EMPLOYMENT TRIBUNALS

Claimant:	**Mr A Hendy**	
Respondent:	**The Chief Constable of Hampshire Constabulary**	
Heard at:	**Southampton**	**On: 17 – 21 October 2016 and 1 December 2016**
Before:	**Employment Judge M S Emerton**	
Members:	**Ms A Sinclair** **Mr R Spry-Shute**	
Representation:		
Claimant:	**Ms S Sleeman, Counsel**	
Respondent:	**Mr A Gadd, Counsel**	

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

1. The claim of discrimination arising from disability is not well founded.

2. The claim of failure to make reasonable adjustments is not well founded.

3. The claim of harassment related to disability is not well founded.

REASONS

Background to the Hearing

1. It is not in dispute that the claimant's employment as a Police Officer in Hampshire Constabulary ended on 22 March 2015. ACAS early conciliation commenced 21 May 2015 and completed 21 June 2015. The claimant's ET1 claim form was presented on 20 July 2015 by Slater and Gordon Solicitors, who continue to represent him. The respondent resisted all claims, initially not accepting that the claimant was at the relevant times a disabled person, in any event challenging all the allegations, and contending that part of the claim was time barred.

2. The claimant relied upon his being a disabled person by reason of a mental impairment (namely depression, anxiety and post traumatic stress disorder – PTSD). He made allegations of direct discrimination, discrimination arising from disability, indirect discrimination, harassment, failure to make reasonable adjustments and constructive unfair dismissal for making a protected disclosure. The claims of constructive dismissal, direct discrimination and indirect discrimination were later dismissed upon withdrawal, leaving three claims to go forward to hearing, namely (1) discrimination arising from disability, (2) harassment related to disability and (3) failure to make reasonable adjustments.

3. Two preliminary hearings were ordered in the case.

4. The first preliminary hearing for case management by telephone was conducted on 23 September 2015. This did not identify detailed issues in the case but identified that the main hearing would take up to ten days, and ordered that there should be a preliminary hearing to determine whether the claimant was a disabled person. Various orders were made including for medical evidence, and for the claimant to provide further information in respect of his claims. The respondent was ordered to provide an amended response in the light of that further information. Unfortunately the parties were not ordered to agree a list of issues, and did not do so.

5. The claimant provided the medical evidence as ordered and on 19 October 2015 also provided further information as to his claim, which effectively summarises the totality of his claim. This was the document subsequently used by the Tribunal as the basis of the list of issues in the claim, annexed to this Judgment and Reasons. The respondent provided amended grounds of resistance on 2 November 2015. By email of 3 December 2015, having considered the medical evidence, the respondent conceded disability in the following express terms:

> "The respondent is willing to concede that the claimant was disabled within the meaning of Section 6 of the Equality Act 2010 from mid-2014 onwards."

6. The claimant's solicitors responded by email the same day, acknowledging the concession of disability. They did not querying the terms of the concession, nor suggest that there were any issues remaining to be determined in relation to the disability, or the date that the claimant became a disabled person. It was agreed that a preliminary hearing, which had been listed to determine whether the claimant was disabled, should be vacated.

7. A further preliminary hearing by telephone for case management took place on 14 December 2015 and the case was listed for a six day case in May 2016. No issues were identified. Conventional case management orders were issued, to ensure the parties were ready for the hearing.

8. The hearing was due to commence on Monday 23 May 2016, but on 17 May 2016 the Tribunal unfortunately had to postpone the hearing due to lack of capacity to hear the case. It was subsequently relisted for a five day hearing commencing Monday 17 October 2016. It was agreed that the hearing would deal only with liability.

The Hearing

9. At the start of the hearing on Monday 17 October 2016, the Tribunal received the agreed bundle, copies of witness statements and a chronology prepared by the respondent. It was confirmed that the claimant would give evidence first and would not call any other witnesses, and that the respondent would call evidence from four witnesses, namely:

    Detective Constable Angela Regan (*nee* Scorey) (who had investigated the claimant when she worked in the Anti-corruption Unit);

    Detective Sergeant Robert Spall (of the Professional Standards Department, who also investigated the claimant);

    Sergeant Steve Willcocks (who acted as the claimant's Welfare Officer for much of the relevant period); and

    Chief Inspector Simon Tribe (the claimant's Line Manager for part of the time, who made a number of decisions in the case).

