of jackets was causing her pain and discomfort. We find that that was the first occasion on which Sgt Evans had been made aware of that fact. As Mr Dracass pointed out, there had been exchanges of emails between Sgt Evans and the Claimant in the meantime and the Claimant had not raised any objection. In an email of 28 July 2014 the Claimant said that she had a medical appointment and requested disability leave, and to wear civilian clothes 'for ease' as she had to go on foot to the appointment, to which request Sgt Evans agreed.

139 We find that what occurred was that Sgt Evans effectively gave an instruction to the Claimant to wear uniform in the station. The reason was so that she could be readily identifiable as a member of the police staff. Sgt Jones wanted to include the Claimant as part of the staff. We find that that was done with the best of intentions and was intended to be for the benefit of the Claimant. Sgt Evans was not aware that that would cause the Claimant material discomfort. Further we find that the Claimant only worked for six shifts after that date before going off sick on 4 August 2014. We do not know how often the Claimant left the station during that period and accordingly do not know the extent of the effect on the Claimant.

140 Miss Lintner made two points. The first was that the requirement to wear a jacket was a PCP which put the Claimant at a substantial disadvantage. The second was that the requirement could not be objectively justified. That appears to us to confuse the terminology of sections 19 and 20. Mr Dracass addressed the claims under section 15 and of victimisation and harassment, as well as the claims under sections 19 and 20.

141 We can deal with the harassment and victimisation claims easily. We find that Sgt Evans did not intend his decision to have any of the effects in section 26(1)(b) of the 2010 Act, nor indeed did it in fact have any of those effects. There was no evidence of any causative link to any of the protected acts for the purposes of the claim of victimisation. We find that the requirement to wear a uniform jacket was not unfavourable treatment because of something arising in consequence a disability for the purposes of section 15. The 'something arising' was not identified.

142 The claims under section 19 and 20 require that there be a provision, criterion or practice. We find that there was a general requirement to wear uniform in the police station and that formed a PCP for the purposes of the legislation. For the purposes of section 19 we also find that that put the Claimant at a particular disadvantage by comparison with those who did not have her disability, because of the pain caused to

her in changing jackets. The extent of the disadvantage has to be limited because of the few shifts the Claimant worked after 15 July 2014. We find that the potential defence under section 19(2)(d) is not made out. We were not addressed on the matter.

143 We find that the Claimant would also succeed in her claim under section 20, but she does not do so because of the provisions of paragraph 20 of Schedule 8 to the 2010 Act which we have set out above. We accept the submission of Mr Dracass that Sgt Evans (on behalf of the Respondent) did not know, and could reasonably be expected to know, of the likelihood of the disadvantage because the Claimant simply did not raise the matter at the time. The Respondent, through Sgt Evans, should be able in our judgment to rely on that silence.

Requirement to report whereabouts

144 This is allegation number 10. The facts are agreed, although vague in some respects. Again this one simple allegation is brought under four heads of jurisdiction. The issue arose at the meeting of 15 July 2014 and was effectively part and parcel of the discussion about uniform. For her own safety the Claimant had not been wearing PCSO uniform outside the police station. Advice had been received from Occupational Health to that effect. The Claimant had at some stage been instructed by Sgt Evans to inform the supervisor on duty of where she was going when she left the police station. Unfortunately Sgt Evans did not state in his witness statement when that instruction had been given, nor was he asked about it. At the meeting of 15 July 2014 the issue was raised by the Claimant who said that she was the only person subjected to the requirement, and this had impacted on her relationship with her colleagues.

145 As already mentioned, part of the Claimant's work was visiting vulnerable people in their own homes. She went there in civilian clothes. Further during such visits the Claimant would not necessarily have her radio, with its GPS facility, turned on. It would simply not be appropriate. Sgt Evans had tried to contact the Claimant by radio in the past, but without success. The reason for the decision was set out by Sgt Evans in his letter of 17July 2014 as follows:

> I explained that I have a duty of care towards you and as you are not routinely out and about like the other PCSO's there is a need for you to continue to do this. However, I appreciated that it may not always be easy for you to do this verbally and as such, we agreed that you would either send a text or an email to the duty sergeant for this purpose.

