



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL
BEFORE: EMPLOYMENT JUDGE F SPENCER
MEMBERS: MR S PEARLMAN
MR D SHAW

CLAIMANT R

RESPONDENT H

ON: 27 October – 5 November 2021 (5th November in chambers)

Appearances:

For the Claimant: Mr MacDonald. counsel
For the Respondent: Ms C Maclaren. counsel

This hearing was carried out on CVP (Cloud Video Platform). The parties did not object to it being conducted in this way. It was not possible to conduct the hearing in person and all issues could be resolved using CVP

RESERVED JUDGMENT

The Judgment of the Tribunal is that the Claimant's claim that the Respondent failed to make reasonable adjustments contrary to sections 20 and 21 of the Equality Act 2010 is not well founded and is dismissed.

REASONS

1. The Claimant is a former police officer, who took early ill-health retirement in 2017. She brings a claim of failure to make reasonable adjustments. It is accepted that at all material times for the purposes of this claim she suffered from complex post-traumatic stress disorder (PTSD) and depression.

2. The Claimant joined the police in January 2004. At the time that this claim was presented the Claimant was still an acting police officer, although she had been absent for ill-health since 2015. Proceedings were then stayed, at the request of the parties, pending the outcome of the Claimant's applications for ill-health retirement and an injury on duty award. There have been further delays for a variety of reasons including, most recently, the coronavirus pandemic.
3. On 31 July 2019 Employment Judge Pearl ordered that the hearing was to be conducted in private and that the parties would be anonymized in the Judgment. The parties have agreed a list of letters representing individuals who would otherwise be named in this Judgment and the parties names have been anonymized in accordance with that list. Places have also been anonymized and places denominated with a letter L followed by a number.

Preliminary matters

4. At the start of the hearing we had a discussion about the list of issues. A list of issues had been agreed following an earlier preliminary hearing in 2018. At the start of the hearing Mr MacDonald, on behalf of the Claimant, sought to amend the list of issues. The changes were twofold. The first was to expand the pleaded failures to make reasonable adjustments to include a PCP of "requiring the Claimant to attend or to have contact with L1 Police Station in the period May 2013 to end 2014."
5. The second proposed change was to amend paras 4, 7 and 11 of the list of issues to ensure that the Tribunal determined not only whether the Respondent actually knew of the substantial disadvantage caused by the relevant PCP, but also whether the Respondent could reasonably have been expected to know that the Claimant was placed at a substantial disadvantage by the relevant PCP. Mr MacDonald submitted that the list of issues contained an error and that the list of issues should reflect the legal test. The Respondent resisted both changes.
6. In relation to the first proposed change – the addition of a failure to make reasonable adjustments arising from a new PCP, (the requirement to attend L1) we noted that in the Claimant's particulars of claim she had stated that a number of adjustments were required to minimise the effects of her PTSD. One of those adjustment was said to be to not having to attend L1 Police Station. However, no complaint was made in the narrative that followed that the Respondent had not made that adjustment.
7. In the further particulars of her reasonable adjustments claim, drafted by her lawyers for the purposes of the first preliminary hearing in 2015, the Claimant did not identify any issue regarding attendance at L1 police station as part of her reasonable adjustments complaint. Those further particulars had been used as the basis for the Tribunal's list of issues as set out in the order of Employment Judge Gay following the preliminary hearing on 16 November 2015. Thereafter an adjustment relating to L1

had not appeared in any subsequent list of issues. We therefore concluded that even if there was a complaint in the particulars of claim – which was not at all clear - the Claimant must be taken to have withdrawn any such complaint.

8. We concluded that the L1 amendment so late in the day should not be allowed. The addition of the L1 complaint increased the timeline of complaints into 2013, added a new complaint and would prejudice the Respondent, whose witness statements had been drawn up in reliance on the agreed list of issues. The Claimant had at all times been advised by experienced employment lawyers, and there was no good explanation for such a late change.
9. We did however permit an amendment to include an enquiry into whether or not the Respondent could reasonably have been expected to know that the Claimant would be placed at a substantial disadvantage by the pleaded PCPs. Ms McLaren had objected to this amendment. She said the formulation in the list of issues was not an error and that the Claimant's case had always been based on the Respondent's actual knowledge, so that constructive knowledge was not in issue. The amendment would require her witnesses to be cross-examined about what they saw or concluded in relation to her symptoms. It was not fair to make this amendment so late in the day after a 6 year wait.
10. Ms McLaren's submissions had some force. Nonetheless, we concluded that the tribunal could not make a proper and fair assessment of whether or not there had been a failure to make reasonable adjustments without using the full legal test set out in schedule 8 of the Equality Act.
11. The Claimant's witness, AL, had attended pursuant to a witness order which had been granted very shortly before the hearing. Ms McLaren objected to introduction of a new witness so close to the hearing. At the start of the hearing the Claimant had indicated roughly what the Claimant would say but there was no witness statement. A witness statement was provided at the end of the first day and, having had sight of the proposed new witness statement, we concluded that the introduction did not prejudice the Respondent, subject to the deletion of one paragraph which raised new factual matters.

Issues

12. The list of issues, as amended, is set out in the schedule to this Judgment. The claim is about failures to make reasonable adjustments. Broadly the Claimant claims that
 - i. From February to December 2014 there was a PCP in place requiring her to deal with issues concerning firearms and sexual offences; that this put her at a substantial disadvantage in comparison to those that were not disabled, in that such actions could be a trigger for her PTSD causing her distress and ill-

health; and that she should not have been required to deal with such issues.