10. The Tribunal confirmed the issues in the case (see below) and timetabled the hearing. It was hoped that the Tribunal would be in a position to deliver its Judgment on liability on Friday afternoon, albeit in the event this turned out not to be feasible. It was agreed the Tribunal would need several hours to read the papers, and although there was some risk that this would take the remainder of the working day, it was agreed that the parties should be ready to commence at 2:30pm, so that the Tribunal would be in a position to start hearing evidence. That is indeed what happened and for the remainder of the afternoon on the first day the Tribunal heard the claimant's oral evidence, which completed at lunchtime on second day. The Tribunal then heard the evidence of DC Regan, DS Spall, Sergeant Willcocks and Chief Inspector Tribe, ending on the Wednesday afternoon. It was agreed that the parties would provide written skeleton arguments and make oral submissions the following morning. Although it was anticipated that oral submissions would be relatively brief, in the event they were considerably longer, as a result of various complicated issues which had arisen from the skeleton arguments, and differences of approach by the parties, and the need for the Tribunal to ask a number of clarificatory questions.

11. The parties were called in at 10:45am on the Thursday, the Tribunal having read the written submissions, and in the event the parties' submissions took over three hours. This left little time for deliberation on the afternoon of the Thursday, and the parties were later notified that a Reserved Judgment and Reasons would be provided in due course after further in-chambers discussions in early December.

12. The Tribunal deliberated on the Friday, and deliberated further in Reserved Judgment Discussions on Thursday 1 December 2016, the earliest day when the Tribunal could reconvene, and reached its decisions on that date. The draft judgment and reasons was then dictated for type.

The Issues

13. It was confirmed that the Tribunal would deal only with liability. Although a

number of other issues were originally canvassed, which related to remedy, in the event it was agreed that it would not be feasible for the Tribunal to make a ruling on matters which would affect remedy, as the parties would need to make further submissions and potentially call further evidence, once they had received the Tribunal's judgment as to liability. The Tribunal did agree to consider, in addition to liability, making a finding as to the likelihood to the claimant resigning, should the respondent have made the adjustments suggested by the claimant, including not accepting the resignation at first and giving the claimant longer to make up his mind whether to go through with his resignation.

14. The Tribunal raised the question with the parties of a lack of an agreed list of issues, that the parties confirmed that the claimant's case was set out in the "further information pursuant to the Tribunal's order" and that this remained a sufficient statement of the issues in the case, relied upon by the claimant.

15. Whilst the claim remained disputed, Mr Gadd confirmed that the respondent's case was essentially as set out in the amended response. It was agreed that the "further information" would effectively be used as the skeleton list of issues, and it has been annexed to this Judgment, notwithstanding that aspects both of the contents and the format are at times a little confused. The respondent had originally accepted that it understood the case it faced from this further information. It did, however, become clear to the Tribunal that the parties had in fact failed to agree what matters were in dispute: the respondent and claimant unfortunately had a different interpretation as to what the claimant's case actually was. It is regrettable that the parties had not seen fit to take sufficient steps, in preparing for a lengthy (and postponed) hearing, in establishing and agreeing what issues were in contention.

16. It was confirmed at the start of the hearing that the claimant was a disabled person by reason of his anxiety, depression and PTSD. There was no suggestion that the terms of the respondent's concession had changed from that referred to above, nor that the claimant would argue that he was disabled at any earlier stage than that conceded.

17. The claimant confirmed that the three heads of discrimination relied upon were:

    (1) **Harassment related to disability** (Section 26 of the Equality Act 2010);

    (2) **Discrimination arising from disability** (Section 13 of the Equality Act 2010);

    (3) **Failure to make reasonable adjustments** (Section 20 of the Equality Act 2010).

18. The details of these individual claims are set out in the claimant's "further information". The Tribunal pointed out to the parties that some of the wording of the allegations and (for example) the PCPs, appeared to be somewhat emotive, rather than clear. Some appeared to allege discrimination in terms that might be seen as circular, or as being self-fulfilling prophecies. It was rather unhelpful of the claimant's legal representatives to attempt to present

his case in this way. The Tribunal also the use of the phrase "incredibly vulnerable" in the specific wording of some of the allegations. Ms Sleeman confirmed that the word "incredibly" should be deleted from the allegations in question. Other than that point, Ms Sleeman confirmed that the claim, and the specific allegations relied upon, remained precisely as set out in the further information.

19. Some matters were clarified at the time or subsequently, including that references to resignation and pressure to resign related only to the immediate aftermath of the claimant's arrest on 21 February 2015, and that reference to misconduct proceedings in the claims should be taken as references to what was referred to as the "Facebook comments" (albeit the investigation into the claimant in fact dealt with other matters relating to text messages and to oral abuse), and these were not to be seen as references to any misconduct alleged on other occasions.

20. Although Mr Gadd had interpreted some of the allegations as being broader, it was confirmed that in the context of the way the claim had been pleaded, it had never been the claimant's intention to rely, in his claims, on the other misconduct allegations which he had faced.