146 The Claimant responded in her letter of 29 July 2014 in which she still complained about the decision.

147 We accept the evidence of Sgt Evans that others were doing different work from the Claimant, that they were identifiable and their whereabouts could be mapped by the GPS system. Further, they radioed in regularly. That was in distinction from the Claimant, who undertook home visits in plain clothes.

148 In her submission Miss Lintner pursued the claim under section 15, but not the other heads of claim. The wearing of plain clothes following recommendations from Occupational Health was something arising from her disability. The requirement to report her whereabouts was unfavourable treatment as it drew attention to the Claimant. It was not justifiable within section 15(1)(b) as the Claimant could always be reached through the police radio or mobile phone.

149 Mr Dracass submitted that it appeared that the instruction had been in place for some time, and that Sgt Evans was justifiably concerned to know the Claimant's whereabouts because of the duty of care which the employer had to her. Mr Dracass submitted that there was nothing discriminatory about the instruction and it did not fall within any of the relevant statutory provisions.

150 In respect of the section 15 claim we do not accept that the wearing of plain clothes was entirely because of the Claimant's disability. The Claimant had previously been involved in visiting vulnerable people in their own homes as part of her normal work. That involved the wearing of civilian clothes. We do accept that there had been Occupational Health advice that the Claimant should not wear uniform so as to reduce the potential for being involved in confrontational situations, and therefore the requirement to wear plain clothes was to a material extent in consequence of the disability.

151 We have some difficulty with the logic of this claim. The factual complaint is that the Claimant was required to report her whereabouts. The reason was that a considerable element of her duties involved going into people's homes. She went there in plain clothes. She was not on the streets in uniform in regular contact with the police station. The Claimant was not required to report her whereabouts because Occupational Health had advised that she should not be in uniform so as not to be in a confrontational situation.

152 In any event we find that the requirement was a proportionate means of achieving a legitimate aim. The aim in question was to seek to ensure the safety of the Claimant and to protect her. Requiring to know to where she was going was in our judgment quite clearly a proportionate means of achieving that end. Indeed, we ask rhetorically, what the outcome for the Respondent would have been if the Claimant had gone missing on duty without the Respondent having any idea to where she had gone.

153 The question as to whether there was a PCP for the purposes of any claims under sections 19 and 20 was not pursued. It is up to the Claimant to make out her case, and not for us to make it for her. For some reason which we do not understand taking into account the multiplicity of heads of jurisdiction invoked in respect of other factual allegations, there is no claim for harassment being made. There is a claim of victimisation. That claim is dismissed. No submissions were made about it, and there was no evidence of any causal link to any of the protected acts.

Language suggesting that the Claimant was no longer required

154 Allegation 14 in which the Claimant says that the Respondent subjected the Claimant to language and conduct suggesting that she was no longer required was not pursued before us. No submissions were made by Miss Lintner on the matter. As Mr Dracass correctly said, the allegation had never been particularised with any precision. It fails.

Ill health retirement procedure

155 This section relates to allegations numbered 15 and 16. In order to understand this matter it is necessary to go back to the events which occurred in 2012 and 2014 mentioned above.

156 The possibility of the Claimant being retired on the grounds of ill-health under the Local Government Pension Scheme had been raised at least when she was referred for an occupational health assessment on 6 June 2014. The Claimant met Dr Cahill-Canning on 15 August 2014. Her report addressed to Sgt Evans is dated 18 August 2014, but the Claimant did not authorise its release to Sgt Evans until 2 October 2014. The report stated that the Claimant was keen to explore ill health retirement.

157 The next stage in the process was for Mr Rutherford to approve the referral of the Claimant to an Independent Registered Medical Practitioner. That he did, and on 14 January 2015 Ms Palmer wrote to the Claimant informing her of the decision. With her letter she sent medical consent forms to the Claimant for signature. Those were returned by the Claimant, and on 20 February 2015 Ms Palmer informed the Claimant that she was instructing the IRMP. That was done on 23 February 2015. A pack of documentation was provided by Ms Palmer, which included a document headed 'Medical Certificate for a Current Employee – England and Wales'. That was referred to at this hearing as 'the Certificate'.