- ii. That in December 2014 she was required to undertake a role within L3 which put her at a substantial disadvantage. However, although worded in this way, it was apparent from the evidence that the real issue was not that the Claimant was required to undertake the role itself but that she was placed in the role without proper support and understanding and that this put her at a disadvantage because she required greater support and guidance in acclimatising to her new role given her PTSD.
- iii. In April 2005 the Claimant was required to assess reports of crimes involving firearms and/or sexual offences at L8 police station. In evidence again the issue shifted. Mr MacDonald pleaded, in the alternative, that if the Tribunal found that she was not required to assess such reports, the Claimant was put in a position where she had to see the words “gun” or “firearm” and references to “sexual offences” which were likely to trigger her PTSD.
- iv. In all cases the Claimant says that the Respondent knew or ought to have known of the substantial disadvantage which she suffered.

Relevant law

13. Section 39(5) of the Equality Act 2010 imposes a duty to make reasonable adjustments on an employer. Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. However, an employer will not be subject to this duty if he does not know, and could not reasonably be expected to know, that the disabled person has a disability and is likely to be placed at a disadvantage by the PCP. (Para 20 (1) of Schedule 8 to the Equality Act.) Constructive knowledge can arise where there are warning signs and where an employer does not do all that it could reasonably be expected to do to find out if that is the case.
14. The duty itself is set out in section 20 which provides (inert alia) that where a provision, criterion or practice (a PCP) applied by or on behalf of an employer, places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable to have to take in order to avoid the disadvantage. This duty necessarily involves the disabled person being more favourably treated than others, in recognition of their special needs.
15. An employer is required to make reasonable enquiries as to whether an employee is disabled and as to the effect of that disability. The EHRC Employment Code (“the Code”) gives guidance on knowledge of disability

at paras 6.19 -21“An employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.”

16. *If an employer’s agent or employee (such as an occupational health adviser, a HR officer or a recruitment agent) knows, in that capacity, of a worker’s or applicant’s or potential applicant’s disability, the employer will not usually be able to claim that they do not know of the disability and that they therefore have no obligation to make a reasonable adjustment. Employers therefore need to ensure that where information about disabled people may come through different channels, there is a means – suitably confidential and subject to the disabled person’s consent – for bringing that information together to make it easier for the employer to fulfil their duties under the Act.”*
17. *In Environment Agency v Rowan 2008 ICR 218 and General Dynamics Information Technology Ltd v Carranza 2015 IRLR 4 the EAT gave general guidance on the approach to be taken in the reasonable adjustment claims. A tribunal must identify:*

the PCP applied by or on behalf of the employer, or the physical feature of premises occupied by the employer

the identity of non-disabled comparators (where appropriate), and

the nature and extent of the substantial disadvantage suffered by the claimant.

Once these matters were identified then the Tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified. The employee only needs to show that there is a chance that the proposed adjustment would do so. The issue is whether the employer had made reasonable adjustments as matter of fact, not whether it failed to consider them. “Steps” are not merely mental processes such as the making of an assessment; rather they are the practical actions which are to be taken to avoid the disadvantage

18. What is a reasonable step for an employer to take will depend on the circumstances of the particular case. Paragraph 6.28 of the Code sets out some of the factors which might be taken into account in determining whether it is reasonable for an employer to have to take a particular step in order to comply with the duty to make reasonable adjustments. These include whether taking the step would be effective in preventing the substantial disadvantage, the practicability of the step, the cost to the employer and the extent of the employer’s financial and other resources.

Evidence

19. The Tribunal heard evidence from the Claimant and, on her behalf from AL, who had been the Claimant's line manager until early 2012. On behalf of the Respondent we heard from AE, an Occupational Health Adviser for the Respondent, from AK, the Claimant's line manager, from R the Claimant's 2nd line manager and from F, the Claimant 3rd line manager. We had an electronic bundle of documents running to some 538 pages.
20. The Claimant remains unwell, and it was necessary to take frequent breaks (every half an hour or so), in order to for her to be able to follow the proceedings. At times when she was not being cross-examined she turned off her camera (with permission) and would notify us via the chat bar if she needed a break.

Credibility

21. There have been a number of conflicts of fact during the evidence. We accept that the Claimant was trying to be truthful but, on balance, having regard to the documentary evidence we have on the whole preferred the evidence of the Respondent. In particular, it is a large part of the Claimant's case that AK failed to take her health condition seriously and asked her to do things knowing that they would trigger her PTSD. We do not accept that. During the time that the Claimant was managed by AK it is apparent that they had an exceptionally good relationship. She thought well enough of him to invite him to the appointment with AF (see below), and AF's report made it clear that he thought that they enjoyed a strong relationship. Other contemporaneous documents in the bundle support this - see the reports of conversations with AE (106 and 338) and the various WhatsApp messages passing between the Claimant and AK in which the Claimant repeatedly expresses her gratitude for his continuing support and understanding. In the light of that, the Claimant's claim that she did not put her complaint in writing because she was afraid of repercussions from AK is not plausible.

Findings of Relevant fact

22. The Claimant was a police officer. The Claimant's life has not been an easy one. As a child she was raped and sexually assaulted by her cousin. He was a member of an organised criminal gang who had committed a double murder in 2006, and is currently in prison, having been convicted of homicide. It is the Claimant's case that in 2010 while she was in Pakistan, and acting as an undercover police officer, her cousin held her hostage, put a gun to her head and threatened to kill her, as well as physically assaulting her. The murder team investigating her cousin were based at L1 police station. In her witness statement the Claimant told the tribunal that a personal injury claim she brought against the Respondent in relation to this incident was subsequently settled in her favour.