21. It should also be noted that the Tribunal pointed out to Ms Sleeman that a number of the allegations, including allegations under all three heads of claim, contained quite detailed allegations as to the acts relied upon including such matters as "*at a time when the claimant was vulnerable and medically was not fit and able to make an informed decision regarding his future*" (harassment and discrimination arising from disability), or for example alleging a PCP requiring police officers to carry out their job "*without adjustment or restriction*". That was how the claims were pleaded, which on the face of it appeared to require the claimant to prove on a balance of probabilities that that a very specific situation arose. The PCPs appeared to be a somewhat circular way of seeking to prove a failure to make reasonable adjustments, as if the specific PCP was established, it would be very difficult for the respondent to prove that it had acted reasonably, in the same way that the "arising from" allegations appeared to be calculated by the claimant's legal advisers to try to deny the respondent any realistic chance of relying on the statutory defence. Conversely, the claimant had (clearly on the basis of the legal analysis made on his behalf by his solicitors and counsel) set himself a somewhat onerous initial burden of proving the existence of very specific facts, which did not necessarily appear to be obvious from the evidence he was intending to call. The Tribunal was aware that Ms Sleeman was an experienced employment law practitioner, and was confident that she would have prepared thoroughly for the hearing, and familiar with the legal tests which the Tribunal would need to apply. The Tribunal was ready to hear what she might have to say in respect of asking to amend the allegations relied upon, in order to adopt a more considered and logical form of words.

22. Somewhat to the Tribunal's surprise, Ms Sleeman confirmed that the wording which had already been set out was the way which the claimant wished to bring his claims. Counsel having confirmed this, the Tribunal did not press the point further. Mr Gadd confirmed that the respondent did not accept that the claimant "*was not fit and able to make an informed decision regarding his future*" and did not accept that any such PCP was applied to the claimant along the lines of that referred to above. Indeed, the respondent

did not accept the factual allegations relied upon in the claims, including that the PCPs were applied, save where it had been expressly conceded.

23. The Tribunal also confirmed with Ms Sleeman in respect of **the discrimination arising from disability** the claimant's case in respect of what the "something" was said to arise in consequence of the claimant's disability. There are three allegations of discrimination arising from disability.

24. Ms Sleeman confirmed that in relation to the first allegation (subjecting the claimant to misconduct proceedings relating to the Facebook comments) the "something" was the posting of comments on Facebook in October and November 2014.

25. In respect of the second allegation (placing the claimant under pressure to resign) there were said to be two "somethings" arising from disability, namely the making of comments on Facebook, and also his absence, both of which were said to arise from disability.

26. In respect of the third allegation (accepting the resignation), it became clear that Ms Sleeman's case was not that the resignation was accepted because he had submitted it, but was because of the claimant having made comments on Facebook and because of his absence. The respondent's case, for example was that resignation was accepted because the claimant had requested it, albeit in the light of medical reports that advised that his employment was causing him to be sick and that he was no longer fit to work as a policeman.

27. The Tribunal also flagged up that it would expect to hear evidence relating to causation in respect of the claims of discrimination arising from disability, to show that the "something" relied upon was indeed "arsing in consequence of the claimant's disability". Ms Sleeman indicated there was no direct evidence on the point, and invited the Tribunal to conclude that there would be evidence from which that inference could be logically drawn, suggesting that this had not been disputed at the time. Mr Gadd confirmed that the respondent had certainly not accepted any causal link.

The Parties' Closing Submissions

28. What appears below is not intended to be a comprehensive summary of all the arguments put forward by the parties, but an overview of most of the salient points. The Tribunal's file contains the parties' written submissions and the Judge's long hand notes of proceedings.

29. The Tribunal received written submissions from both parties and then heard oral submissions from the respondent and the claimant.

30. Mr Gadd's written skeleton argument on behalf of the respondent may be summarised as follows. In respect of the two harassment allegations, Mr Gadd denied both factual allegations, disputing that the claimant was put under pressure to resign, disputing that accepting the claimant's resignation was "unwanted conduct" and disputing the factual allegation that the claimant was vulnerable and medically unfit to make an informed decision regarding his future. The respondent denied at least in part that the unwanted conduct related to disability, and denied that it had the prohibited

effect. In respect of the discrimination arising from disability, the respondent denied the unfavourable treatment in question (with the exception of "subjecting the claimant to misconduct proceedings"), and to a lesser or greater extent denied the causal links with the "something" and the link between the "something" and the claimant's disability. The respondent also, in the alternative, relied upon the conduct in question being a proportionate means of achieving a legitimate aim.

31. In relation to the claim of failure to make reasonable adjustments, the PCPs were referred to (albeit relying on the original order in the ET1 rather than the revised order set out in the further information, albeit there is no dispute as to what the PCPs alleged were). The respondent accepted that it did subject officers committing alleged misconduct (not "performance" as set out in the allegation in question) to the misconduct process, and accepted that it referred officers to the misconduct process without first considering welfare or their medical conditions/disability or obtaining medical reports. The other PCPs were not accepted. The respondent also challenged whether any of the PCPs, even if applied, placed the claimant at a substantial disadvantage. To the extent to which the respondent conceded there may have been any duty to make adjustments, the respondent's case is that reasonable adjustments were made.