158 Part A of the Certificate is to be completed by the employer, and Part B by the IRMP. A question in Part A of the form is as follows:

> Have the employee's contractual hours been reduced as a result of their ill-health or infirmity or[7] mind or body?

The answer to that question was stated to be "No".

159 There then ensued considerable correspondence concerning amendments made by the Claimant to a consent form and other matters. Our attention was not drawn to this correspondence and we simply record that it did occur. Of relevance to the points at issue before us is a letter sent by Dr Fox, the IRMP, to Ms Arnould dated 31 July 2015. A draft of that letter had been seen by the Claimant, and her comments on the draft were enclosed with the letter as an addendum to it. The relevant part of the letter from Dr Fox is as follows:

[7] Presumably this should be 'of'.

> A point has been reached where advice can now be offered however on review of her file I note that the pension certificate that you have provided indicates that she has not been working reduced contractual hours for health reasons.
> Immediately above that section of the certificate there is comment that she works 28.75 hours on a part-time basis.
> Would you be kind enough to confirm whether the 28.75 part-time hours are Mrs Baker's contracted hours and that there has been no change down from a higher level for health related reasons.
> This matter is important in the decision-making process. I can confirm that once I have this matter clarified from you I will be in a position to provide an opinion.

160 The comments made on that letter by the Claimant were as follows:

> In regards to the questions asked and as recorded in my letter to you dated 09/04/15, I too queried the "no" response to my ill-health being contributory to the reduction in my working hours. I am able to evidence that my reduction in hours was and is (following further deterioration) due to my ill-health and disability, together with my responsibilities to my disabled parent – Equality Legislation applies.
> Additionally, I am able to evidence that the reduction in my working hours was on a six month trial period (extended for three months 15/07/14) in order for me to make some adjustments and find a better work/life balance due to my ill-health. Unfortunately, shortly after (04/08/14) I was signed medically unfit for work and remain on sick leave. Therefore, the extended trial period and contracted hours have not yet been agreed or finalised. Additionally, I have not signed any new contract.

161 On 20 February 2015 Ms Palmer asked Sgt Evans for confirmation that the reason for the Claimant's reduction in hours to part-time was due to caring responsibilities and not due to medical issues. Sgt Evans replied by attaching a copy of the flexible working application form which the Claimant had completed. He also recorded that the reason for the reduction was given as being the support the Claimant's dependent relative and find a positive work/life balance. That email exchange, and a copy of the form, were sent to Dr Fox. Ms Palmer also referred to emails dated 5 and 8 July 2014.

162 Dr Fox then replied on 26 August 2015 as follows:

> Whilst these emails/information are helpful, I'm afraid I must ask you a clear yes/no answer as to whether the Sussex Police have adjusted Mrs Baker's contractual hours as a result of ill-health or infirmity of mind of (sic) body.
> . . . .
> If you do not believe, from your perspective, that Mrs Baker's hours have been adjusted in relation to any health issue, then the current certificate we have on file will suffice. If to the contrary, you believe that they were, then I will need a new retirement certificate.

163 Mrs Arnould replied on 8 September 2015 as follows:

> Dr Fox, in relation to your request in a letter dated 26 August 2015 addressed to myself, I am writing to confirm that Sussex Police did NOT adjust Miss Bakers contractual hours, as a result of her ill-health or infirmity of mind and body.

164 Dr Fox then provided his report addressed to Mrs Arnould dated 11 September 2015. However, this report was provided to the Claimant, and she did not at any time authorise its release to the Respondent. It has only now been provided in accordance with the disclosure obligations arising from the litigation. The report and the certificate

accompanying it were to the effect that the Claimant was not immediately capable of undertaking any gainful employment, but that that would be achievable within the subsequent three years. The result was that she became entitled to a Tier 3 pension. That award would have had to be reviewed after 18 months, and would only last for a maximum of three years. [8]

165 Dr Fox did record in his report the difference of views as to the reduction in the Claimant's contractual hours, saying that it was not a matter which he was able to resolve. That was not an end of the matter. On 30 October 2015 the Claimant wrote to Mr Rutherford saying that her hours of work had been reduced due to her 'ill-health/disability', and that she had documentary evidence in support of it. That documentary evidence was the RARF form[9] which we have mentioned briefly above.