23. The Claimant was off work for about 7 months from April to November 2010. In May 2010 a consultant psychiatrist, Q, diagnosed that the Claimant had an adjustment disorder – mixed anxiety and depressive reaction. He recommended treatment with medication and a course of cognitive analytic therapy, but he did not recommend any specific adjustments at work. (69)
24. From 2011 the Claimant was based at L2 police station, and AL was her line manager. His evidence was that the Claimant told him that she suffered from PTSD and depression and that she could not visit L1 police station - although her role at that time did not require her to visit L1.
25. In May 2013 OH advised that the Claimant should not deal with undercover work, and she did not so. In June 2013, after a short period of absence for a stress related disorder, (and following a request by the Claimant for a change in line manager) the Claimant was posted to the main CID office at L2, and AK became her line manager. At that point the Claimant was a Trainee Detective Constable working towards becoming a Detective Constable. AK was not advised of any formal issues or restrictions relating to the Claimant.
26. The Claimant and AK got on well. AK's evidence, which we accept, was that he found the Claimant to be likeable and that he worked hard to develop a friendship with her to better support her at work. He told the tribunal that from a fairly early stage he had some concerns about her mental health, because of she had frequent and often dramatic changes of mood, ranging from being exuberant to being in tears.
27. The Claimant asked AK if he would attend a meeting with her psychiatrist AF on 21 August 2013. This appointment had been commissioned by the Claimant's then lawyers, presumably in relation to her personal injury claim against the Respondent. AK sat in during the entire session. During this appointment the Claimant was open about her history of sexual abuse at the hands of her cousin from the ages of 10 to 16. She had also described a violent, abusive and difficult relationship with her father, that her mother had organised a serious assault on her when she was 16, that she was called a whore by her brothers and that while, working undercover in Pakistan, her cousin had put a gun to her head. She had developed nightmares and flashbacks concerning this incident. AF diagnosed PTSD.
28. At the end of the session AK spoke to AF the psychiatrist about what he could do to help. AF described the Claimant as impressive and resilient. He explained that the Claimant would undertake CBT that her mental health would likely get worse before it got better, but that in the meantime she needed to remain employed and busy. He said that was crucial that the Claimant's relationship with her manager was safe, that she would flourish in a close and supportive team and that she should not undertake any undercover policing. No mention was made of any prohibition on the Claimant visiting L1 police station, nor was there any reference to avoiding

gun crime or crimes involving sexual offences. However, as the report had not been commissioned by the Respondent, AK did not subsequently see a copy of the written report.

29. It is not in dispute that the Claimant did not undertake any undercover work at that time, but at L2 she had a normal CID caseload which involved investigating crimes of all different types including sexual assault and stabbings, gun crimes and warrants involving child abuse. As a trainee Detective Constable the Claimant needed to demonstrate that she was competent in all areas of CID work and would log these competences in her workbook and AK would verify. Once all the competencies had been sufficiently demonstrated this was passed to the Detective Chief Inspector for approval. The Claimant became a qualified Detective Constable on 11 April 2014.
30. It was the Claimant's evidence that after the interview with AF the Claimant discussed her PTSD with AK and in particular told him that she believed that the triggers for her PTSD were attendance at L1, gun crime and crimes of sexual violence. AK does not accept this. He says that he was advised of any prohibition on any of those things until much later – see below. The contemporaneous evidence clearly supports AK's account. We do not accept the Claimant's evidence that she did not put her various complaints in writing because she was afraid of AK.
31. As there was no custody suite at L2, it was part of the Claimant's duties to attend L1. AK had noticed that the Claimant tended to get agitated when attending L1 and in about September 2013, the Claimant told AK that she became agitated when interacting with L1 police station. After that AK arranged for her to attend L1 with another police officer.
32. On 26 September the Claimant had a panic attack at work and was then off on sick leave until mid-January 2014, after which she returned on a phased basis. On 16 October 2013. While she was off sick, AK referred the Claimant to Occupational Health (OH). The referral noted that the Claimant became agitated when attending L1 police station and needed to be closely supervised when doing so. Ak set out his view was that the Claimant should not be asked to carry out duties there in the future; but that as attendance at L1 was crucial to her role she should be considered for transfer to another borough, where the likelihood of this occurring would be minimised.
33. The Claimant met with AE, an OH adviser on 13 November 2013. AE in turn made a detailed referral to a consultant neuropsychiatrist AC. This notes that the current episode of sickness appeared to have been triggered by the fact that the Claimant was having to go to L1 daily. She also told AC that she had been unable to deal with a gun that was on a colleague's desk and had to hide in the toilets. The Claimant said she was also triggered by black cars with tinted windows and fireworks. The Claimant asked for a transfer to avoid having to go to L1.

34. In her referral AE noted, amongst other things, that the Claimant was asking to be transferred to another borough in order to avoid the need to go to L1. AC was asked to advise whether the Claimant's sickness was linked her PTSD, whether a transfer would assist to improve her symptoms and for any other recommendations
35. The Claimant attended the appointment with AC on 9 December 2013. This subsequent report dated 11 December 2013 (122) set out the history of the Claimant's difficulties but did not specifically answer the question as to whether the Claimant sickness absence would reduce if she was transferred. AC only advised that the Claimant's symptoms would improve "if her PTSD and depression were treated" and that it was important "to try and eliminate from her working environment any potential reminders of the trauma" but does not state what these potential reminders might be.
36. AE also wrote to the Claimant's GP on 16th December 2103 with a copy of AC's report and asking for the GPs opinion about any adjustments that might assist the Claimant's return to work; and her view on the Claimant returning to her role. In that letter AE specified that the Claimant would not be asked to work at L1. The GP responded that until she had completed therapy it was unlikely that the Claimant would be returning to work. She advised that once the Claimant's issues had been dealt with, she would return to work as normal but not at L1 and that she would need advice from OH to facilitate that return.
37. In the meantime, the Claimant met with AK on 5th December and then spoke to him following her appointment with AC. The Claimant told AK that while the psychiatrist and OH felt she should be transferred to another borough, she disagreed. She said that she was not seeking a transfer. Following that discussion AK and AE agreed that the Claimant would remain on AK's team, given the close relationship they enjoyed and the need for the Claimant to have a safe relationship with her manager.
38. The Claimant returned to work in January 2014 on recuperative duties working in an administrative capacity (rising to full hours in March.) We accept that on her return to work the Claimant was not asked to attend L1 police station. Although the Claimant said in evidence that she would be asked to go with colleagues and to wait in the car, and that AL repeatedly asked her if she felt ready to go to L1, AK denies this, and we prefer his evidence.
39. A further occupational health report was provided in March (154) which advised that the Claimant should avoid any work or communication with L1 police station, and she should not return to work in the afternoon after a trauma-based CBT session.
40. In February, once the Claimant was back at work, the Claimant applied to be posted to the anti-terrorist branch Muslim contact desk as she was

fluent in numerous languages. AK supported this application, but the Claimant did not get the job. In her application (138) the Claimant used and incident in which he was called to deal with persons armed with firearms and knives to evidence the relevant criteria for the job. In July the Claimant applied to join the anti-terrorist public protection unit, which AK again supported, but unfortunately the Claimant did not get this job.