32. Ms Sleeman's skeleton argument on behalf of the claimant went into a little more detail on other matters. After an introductory section it set out the claimant's analysis of the factual background relied upon, and then went on helpfully to summarise the law. The statutory provisions were quoted and in respect of identifying the PCP reference was made to the case of *Carreras v United First Partners Research (2015) UKEAT/0266/15/RN* (albeit no submissions were on the point). In relation to discrimination arising from disability reference was made to the correct approach set out in the cases of *Basildon and Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305* and *Pnaiser v NHS England [2016] IRLR 170*. The skeleton argument then moved on to the claimant's submissions.

33. In respect of harassment, Ms Sleeman argued that on a proper analysis, the Tribunal should find that there had been pressure to resign and that this amounted to harassment, and that accepting the claimant's resignation also amounted to harassment. In respect of both, Ms Sleeman asserted that the unwanted acts in question "created a degrading or humiliating environment". In respect of the reasonable adjustments, she relied upon the PCPs as set out in the further information (save for the removal of the word "incredibly") and asserted that they were all applied to the claimant. Her submissions went on to some detail as to why she considered the Tribunal should conclude they were applied, and why they put the claimant at substantial disadvantage. She alleged that there were insufficient or no adjustments, and that the reasonable adjustments which *should* have been made were those which were listed in the further information. In respect of the discrimination arising from disability, Ms Sleeman confirmed (as previously referred to) that in all three allegations the "something arising" was the posting of comments on Facebook, and in relation to the two allegations relating to the resignation, also included the sickness absence. She confirmed that the claimant's case was that these arose in consequence of the claimant's disability. In relation to the statutory defence, she accepted that there might be legitimate aims, but denied the proportion of the

treatment. In relation to the time jurisdiction point she asserted that the matters complained of were continuing acts.

34. When the parties gave their oral submissions, the Tribunal identified a number of general matters which required further clarification, including: (1) Confirming the dates of the allegations relied upon for the purposes of the time points. (2) Hearing full submissions on time limits, including covering just and equitable extensions (and dealing with earlier matters, were the Tribunal minded to conclude that there were not continuing acts, or that the only acts amounting to discrimination were out of time. (3) Discussion of the correct application of the burden and standard of proof in relation to claims of discrimination arising from disability, bearing in mind the wording of the allegations. (4) To confirm the parties' submissions in relation to the date when the claimant had become a disabled person, as it appeared that the respondent was relying on consistent behaviour both before and after the claimant had become disabled, in support of arguments relating to the alleged absence of causal links in the "arising from" claims.

35. As far as dates of allegations were concerned, the parties confirmed that matters referring to misconduct proceedings related to specifically to proceedings arising out of the Facebook incidents. The parties confirmed they would deal with all the jurisdictional points. There was discussion on the burden and standard of proof, and the Tribunal was taken through the relevant parts of ***Pnaiser***: It was agreed that paragraph 31 set out the correct tests to be applied. In relation to the question of when the claimant became disabled, Mr Gadd reiterated that the respondent's concession was expressly limited to the claimant being disabled from mid-2014 onwards, whereas Ms Sleeman indicated that the claimant asserted he was disabled from 17 February 2014 onwards.

36. Mr Gadd made oral submissions, on behalf of the respondent, on a number of matters in clarification. This including dealing with various questions from the Tribunal, designed to confirm the respondent's stance on a number of issues. There is no need to set out his submissions in any detail, but it is worth drawing attention to certain points. These included that the respondent did not accept that the matters complained of (in the discrimination arising from disability) arose in consequence of the claimant's disability, and also wished to rely on the fact, for example, that the claimant's "Facebook rants" in October 2014 reflected his earlier email to the police standards department (PSD) on 17 February 2014, at a time when the respondent maintained that the claimant was not disabled, and when he had by no means not established that he had become disabled. He had behaved in the same way before and after he became disabled, but the claimant was seeking to argue that the later behaviour arose from the disability. There were also issues over alcohol consumption leading to antisocial behaviour, which were relevant. Plainly individuals can behave in an anti-social way through over-indulgence of alcohol, without there being any link with disability. He took the Tribunal to quite a lot of detail in the medical report of Dr Qureshi, and expanded upon various matters set out in his written skeleton argument.