166 The RARF form is dated 3 February 2014 and was signed by the Claimant and Sgt Evans. Section 2 sets out a summary of the discussions held about proposed adjustments. The issue is described as being a restriction around the movement in the Claimant's right shoulder following her accident and subsequent surgery. What was proposed was that she be provided with specific computer training. There was no mention of any variation to her hours in that section of the form. Section 3 of the form contained various tables, one of which was headed "Employment Practices". One item in that table was the adjustment of time or number of hours worked. Sgt Evans put a letter "Y" opposite that item stating that the change had been implemented on 20 January 2014.

167 The issue of the form was discussed again between Sgt Evans and Ms Palmer in November 2015. Sgt Evans said that he was adamant that the decision to reduce the Claimant's hours was based on 'home/work life balance and her caring responsibilities.'

168 There is an entirely separate issue as to what impact any different information would have had on the certificate to be issued by Dr Fox.[10] In Part A of the form of certificate there is the question as the whether the employee's contractual hours have been reduced as a result of ill health etc. It is then stated that the question as to the cause of the reduction in working hours was to assist the medical practitioner when answering questions B8 and B9. Those questions or boxes indicate respectively that the employee is or is not working part-time wholly or partly as a result of ill health. Boxes B8 and B9 only become relevant if either box B6 or B7 had been ticked. They were not ticked because box B5 had been ticked stating that the Claimant was likely to be capable of

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[8] We note that a Tier 1 pension is due if the employee is unlikely to be able to undertake gainful employment before normal pension age, and Tier 2 applies where it is unlikely that the employee would obtain employment within three years, but would do so before normal pension age.

[9] Sussex Police Reasonable Adjustment Record Form

[10] We have noted that in the bundle there are two slightly different forms of certificate at pages 1234 and 1372j. The latter is the form of certificate completed by Dr Fox and the references are to that document.

undertaking gainful employment within three years. The issue as to the reason for the reduction in working hours became wholly academic.

169 The actual allegations which we have to decide are whether inaccurate information was supplied in February 2015, and whether the Respondent continued to assert that the reason for the reduction in the Claimant's hours of work had nothing whatsoever to do with ill-health or disability. These are said to be claims of unfavourable treatment under section 15 of the 2010 Act, and of victimisation under section 27.

170 These claims are predicated on the premise that the information supplied to Dr Fox was in fact inaccurate. Mr Dracass submitted that we should find on a balance of probabilities that the reason for the requests by the Claimant to reduce her hours was not connected to her ill-health or disability. Miss Lintner submitted to the contrary on the basis that the Claimant had asked for both the flexible work form and reasonable adjustments form to be made available to her at the same time.

171 We find that the reasons that the Claimant requested a reduction in hours in January 2014 were as set out on the application form dated 18 December 2013, namely to support her dependent relative and find a positive work/life balance. In coming to that conclusion we also note that the Claimant had been about to make a similar request in February 2012 before she had her accident.

172 Quite apart from our factual finding, there is no evidence from which we could reasonably conclude that the information which was supplied was because of the Claimant having committed one or more protected acts. The issue was not explored in cross examination with Ms Palmer. It was explored in the cross examination of Sgt Evans. We accept his evidence that all discussions which he had with the Claimant were around the caring responsibilities for a parent, and a better work/home life balance, and that the Claimant did not mention a disability in relation to the request to reduce hours. Further, he said that he did not consider the RARF form to have any relevance, and was not motivated by the fact that the Claimant had made a grievance.

173 Further, we do not know what was the "something arising in consequence of" the Claimant's disability which is alleged to have resulted in unfavourable treatment.