41. The Claimant was keen to progress to become a fully competent Detective Constable and needed to demonstrate that she was fully competent in all areas of CID work. She did so by evidencing the various competencies in her workbook and this was reviewed and checked off by AK. She qualified as a detective constable in April 2014, and we set accept AK's evidence that during 2014 she had a normal CID caseload including assault, GBH, sexual assault and, less commonly, stabbings, gun crimes and warrants involving child exploitation
42. In June 2014 the Claimant was involved in a warrant search of a house in Wimbledon relating to indecent child's images. She was subsequently tasked with scheduling and describing the videos individually. AK's evidence was that they had seized a large number of DVDs from the house search. 3 of those DVDs had titles indicating content involving child pornography and he watched those. The Claimant and the rest of the team were asked to take a dip sample of the remaining DVDs to see if they were normal DVDs, but which hid child images i.e., to watch them on fast forward to see if they contained child pornography and to document what was there. The Claimant claims that this was highly traumatizing, that she should not have been asked to undertake those duties and that she frequently wet herself and felt sick when carrying out the task. AK says, on the other hand, that if that was the case, he was unaware. She did not tell him that she didn't want to view the DVDs and he did not see any evidence of her feeling nauseous or wetting herself. The tribunal was taken to one email in the bundle in which the Claimant referred to this task as "yucky" but this, as Ms McLaren submits, goes no further than the reaction of any ordinary person to such a task.
43. We consider that, given the relationship that the Claimant enjoyed with AK, her openness with him about her condition, and the referrals which had been made to OH, there was nothing to put AK on notice that this was not a task that the Claimant could carry out. She had spoken to AE on 22nd September (180 after she had been tasked with this job but before it was completed (186) and made no mention at that time of any difficulties with his type of work.
44. In mid July, the Claimant was diagnosed with stomach ulcers and had some time off. AK drafted a referral to OH, but the Claimant then went on holiday to Turkey and so this was not completed till September. The Claimant spoke to AE on 22nd September who OH confirmed that the existing adjustments were to remain in place but did not advise any further adjustments – see above.

45. In August or September 2014, the Claimant attended a firearms raid. In her witness statement the Claimant said that this involved “seeing a firearms officer with firearms and searching in a house for firearms”. In fact, although the Claimant was involved, with the entire team, in obtaining a firearms warrant and attending a search, she did not physically go into the house. The Team had briefed firearms officers and the Claimant remained in a car some way away. She was not involved in searching the address or going into the property.
46. It was the Claimant’s evidence that during the raid she was so frightened that she wet herself. She said she told AK about it and that he said that it was like “falling off a horse” and the best cure was to get back on the horse, to tackle gun crimes and to go to L1. We do not accept that evidence. We prefer AK’s evidence that the Claimant did not tell him that she had a problem with this or that she had had a traumatic reaction to it.
47. It was the Claimant’s evidence that despite her reaction to the firearms raid AK instructed her to deliver a firearm to lab for analysis, which stressed her so much that she got a speeding ticket. Afterwards she reported her fears to AK who said that the best way to overcome her fears would be to face them. AK accepts that he instructed the Claimant to deliver a firearm, packed forensically for analysis, but denies that the Claimant told him that it was problematic.
48. Here, as with the issues about the DVDs and the firearms raid, we have preferred AK’s evidence. As we say, given the relationship that they had, we have no doubt that AK would have taken note of the Claimant’s objections if she had told him that those matters would trigger her PTSD.
49. In October the Claimant took part in a promotional drive to encourage women and ethnic minorities to join the Respondent and featured in a magazine.
50. On 27 November 2014 the Claimant contacted AK via WhatsApp (193) and asked to meet him off-site. At that meeting the Claimant told AK that she could no longer cope with her current workload or “certain crimes”. When asked to explain the Claimant told AK that she struggled with the minutiae of cases. However, she did not specifically identify guns or sexual crimes as the cause of her problems. She told AK that had considered resigning and that she wanted a transfer.
51. At AK’s request the Claimant set out the discussion in writing (194). In that memo the Claimant refers to her PTSD and refers to AK as being “*the only one not to judge me and fully supported me. At the time I was off sick with stress, he regularly contacted me and gave me constant reassurance. He included me in his team and has really pushed me to be recognized as a competent police officer. He has treated me as an equal. I feel as though AK has been extremely sensitive with my situation, unfortunately it has*

come to a time where my psychological injuries are still fresh and I cannot cope with certain crimes that are allocated to me” .“AK has also allowed me to flourish and has given me ample opportunity for me to extend my abilities; he fully supported me when I wanted to work for CCRU and any media work that was offered to me.” She gave permission for AK to share her personal circumstances with his superior officers and asked for an office-based job to concentrate on her recovery.