37. In respect of jurisdiction, which had not been covered in Mr Gadd's skeleton argument, he set out the respondent's case that there were no continuing acts, and that all the matters complained of were discrete acts by different

people on different occasions. In respect of any just and equitable time extensions, he suggested there was no basis for extending time, especially as it was his case that the respondent was acting reasonably and the claimant had taken no steps to progress matters. In reply to the claimant's skeleton argument, he submitted that the arguments in relation to putting pressure on the claimant should be given no weight, and appeared to be speculative, especially as the claimant had not called his federation rep who gave him advice on 22 February 2015 in respects of what she had said to him.

38. Ms Sleeman's oral submissions on behalf of the claimant expanded upon certain aspects of her written skeleton argument. She addressed the Tribunal on just and equitable time extensions, and suggested that the balance of prejudice suggested that the respondent had not been prejudiced and that the claimant would be prejudiced if he was unable to pursue his claims. She was reminded by the Judge of the need to set out some reason as to why the Tribunal should consider its discretion whether to extend time, and her submissions were limited to her suggestion that the respondent would not have been prejudiced by delay but that the claimant would be. She then added that the claimant was unwell at the relevant time but did not elaborate upon her arguments. In respect of pressure to resign, she reiterated that it was the claimant's case that one could infer from the circumstances that there was pressure placed on the claimant to resign. In construing what was "unwanted" for the purposes of the harassment, one should look at the circumstances, and pressure on the claimant might be a relevant factor. She made submissions on various other matters, which need not all be summarised. She submitted, for example, that although the respondent had made some adjustments, they were standard adjustments rather than tailored to the needs of his particular disability. She argued that, taken at their highest, the Facebook comments and abusive remarks would be incapable of amounting to gross misconduct, especially for an officer of eighteen years' service. The Tribunal noted that the respondent's point of view was diametrically opposed, namely that abusing other named individuals on social media, and abusing a police officer to his face, could unquestionably be treated as gross misconduct for a police officer. In reference to the medical evidence from the two Psychiatric Consultants, she argued out that these reports had not been received when misconduct proceedings had been instigated.

39. Mr Gadd was permitted a short reply. He raised, amongst other matters, the issue that not only did the respondent consider that the Facebook comments and related matters amounted to gross misconduct, but it had been accepted by the claimant itself (in cross-examination) that this would or could amount to gross misconduct. It should not be open to him at this stage to seek to argue that this was not the case. The Police Regulations referred also to discreditable conduct undermining public confidence, and it was plain that there were gross misconduct issues which needed to be resolved through disciplinary proceedings. In relation to just and equitable time extensions, he added that the claimant's evidence had been that he had previously been to the Police Federation to obtain legal advice on a possible Employment Tribunal claim relating to bullying and harassment, and had been advised by the Police Federation throughout. This was relevant to whether a just and equitable time extension should be permitted.

The Facts

40. This is a case which very much turns on its facts, but most of the primary facts are not in dispute. The Tribunal found the evidence of the respondent witnesses to be very clear and credible, and to the extent to which their evidence might have been challenged, it accepts their account. The evidence of Sergeant Willcocks was especially clear and balanced, and his account greatly assisted by the detailed notes which he made every time he had contact with the claimant. The claimant's evidence was also reasonably clear, albeit certain aspects of it were a little vague and incomplete. Often any gaps were filled by contemporaneous documentation, and in particular Sergeant Willcocks was able to give detailed and credible evidence of events where the claimant's recollection was less sure. Where there was dispute on the evidence relating to material issues, this was primarily a question of assessing what was in people's minds, of taking a view on what should have occurred, or interpreting the primary evidence. There apparently remained an issue as to when the claimant became a disabled person, which had not been resolved before the hearing, albeit the claimant did not call evidence to support any representation that he had become disabled prior to the date conceded by the respondent. What appears below is intended as a narrative account of the key events, and includes findings of fact where the tribunal needs to make such findings. Further comment of the facts is made in the Tribunal's conclusions, including on the issue of whether any pressure was put upon the claimant to resign.

41. The Tribunal make the following findings of facts upon a balance of probabilities:

    41.1 The respondent is the employer for police officers and staff working in Hampshire Constabulary. The Tribunal was not taken to any internal documents formal internal procedures in relation to police misconduct, but was shown regulations and heard detailed oral evidence from the respondent's witness as to what procedures were followed, and as to the workings of the Police Standards Department ("PSD"). The latter is tasked with investigating misconduct by Police Officers and will usually carry out any police investigations into alleged crimes, where the suspect happens to be a police officer.

    41.2 At the relevant time the respondent was also bound by the Police (Conduct) Regulations 2012, governing investigations into police officers. The Tribunal were taken to some parts in particular of those Regulations, including Regulation 5(1) which provided "*these Regulations apply where the allegation comes to the attention of an Appropriate Authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduc*t". The Tribunal accepts that the Appropriate Authority would be the Chief Constable, or deputy Chief Constable, albeit this decision-making role was delegated to a Chief Superintendent.