174 These elements of the claims fail.

Sick pay

175 The claim is that the Respondent refused to reinstate payment to the Claimant of full pay from half pay, and then removed the payment of half pay. It is allegation 15, and the claim is made under sections 15 and 20, and is also a claim of victimisation. The Respondent's sick pay policy was to pay full pay for the first six months of absence, and half pay for the subsequent six months. The Claimant's pay reduced to half rate from

6 January 2015, and was due to reduce to nil from 26 June 2015.[11] On 8 June 2015 the Claimant wrote to Ms Palmer asking for full pay from 26 June 2015 as a reasonable adjustment under the 2010 Act. Ms Palmer replied on 16 June 2015 saying that the matter fell outside the reasonable adjustments process, and invited her to complete a pay appeal form. The Claimant then responded on 22 June 2015 asserting that it was a reasonable adjustment under the 2010 Act. In any event, the Pay Appeal Panel decided on 2 July 2015 to extend half pay to the end of August 2015 as at that time the ill health retirement process was under way. It was further extended to the end of September 2015.

176 The issue was to be considered again by the Pay Appeal Panel towards the end of September or at the beginning of October 2015. Ms Palmer provided Mr Rutherford (through his secretary) with a summary of the position. Ms Palmer said that Dr Fox had issued his report and certificate, but that the Claimant had refused to authorise its release. Having read that information, Mr Rutherford wrote to Ms Palmer on 25 September 2015 saying that he would not support continuation of half pay. The Claimant was informed by letter of 3 November 2015 that if she did not authorise the release of Dr Fox's report and the Certificate half pay may cease. That was the decision then reached by the Pay Appeal Panel, and the Claimant's pay ceased with effect from 9 November 2015. The Claimant was informed by letter of 12 November 2015 from Ms Arnould which specifically stated that the reason for the decision to cease making payments was because the Claimant had refused to release the documents in question to the Respondent. We find that that was the genuine reason.

177 Mr Rutherford also wrote to the Claimant on 24 November 2015 in which he said that it was the Respondent's position that the purpose of making reasonable adjustments was to assist the employee to return to work or to keep an employee at work, and that an adjustment to her pay while on sick leave did not fall within the criteria.

178 We were referred to Police Negotiating Board Circular 05/01 relating to the exercise for discretion for payment of sick pay. When the Tribunal drew her attention to the point Miss Lintner accepted that the documents only related to police officers. However after the hearing the Respondent's solicitors quite properly wrote to the Tribunal saying that in practice the Circular did apply to PCSOs. The Claimant's solicitors did not comment further on the matter.

179 The Circular contains guidance to chief officers on the use of discretion to resume or maintain paid sick leave.

> 7. Whilst each case must be considered individually, the PNB considers it would generally be appropriate for chief officers to exercise the discretion favourably where:
>
> - The chief officer is satisfied that the officer's incapacity is directly attributable to an injury or illness that was sustained or contracted in the execution of his/her duty or ·

[11] We do not fully understand how these dates provided by Mr Rutherford relate to the policy, but they were not challenged by the Claimant.

- The officer is suffering from an illness which may prove to be terminal; or
- The case is being considered in accordance with the PNB Joint Guidance on Improving the Management of Ill Health and the police authority has referred the issue of whether the officer is permanently disabled to a selected medical practitioner
- The Force Medical Adviser advises that the absence is related to a disability as defined by the
- DDA* (*"A physical or mental impairment which has a substantial and long term adverse effect on the ability to carry out normal day-to-day activities.") and the chief officer considers that it would be a "reasonable adjustment" to extend sick pay, generally speaking to allow (further) reasonable adjustments to be made to enable the officer to return to work

Our attention was drawn specifically to the third bullet point.

180 The claims being made are under section 15 of the 2010 Act, of a failure to make reasonable adjustments, and of victimisation. In her submissions Miss Lintner only addressed the issue of reasonable adjustments. She submitted that the refusal to exercise a discretion was a PCP. She further submitted that the Claimant was at a substantial disadvantage in that she was not receiving any pay, and it would have been a reasonable adjustment for her to have her pay reinstated. We simply do not know what the basis of the section 15 claim is, and the claim of victimisation was not pursued in evidence at the hearing. It was not put to Mr Rutherford in cross examination that the reason he made the decision concerning the Claimant pay was related to any protected act.