52. AK emailed his line manager R the same day, (195) in order that a new role could be found for the Claimant without delay. R in turn discussed this with his line manager F.
53. On 1 December 2014 the Claimant emailed AE of OH with an update on her recent absence for a stomach ulcer (199) she said that she had been diagnosed with hpylori and that there was a strong possibility that this was linked with stress. She said she was suffering from hallucinations and anxiety, that the Respondent was toxic for her and, although AK had been very supportive of her, she was unable to cope in her role and she had recently told him that she no longer wanted to be on his team.
54. On 3 December 2014 the Claimant called AE (349) and told her that “the amount of sexual/gun crime that she is dealing with is impacting on her”. She said her therapist had advised her that she should go sick and that she should be removed from this type of crime. She requested that she be removed away from the borough and carry out only non-confrontational, admin-based work only with no sensitive material and to work a 5-hour day. She said she was due to attend an appointment with her psychiatrist on 12th December. AE asked the Claimant to forward any reports that she received following that appointment. This information was relayed to AK. It was the first time that the Claimant had identified that she found it difficult to deal with sexual and gun crime.
55. On 5th December, just over a week after her request, the Claimant was given the choice of 2 different roles. The first was working in the Crime Management Unit to assist in screening decisions, or a role in L3. The Claimant chose the L3 role.

L3

56. It is the Claimant’s case that the Respondent had in place a PCP which required her to take the role. She says she was only offered the choice of 2 roles and the L3 role seemed more appropriate, but she did not have any real choice in the matter, and she was backed into a corner. She says that no proper thought was given to what role would be best for her health.
57. We do not accept that the Claimant was forced to take the L3 role. We have no doubt that if the Claimant and said that neither role was suitable, efforts would have been made to find her another role. He role was an

admin-based office role which did not require her to deal with gun crime or sexual assault.

58. The new role was with the L3 Team and based at a civic centre, L4, and not in a police station. She was to report to S. The Claimant would be part of a multiagency team working with children and young people who had come to the attention of the police in relation to low level crime. Her role was to liaise with social services and/or victims to decide the best course of action. She also had to update a spreadsheet containing a log of those who had been referred to the Team. It was the Respondent's evidence that she would be familiar with the case files from her experience elsewhere. It required working with the social workers who were based in the same location.
59. The Claimant started in the new role on 8th December working on compressed hours (so that she did not work on Wednesdays). S contacted the Claimant on 4th December to talk about the new job (201) and they met in his office on 8th December after which S took the Claimant to L4.
60. The Claimant worked in L3 for 3 days before, on the 4th day, she became distressed and left work. A fellow officer drove her to her appointment with her therapist for 11.30 but after that the Claimant was off work on sick until 23 February 2015.
61. The Claimant is clearly upset by her time at L3. She says that S was not based at L4 – so that she did not have any direct supervision in the new job and that the Respondent failed to support her. She says that she did not know what she was doing, and no one provided a formal handover to assist her acclimatising to the role. She says she was not given access to an IT system or to the Police National Computer and had to phone colleagues at L2 to assist. S was not in the office except on the first day to greet her. She says that she was not given swipe access to building and had to contact civilian colleagues to allow her to enter. She also says that S was unsupportive and questioned her hours, challenged her about attending medical appointments and dint ask about her health. She says she was “stuck with civilians”, that it was isolating and that she struggled with the role and was being blamed but did not have sufficient training to do the work.
62. We do not accept that. The Claimant was based in a multidisciplinary team. She was required to liaise with social workers also based at L4 and she was able to contact her predecessor in the role by email. We accept the role was straightforward and one for which no specific training was required, and that the Claimant had an awareness of the role from her own experience in CID. She complains that she did not have access to the PNC computer and had to ask “civilians” for help- but the Claimant had never had access to the PCN and this this was no different to the position she was in when she worked at L2. She spoke to her predecessor on the phone and accepts that he was helpful

63. On Friday 12th December the Claimant had arranged to meet with LI the MPS lead for youth justice. She was very distressed. A note prepared by another officer described the Claimant's distress on 12th December. He notes that the Claimant had complained that she had been "dropped into the role" with no handover, no guidance and no clear idea of what the role entailed and that, from the Claimant's description, her move into the L3 had not been well managed and that in her state at that time she shouldn't be in the workplace. He drove her to her medical appointment after which the Claimant went on sick leave.
64. When the Claimant started in the L3 she was more fragile than anyone at the Respondent understood. We accept that it was a role which did not require a detailed handover and that the Claimant would have been familiar with the role and we do not accept that S questioned her hours and challenged her about her medical appointments. Text messages in the bundle do not support that.
65. The Claimant met AK on 15th December. AK recorded at the time that she did not look well (214). She told AK that she had found the posting in L3 overwhelming, that the DS in the L3 had "gone mad" and that she was very upset by having been parachuted in with no handover or training. AK told her that the job in the CMU was still open to her.
66. From December 2014 to February 2015 the Claimant remained on sick leave. Contact was maintained between the Claimant, AK and AE. On 13 January 2015 (221) AK contacted the Claimant to ask if she would like to consider the possibility of becoming a PC trainer starting in April. The Claimant was interested. (221).
67. In the meantime, the Claimant had been assessed by the Springfield Psychiatric Unit. AE sought advice from the Claimant's GP as to whether or not she would be fit to return to work, but the GP responded that guidance in terms of the Claimant's absence and prognosis should be sought from Springfield.
68. A case conference took place on 27 January 2015 attended by the Claimant, her husband, AE and AK. The Claimant said that Springfield had diagnosed her with complex PTSD but would not treat her until her weight and her home life became more stable. She was however keen to take the trainer role which she said she had discussed with her GP and they both thought it would be perfect for her. As the Tribunal understands it, the MPS training school had introduced 2 new courses for police constables. The training itself had not yet been scheduled but 2 courses had been arranged to train the trainers. It was agreed that the Claimant could be released into the training role full-time when it got up and running and that this would be a permanent position.
69. It was explained to the Claimant that before beginning the role as a trainer

the Claimant would be required to attend two separate week-long training courses, both of which were at some distance from her home. The Claimant asked for the Respondent to pay for a private car or taxi to get to the courses, but this request was refused as the MPS had only 3 cars shared between 60 officers for investigative work and there were insufficient funds to pay for taxis.