    41.3 The Tribunal notes that an allegation may come in a number of forms. Such allegations may include matters relating to outstanding or possible criminal proceedings, covered by. This also provides that in a criminal case, the Appropriate Authority should decide

whether taking forward misconduct proceedings would prejudice any criminal proceedings. The Regulations provide for a written notice (known as a Regulation 15 Notice), which shall be given by the investigator as soon as reasonably practicable after being appointed, and which formally notifies the police officer of the conduct which is the subject matter of the allegation, and of various other matters including his rights under the Regulations.

41.4 It is clear that the arrangements within Hampshire Constabulary would then be that a report would be made, through the chain of command, to the Chief Superintendent of Professional Standards. He or she would consider the report, and any recommendation made, and would then make a decision as to whether the matter should go before a gross misconduct hearing panel. If that is the case, the individual police officer would need to be informed of the decision. Various other procedures would then follow, resulting ultimately in a hearing before a gross misconduct hearing panel, whose powers would include dismissal from the Force.

41.5 The Tribunal notes that police officers could only be dismissed for gross misconduct if this formal procedure was followed.

At the relevant time, however, the police misconduct arrangements were in the course of being changed. These led, ultimately, to new statutory police disciplinary Tribunals being formed from the beginning of 2016. However, by late 2014 police staff were aware of immanent changes, clearly designed to make it more difficult for a police officer to avoid a disciplinary hearing by resigning during the course of an investigation. The Tribunal accepts the unchallenged evidence which it has heard, that it had in the past been commonplace, to the extent that it occurred in the majority of serious police disciplinary investigations, that police officers would resign, or alternatively take early retirement, in order to avoid a disciplinary hearing which might result in their dismissal.

41.6 It is also not in dispute that as of the beginning of March 2015, in light of the new arrangements, police officers would ordinarily be prevented from resigning in order to avoid a disciplinary hearing. The Tribunal accepts the respondent's evidence that by the early part of 2015, in the knowledge of the changing arrangements, a stricter view was being taken as to attempts to resign. Many police officers seeking to resign, who in the past would have been permitted to leave the Force, were now prevented from doing so, if the view was taken that it would be necessary to progress their cases to a disciplinary gross misconduct hearing panel. Although there were evidently transitional arrangements in place, the Tribunal accepts that the position (as understood both by management and by the Police Federation) was that by February 2015, any officer who had not already resigned would be prevented from doing so after 1 March 2015, if he or she was awaiting a gross misconduct hearing.

41.7 Although the position is not entirely clear as to the rules actually in place, the Tribunal accepts the unchallenged evidence indicating

that by February 2015, a police officer may be permitted to resign in relation to an *existing* disciplinary matter, but once a new Rule 15 Notice had been served, it would be unlikely that such a resignation would be permitted.

41.8 As to the sequence of events in this case, the claimant joined Hampshire Constabulary as a Police Officer on 23 March 1997. It is common ground that he had an unblemished career until the referred to below.

41.9 In August 2012 the claimant joined the Vehicle Crime Unit, based in Lyndhurst police station, under the management of Sergeant Nick Adams. There can be no doubt that the claimant had a poor working relationship with Sergeant Adams. Although not part of the claim before this Employment Tribunal, the claimant complained of bullying and harassment. At some stage in 2014 he sought advice from the Police Federation in respect of possibly presenting a Tribunal claim based on his allegations, and his complaint that Sergeant Adams' actions had made him ill.

41.10 The position, by February 2014, was that although Sergeant Adams had been promoted to Inspector, he still had professional contact with the claimant. The claimant still considered he was being bullied.

41.11 At some stage in 2013 the claimant had been involved in an arrest in relation to a drugs case, where an allegation was made that he and other police officers had stolen money during the course of that operation. On 16 February 2014 the claimant was informed of this allegation against him. Although the claimant had suffered from depression three years previously, following an assault, there is no suggestion of any unusual level of sickness absence between then and mid-February 2014.

41.12 On 17 February 2014 the claimant sent two emails to the PSD mailbox from his home email address, at 21:13 and 21:30. It would appear that he was under the influence of alcohol at the time that he sent the emails.

41.13 These emails made reference to a number of police officers and their alleged Masonic connections. The claimant made derogatory remarks about freemasons, and the emails also made reference to him being investigated and not being "in the club". It would appear that the emails were an angry reaction to accusations being raised against him, and he wished, in turn, to make accusations against others, and his target was freemasons.