181 Mr Dracass submitted that Mr Rutherford was correct when he stated that the purpose of making a reasonable adjustment was to enable an employee to remain at work, or to return to work. Payment of sick pay fell outside that concept. We entirely agree. We note that paragraph 6.2 of the ACAS Code states that employers are required 'to take positive steps to ensure that disabled people can access and progress in employment.'

182 We do not accept that in these circumstances the failure to exercise the discretion was a PCP which put the Claimant at a disadvantage. There was no evidence that there was a practice applied to others. The only evidence we had was the guidance, but not whether there was compliance with that guidance. We find that the sole reason for the Respondent not considering further payment of sick pay was that the Claimant was refusing to authorise the release of the report of Dr Fox. It was not suggested on behalf of the Claimant that that was a PCP for these purpsoes.

183 Those claims fail.

Discretionary award

184 This is allegation 19. The Claimant alleges that the Respondent's refusal to make an injury award was unlawful under section 15, was an act of indirect discrimination, was in breach of section 20, and also an act of victimisation.

185 We were referred to the terms of Local Government Pension Scheme Discretion Policy in relation to the pension scheme provided by Sussex Police. The introduction states the Local Government Pension Scheme contains some discretionary provisions. There may be an issue as to whether the Claimant sustained her injury during her employment, and we do not in the circumstances need to consider that point. The paragraph numbering in the document is confusing, but in the relevant section it is clearly stated that 'Sussex Police does not intend to exercise the above discretion [relating to industrial injury] in the event that you have an industrial injury . . . or disease sustained during employment.'

186 In her letter of 30 October 2015 to Mr Rutherford the Claimant requested that consideration be given to the making of an award. Mr Rutherford replied on 24 November 2015 enclosing a copy of the policy referred to in the preceding paragraph and stating that the Respondent did not confirm it would exercise its discretion, and that it was the position of the Respondent that it would not give consideration to an award in respect of the Claimant's injury.

187 Miss Lintner did not make any submissions on this point. Mr Dracass made very brief submissions. He correctly pointed out that Mr Rutherford had not been cross-examined on the matter at all. He said that the Respondent was assuming that the Claimant had belatedly, but sensibly, withdrawn the claims.

188 As we have repeatedly said, it is not for us to make the case for the Claimant. It was not explained to us how the factual allegation fits into the relevant statutory provisions. We do not propose to seek to guess what the 'something arising' for the purposes of section 15 was.

Letter of 3 March 2016

189 The Claimant's solicitors wrote to Alison Leitch, the solicitor then instructed by the Respondent, on 3 March 2016. It was an open letter but written in an attempt to resolve the disputes between the parties. Proposals were set out in nine separate paragraphs. As far as ill-health retirement is concerned, it was proposed that the Respondent provide a new certificate stating that ill-health played a significant part in the decision of the Claimant to reduce her hours, and that another IRMP be instructed. Further, the employment was to end on the basis of ill-health retirement. As far as pay was concerned, that was to be reinstated with effect from 10 November 2015.

190 Ms Leitch replied on 10 March 2016. Comments were made on various points set out in the letter of 3 March 2016. For current purposes it is only necessary to record that the Respondent did not agree to the proposals.

191 The failure to agree is said to have been unlawful under section 15, a failure to make reasonable adjustments, and an act of victimisation. Miss Lintner did not pursue any of these points. Mr Dracass submitted that the allegation that this was an act of victimisation was ludicrous. We agree entirely. He also submitted that the fact that the Claimant brought such a

hopeless claim exposed her mind set. We entirely agree that this allegation is entirely hopeless. Proposals were made clearly on a without prejudice basis in an attempt to resolve difficulties which had arisen. The Respondent did not agree those proposals. That is an end of the matter.

192 For the above reasons the claims are dismissed.

Employment Judge Baron
14 March 2017