70. On 11 February 2015 AE received a report from the Claimant's psychiatrist at Springfield in response to her queries as to the Claimant's fitness to return to work. He advised that the Claimant should not return to even basic duties at L2- but that she would be fit to undertake the training role and the associated duties "and it is worth taking the risk of doing so in order to progress her situation in her current role.". He advised that it would be helpful to identify a mentor distinct from her direct line management and to identify a quiet place which she could use on site as a breakout location. AE passed this advice on to AK and the training organiser.
71. The Claimant returned from long-term sick leave on 23 February 2015 to attend the first course. She was able to attend this training courses and the second course (which began on 9th March) and worked from home reading the supporting material in the period between the 2 courses and for a week after the second course and but that she would then was on annual leave until 10th April.
72. We accept that the Claimant had not appreciated that the training courses that she had been trained to deliver would not begin immediately.
73. In the meantime, the schedule for the training courses had not yet begun. A role needed to be found for the Claimant before her new trainer role could begin. The Claimant's psychiatrist had advised the Claimant should not return to L2. AK therefore identified an administrative role at L8 police station, providing quality control of crime reports, which was geographically convenient for her.
74. This role had previously been undertaken by a PC and AK considered the role well within the Claimant's capabilities. The role required the Claimant to review "crime grids" i.e., spreadsheet of crimes that had been committed the previous day. The task was to review the spreadsheet to (i) highlight what had been done well, (ii) identify anything that needed to be rectified and (iii) bring it to the attention of management. Examples of those crime grids appeared in the bundle. The grid contains the classification of each crime such as theft, shoplift, ABH, no crime, burglary etc. AK knew that the Claimant was not to be exposed to sexual abuse, child abuse or gun crime, he instructed her to check the classification in the grid and not to open or deal with files which involved these types of crime. Although AK was not based at L8, it was agreed that, as this was a temporary role, it would be best for her if he continued to be responsible for her line management as they had a strong working relationship.

75. AK emailed the Claimant on 10th February to discuss her role at L8. AE also discussed the work with the Claimant, who told AE that she felt that she would be able to deselect gun and sexual crime cases. AE also emailed the Claimant's psychiatrist to explain and to ask for his advice (270), though we have no record of his response.
76. The Claimant began work at L8 on 13th April. There was a further report from OH on 22nd April. The adjustments noted were that she should avoid working from L1 and L2 and to work from L8.
77. The Claimant said in evidence that the role at L8 was not fulfilling, was mundane and failed to provide stimulation or utilise her skills, but at the time (22nd April), she had sent an email to AE informing her that she was happy at L8 but was concerned that she would not be fit for purpose for the trainer role.
78. It was also the Claimant's evidence the role triggered her PTSD. She said that *"the fact of being exposed was a trigger for me. I felt physically sick and leaked urine when I had to read of sexual assault and/or firearms."* When asked about this in cross examination the Claimant accepted that she had been told to deselect such cases but said that merely seeing the word gun or firearm or sexual assault was enough to trigger her PTSD, and that she should not have had to deselect her triggers.
79. The Claimant also complains that she was not provided with desk of her own at L8 and was required to desk hop which made it inevitable that she would overhear conversations of an operational nature about her triggers. She complains that the other officers at L8 were suspicious of her and thought that she had been deployed to investigate them by the DPS and that she was ignored at L8.
80. On 27th April 2015 the Claimant began another period of long-term sick leave with PTSD. The same day her husband, who is also a serving police officer, emailed AK and AE complaining that the posting to L8 had left her isolated without a local line manager and that she was required to desk hop on her own desk and overhear conversations between officers that had set off her triggers. He does not complain that working on the grids themselves was unsuitable, or that the Claimant had found it difficult to deselect her trigger crimes.
81. There was then a further referral to OH but in the event the Claimant never returned to work. Her ET1 was submitted on 7 September 2015. Subsequently she was successful in her application for an early ill-health retirement and for an injury on duty award. The effective date of termination of her employment by reason of ill-health retirement was 16 June 2017.

Conclusions

February – December 2014 role at L2

82. The Respondent accepts that at that time there was a PCP in place requiring the Claimant to deal with issues concerning firearms and sexual offences. As we said disability itself is not disputed. The issue for the Tribunal in relation to this part of the Claimant's claim was whether the duty to make adjustments arose. In other words, whether the Respondent knew or could reasonably be expected to have known that the Claimant was likely to be placed at a substantial disadvantage by the relevant PCPs.
83. As set out in our findings of fact above, the Claimant was required to attend a firearms raid in August or September 2014. The Claimant was also required to watch DVDs which could potentially contain images of child abuse.
84. It was the Claimant's evidence that after the interview with AF in August 2013, which AK attended, the Claimant discussed her PTSD condition with AK and told him that she believed the triggers to include L1, gun crime and crimes of sexual violence. We do not accept that. On the balance of probabilities we accept AK's evidence that it was not until about September 2013 shortly before she began an extended period of sick leave, that the Claimant said that she became agitated when attending L1 police station- (although AK had in fact noticed this before) and that it was not until December 2014 when she was off sick that he became aware that she could not deal with gun crime or sexual offences. The very many warm text messages which the Claimant sent to AK evidence that she considered that he was a good and supportive manager. It is not credible that she would have sent those text messages to AK if she had considered that he had not acted on conversations in which she had identified gun crime and crimes of sexual violence to be triggers for her PTSD, but had instead repeatedly told her to "get back on the horse" and that he best way to tackle her fears was to face them - or that he thought he knew better than her doctor. We do not accept the Claimant's evidence in cross examination that "as soon as I was firm I was treated as a pariah". In November 2014, when the Claimant did finally request a transfer, she was fulsome in her praise for AK.
85. The Claimant had told AE in December 2013 that on one occasion in L2 that occasion she could not deal with a gun that was on a colleague's desk (as it was evidence for another case) and that she had hidden in the toilets (104). AE set that out in the referral that AE made to AC for psychiatric advice as to recommendations that would assist the Claimant on her return.
86. In her consultation with AC the Claimant also referred to other triggers such as fireworks and black cars with tinted windows. The resultant report from the consultant neuropsychiatrist AC was not particularly helpful - the only recommendation being that her symptoms would improve if her PTSD

was treated and that it would be important to eliminate from her working environment “the potential reminders of the trauma”. However, the psychiatrist does not single out guns or sexual offences, or recommend that the Claimant should not be asked to deal with them.