41.14 The claimant did not dispute the respondent's evidence (the matter having been investigated by PSD), that that shortly after the claimant sent these emails, his wife dialled 999 and requested the attendance of police. The claimant was described as being clearly "in drink," but cooperated with the attending officers and indicated that he was suffering with work related stress, and agreed to stay at his mother's address to prevent a breach of peace. No further

action was taken in relation to the matters triggering the 999 call, but on a subsequent date the claimant's concerns were clarified, and investigation was carried out into Inspector Adams on the basis of the allegations of bullying against him, as well as various allegations relating to freemasonry and the alleged more favourable treatment of another police officer.

41.15 Meanwhile, the claimant went to see his GP. On 19 February 2014 he was signed off work with stress/depression, and remained off work for a considerable time.

41.16 Detective Constable Craig Rainsley, of the PSD, completed a report on 11 March 2014. He concluded that there may be medical issues requiring the involvement of Occupational Health (OH), but he referred the matter for determination by the Appropriate Authority on the action to be taken. A decision was taken to commence a formal investigation into Inspector Adams' conduct, which was completed on 14 July 2014. This drew specific conclusions on the basis of the bullying allegations which the claimant had made during the course of the investigation, and concluded that on balance of probabilities these allegations should not be upheld. This report was submitted and it was agreed that no formal action be taken against Inspector Adams. The claimant did not make a formal grievance in relation to this matter. Once the disciplinary investigation had been closed, that was an end of the matter.

41.17 Meanwhile, the claimant had been referred to OH. He remained on sick leave at the time. A report dated 8 April 2014 from OH referred to the claimant being signed off with depression, and the claimant's concerns over bullying as well as the investigation into his own conduct by PSD. At this point the claimant was not fit to return to work.

41.18 An updated OH report on 7 May 2014 noted the claimant was still not fit to work, and that he would be having a supportive action meeting on 16 May 2014.

41.19 Meanwhile, there were significant reorganisations going on in Hampshire Constabulary. The HR function was to be merged with that of the Local Authority (Hampshire County Council), and in addition there was a significant reorganisation involving police officers known as "Operational Change Programme" or "OCP". This involved a large number of police officers being moved to new roles, in some cases against their will.

41.20 The claimant attended a "supportive action plan" meeting on 16 May 2014 to review his absence and consider supportive action. It was noted that part of the stress he felt related to the PSD. The meeting noted that the claimant appeared to have made improvements. This was reflected in a further OH Report dated 18 June 2014, which confirmed that he was feeling better and he was covered by a fit note until 27 June 2014, but was keen to return to work. The report recommended a phased return to work, starting with four hours a day initially and then increasing by one hour per

set of shifts over about four weeks. At this stage he described the slowness of the PSD process as his main issue. This was evidently a reference to the allegation of theft against him, still being investigated. He was waiting to hear what action, if any, would be taken against him.

41.21 In any event, the claimant was fit enough to return to work on 28 July 2014, albeit his GP had recommended that he should not work night shifts. He was also referred again to OH. A further supportive action meeting took place on 28 July 2014, the day of his return, to discuss the claimant's return to work. At this stage the OSP arrangements had planned for the claimant to move Basingstoke. The claimant was not happy with this plan. It was that this would not be put into effect, but line management would look for alternative roles which might be more suitable for the claimant.

41.22 There were discussions with the claimant's GP in relation to the duties he could undertake, and the claimant was asked to speak to his GP.

41.23 On 28 August 2015, the claimant discovered from PSD that the investigations into his alleged misconduct had progressed, and they were about to serve a Rule 15 Notice on him in relation to the theft allegation.

41.24 At this stage, Sergeant Steve Willcocks was asked to become the claimant's Welfare Officer. He had temporarily been the claimant's Line Manger. The role of Welfare Officer was designed to provide the claimant with ongoing support, and to encourage him back to work in his full duties when fit to do so.

41.25 The Tribunal accepts, and indeed it is not in dispute, that Sergeant Willcocks did his best to give the claimant a high level of sympathetic support, and to assist him where he could, throughout the remainder of the claimant's service in Hampshire Constabulary. The tribunal was impressed by his clear evidence, and his self-evident efforts to provide encouragement and support to the claimant, and to do his best to take a positive view as to the claimant's prospects for returning to work with suitable adjustments, even when the claimant showed little wish to do so.

41.26 Sergeant Willcocks did a risk assessment in relation to serving the Rule 15 Notice, which was part of his role as Welfare Officer.

41.27 Although the claimant explains that he was suffering from depression at this time, it would appear that he was in fact signed off from work not with depression, but with a back injury. In any event, he returned to work on 13 September 2014. He was, however, signed off again, this time with depression, on 20 September 2014.

41.28 On 24 September 2014 the claimant attended a first stage formal meeting under the Attendance Management Procedure, which noted that he had 105 days' absence on two occasions in the last

twelve months. Discussions covered stress-related illness and back injury. The claimant expressed himself a lot more positive about the future. They agreed a plan for a phased return to full night duties over the next two months, should the claimant return to work. A longer term action plan was put in place.