87. It was not until December 2014, when she requested a transfer away from L2 that the Claimant told the Respondent (via AE) that she could not cope with sexual/gun crime.
88. Mr MacDonald submits, in the alternative (if the Tribunal were to reject the Claimant’s case that the Respondent had actual knowledge of disadvantage), that the Respondent had constructive knowledge that that the Claimant was likely to be placed at a substantial disadvantage, compared to non-disabled individuals, by a requirement that she should (i) attend a firearms raid in Wimbledon and (ii) view material and execute a warrant in relation to child pornography. AK had attended the Claimant’s interview with AF and knew that the Claimant’s previous experiences involved firearms and sexual abuse when she was a child and as such, he should have been aware that exposure to those triggers would cause the Claimant to suffer distress and exacerbate her PTSD.
89. In his written report (although this was not seen by the Respondent) AF noted that panic attacks were likely to be triggered “by any reminders of the index event and its aftermath.” It is not clear from the Claimant’s evidence whether this is something that was said during the session, but assuming that it was, it is not clear what specific reminders of the index event he is referring to. AF had described the fact she was prone to panic attacks and flashbacks “particularly after seeing dark cars”, but there is no mention of child pornography or indeed of or exposure to firearms and we accept that AF did not tell AK that the Claimant should avoid guns or sexual offences. The only clear advice was that the Claimant was likely to develop a relapse of anxiety “if she feels she has an unsympathetic line manager or somebody who she fears may put her unnecessarily in harm’s way” and that she needed to be kept employed and busy.
90. During 2014, save for not attending L1 police station. the Claimant had undertaken a normal CID workload without complaint. In her application to the Muslim Contact Unit, which was supported and verified by AK, the Claimant referred to the way she had dealt with an incident with firearms to evidence her ability to deal with the criteria for the job. She was open about her psychological difficulties both with AK and with the team as a whole.
91. In all the circumstances we do not find that the Respondent should have been aware that the Claimant was unable to attend a firearms raid or to view material and execute a warrant relating to child pornography. It follows that the Respondent was not, before December 2104, under a duty to ensure that the Claimant did not have to deal with issues concerning firearms and sexual offences.

92. To that extent, it is not necessary to decide whether, at that time, the Claimant was put at a disadvantage by the requirement to attend the firearms raid or to view and view material and execute a warrant in relation to child pornography.
93. We refused the Claimant's application to amend her claim to include a further PCP of having to attend L1 police station, but we record here that we do not accept that, once AK was made aware that attendance at L1 made the Claimant agitated, he continued to require her to attend.

December 2014 – work at L3

94. As pleaded, the PCP is "requiring the Claimant to undertake a role within L 3." From the evidence that we heard it appeared to us that the Claimant's real complaint was not the role itself, but the perceived lack of support when she first took the role. When we sought to clarify this with the Claimant's representative, he clarified that it was not the role but in fact the way that the role had been handed over that was the real complaint.
95. In any event the Respondent did not "require" the Claimant to undertake a role at L3. The Claimant had asked to work in an office-based job where she could concentrate on her recovery and had said that the only reason that she wanted to remove herself from working at L2 was because she could not cope with gun and sexual abuse crimes. The role was described to the Claimant, she was given a choice of 2 roles and chose the L3 role. The role was itself a reasonable adjustment, following the understanding that she could no longer deal with gun crimes sexual abuse. It was a role which was within her normal capabilities.
96. Even if the PCP were described more loosely as an expectation that she should undertake the role we do not accept that the Respondent had actual or constructive knowledge that either the role itself, or the way in which the role was handed over the Claimant, was likely to put the Claimant at a substantial disadvantage in comparison to those that were not disabled.
97. The Claimant says the substantial disadvantage was that the role (or the way in which it was handed over) caused her ill-health and distress. She refers in particular to a lack of support, lack of a formal handover, lack of access to the PCN and unsympathetic micromanagement by S.
98. S met the Claimant on the first day and accompanied her on site. The Claimant would have been aware before she accepted the role that S was not based at L3. The role was relatively straightforward, and we have accepted the Respondent's evidence that there was no specific training required for the job. The Claimant was put in touch with her predecessor in the role who was on long-term sick but available on the phone. The individuals with whom the Claimant had to liaise were based at L3. The

evidence does not support any micromanaging or lack of sympathy on the part of S.

99. In evidence the Claimant complains variously about not having any work to do and being “stuck with civilians” and not having a swipe card. These matters had nothing to do with the fact that the Claimant had said that she could not deal with gun crime, or sexual offences. There was no reason for the Respondent to believe that the role at L3 would put her at a substantial disadvantage in comparison to those that were not disabled.
100. The reality is that the Claimant was very fragile in December 2014 and, in retrospect, probably should not have returned to work. She worked for fewer than 4 days in L3 we do not accept that it should have been clear to the Respondent that she would have been unable to work in that role without formal training, a formal handover or a line manager on site or swipe card.

April 2015 work at L8

101. As pleaded, the Claimant’s case is that the Respondent had in place a PCP of requiring the Claimant to assess reports of crimes involving firearms and/or sexual offences. As the Claimant herself accepts, she did not have to do this. The Claimant was told not to click on any crimes which had such a classification. The role at L8 had been devised as a reasonable adjustment to prevent her from dealing with such crimes.
102. During evidence the Claimant’s case changed and she said that merely seeing the words “gun” or firearm or sexual offences was enough to trigger her PTSD, and she should not have had to deselect them herself. However, if that was true, the evidence does not indicate that the Respondent should have known this. She had agreed to take on this role as a reasonable adjustment. She had been told what the role involved, and she had said she thought that it was possible to do that. There was no indication at the time that she could not even see the words. (The Claimant was undertaking this role while waiting for the first training courses to materialize. It seems unlikely that the Claimant could have undertaken the trainer role in a way which avoided seeing or hearing the words firearm or sexual offences.)
103. The Claimant says that she should have had more support and guidance, but in evidence her complaint was more that the role was not fulfilling- “it was a mundane and failed to provide stimulation or utilise my skills”. She does not suggest that she needed more guidance as to what was required for the role, nor does she explain what additional handover or induction was required. She does complain that she didn’t have line management on site, but in the circumstances, it was reasonable for the Respondent to consider that given the Claimant’s good relationship with AK and the fact that the L8 role was temporary – until she could undertake the trainer role

- AK should continue to line manage her even though he was based at L2.
104. The Claimant also complains about the requirement to desk hop and the Respondent accepts that in the role at L8 the Claimant, like all the officers, had no assigned desk and would therefore need to desk hop.
105. It is the Claimant's case that because she had to move around she was put at a substantial disadvantage because she would overhear conversations of an operational nature about her triggers. We do not accept that moving from desk to desk would expose the Claimant to more conversations of an operational nature than being at a fixed desk, but in any event neither the Claimant, nor any of the various psychiatrists and medical specialists to whom the Claimant had been referred had suggested to the Respondent that she needed to work in an office on her own, or in a place where she would not be exposed to conversations of an operational nature which might include her triggers. When the Claimant had been placed in a civilian centre (L3) in December 2014, where she would have been very unlikely to hear triggering conversations, the Claimant was unhappy about being based with civilians.
106. If it was the case that the Claimant was likely to be placed at a substantial disadvantage by having to desk hop as she would overhear conversations of an operational nature, the Respondent neither knew or nor could it reasonably have been expected to know that that was likely to be the case.

Conclusion

107. In conclusion, we do not accept that the Respondent failed in its duty to the Claimant make reasonable adjustments. The claim is dismissed.

Employment Judge F Spencer
2 February 2022

JUDGMENT SENT TO THE PARTIES ON

02/02/2022..

FOR THE TRIBUNAL OFFICE

SCHEDULE
AGREED LIST OF ISSUES

1. It is admitted that, at all material times, C was disabled by reason of post-traumatic stress disorder ('PTSD') and depression. Her claim is one of failure to make reasonable adjustments.

From February to December 2014 (Detective Constable Role at Wimbledon Police Station)

2. Did R have in place a provision, criteria or practice ('PCP') of requiring C to deal with issues concerning firearms and sexual offences, including -
 - a. in November or December 2014, requiring her to attend a firearms raid in Wimbledon; and
 - b. at an unspecified time, requiring her to view material and execute a warrant in relation to child pornography.
3. Did any such PCP place C at a substantial disadvantage compared to non-disabled individuals by reason of her PTSD in that she suffered ill-health and distress and had to take sick leave?
4. At what point did R know *or could reasonably be expected to know that the Claimant was likely to be placed at the substantial* disadvantage claimed by C?
5. Was it reasonable for R to
 - a. arrange C's duties so that she did not have to deal with issues concerning firearms and/or sexual offences; and/or
 - b. provide C with a suitable alternative role?

In December 2014 (Youth Offending Team)

6. Did R have in place a PCP of requiring C to undertake a role within the Youth Offending Team?
7. Did any such PCP place C at a substantial disadvantage compared to non-disabled individuals by reason of her PTSD in that she suffered from ~~paranoia and feelings of isolation and hopelessness~~ ill-health and distress and had to take sick leave?
8. At what point did R know *or could reasonably be expected to know that the Claimant was likely to be placed at the substantial* disadvantage claimed by C?
9. Was it reasonable for R to
 - a. provide greater support and guidance to C;
 - b. provide formal line management for C;
 - c. arrange a formal handover to assist her acclimatising to the role within the Youth Offending Team; and/or
 - d. provide C with a suitable alternative role?

In April 2015 (Quality Control of Crime Reports at Kingston Police Station)

10. Did R have in place a PCP requiring C to -
 - a. assess reports of crimes involving firearms and/or sexual offences; and
 - b. desk hop?
11. Did any such PCP place C at a substantial disadvantage compared to non-disabled individuals by reason of her PTSD in that she suffered from ~~paranoia and feelings of isolation and hopelessness~~ ill-health and distress and had to take sick leave?
12. When did R know *or could reasonably be expected to know that the Claimant was likely to be placed at the substantial disadvantage claimed by C?*
13. Was it reasonable for R to –
 - a. arrange C's duties so that she did not have to assess reports of crimes involving firearms and/or sexual offences;
 - b. provide greater support and guidance to C;
 - c. provide formal line management for C in the form of an individual who was physically present in her workplace;
 - d. provide a formal induction or handover;
 - e. provide C with a suitable alternative role, specifically the trainer role identified in or around January 2015?

Time

14. Are any of the acts complained of out of time?
15. If so, do they form part of a continuing course of conduct so that the ET has jurisdiction to hear them?
16. If not, would it be just and equitable to extend time so that the ET has jurisdiction to hear them?

Remedy

17. What, if any, financial losses flow from such acts of discrimination as are found to have taken place?
18. What is the appropriate award, if any, in respect of injury to C feelings?
19. What is the appropriate award, if any, in respect of injury to C's health?
20. Is an aware of aggravated and/or punitive damages appropriate?
21. What if any declarations and/or recommendations should be made?