41.29 The claimant continued to receive support from Sergeant Willcocks. It had been made plain to the claimant at the meeting on 24 September that if his attendance did not improve this could lead to a second formal meeting under the procedure, which could lead to a further or final improvement notice or dismissal on the ground of capability.

41.30 Nothing else of particular significance occurred before 2 October 2014, although the claimant describes a build-up of various matters, impacting upon his mental health.

41.31 The claimant gave evidence, which appeared to be little confused, as to the sequence of events from 2 October onwards. Having heard what he had to say, and what was clarified in cross-examination, the tribunal finds that the sequence of events, (reflected in the investigation report subsequently produced by PSD) was as follows. The Tribunal also notes the summary of medical evidence in the claimant's medical report carried out by Dr Qureshi at a later stage, which refers to the contents of the contemporaneous GP records.

41.32 On Thursday 2 October 2014, probably after having consumed alcohol, the claimant posted various comments on his Facebook account relating to freemasonry and to colleagues in the police force.

41.33 As the respondent subsequently alleged, the comments "*made reference to Hampshire Constabulary and named employees of Hampshire Constabulary both past and present that you suspect to be freemasons. The comments you wrote make it clear that you dislike freemasons and question the integrity of those individuals and Hampshire Constabulary*". At approximately 1500 on that date the claimant posted a number of comments, some of which made offensive and derogatory comments about individuals, as well as setting the claimant's views on their links (or suspected links) with freemasonry.

41.34 The following day, on Friday 3 October 2014, the claimant sent a text message to a police sergeant stating "*I will take out all freemasons in Hampshire police force because they are corrupt I will leave Nick Adams last and freemason Tim Adams' Botley Lodge. It's on Facebook and I am texting in sick*." At 1445, Detective Constable Rainsley and another Officer from PSD attended his house in order to give him a written lawful order, signed by a Detective Chief Inspector, to remove the comments he had posted on Facebook. Detective Constable Rainsley was unable to give the letter to the claimant, as the claimant was verbally abusive and swore at him.

41.35 Following Detective Constable Rainsley's visit, the claimant drank a considerable quantity of alcohol and was contemplating taking an overdose, but in fact the police were called by his wife and it would appear that he was arrested (albeit no formal action was subsequently taken against him) and the claimant was referred to the hospital. There is some confusion in the claimant's evidence, but the summary taken from the GP record does confirm that the claimant was seen in hospital on 4 October, as well as being seen later in the month on 31 October with possible depression.

41.36 Meanwhile, the claimant was continuing to receive support from Sergeant Willcocks, who documented what happened at each meeting. The claimant was also in receipt of advice from his Police Federation rep.

41.37 It appears that, over this period, the notice requiring the claimant to remove his postings on Facebook was successfully delivered to him and that the claimant did indeed remove those postings. In late October 2014, the claimant's Police Federation rep reported to Sergeant Willcocks his concerns over the claimant's health, but also that the claimant was talking positively about resignation, which was what his doctor had recommended.

41.38 The Tribunal was taken to an email from the claimant's Police Federation rep, dated 29 October 2014. This covered various matters, including advising the claimant (in reply to his questions) about retention in the Force, and advising that the claimant would not be likely to be retained in the Force following misconduct proceedings and that it might be better to resign, and to make that decision fairly quickly. The email recorded that this was what the claimant thought, and what his GP had said to him. Although the claimant explained to the Tribunal that in fact, at this stage, he was not keen to resign, it was clear that there had indeed been discussion between the claimant and his Police Federation advisor as to the possibility of resignation. It is clear to the Tribunal from the contemporaneous records, that even if the claimant was not as enthusiastic about resigning as his Federation rep may have understood from what he said, he had plainly not excluded the possibility of resigning. The Tribunal also notes that, in his email, the Federation rep went into some detail as to what the claimant had told him about his carer and that the claimant was looking for alternative work, and needed a change of career.

41.39 The Tribunal would note that subsequent evidence from emails and from Sergeant Willcocks' oral evidence (relying on detailed summaries of meetings with the claimant made immediately after those meetings) also indicated that the claimant was from this period onwards regularly discussing the possibility of resignation. He also discussed ill health retirement, which would be financially more advantageous to him.

41.40 In early November 2014, the claimant was referred to a Consultant Psychiatrist, Dr Ogeleye, who provided a detailed reported dated 10

November 2014, setting out the results of a consultation with the claimant that day. This records that the claimant had recently made a second attempt at suicide when he was reported to "*have attempted to stab himself with a blunt knife. Mr Hendy indicated a degree of ambivalence*". The letter records the fact that the claimant had told the Consultant Psychiatrist that he was considering retiring from the Police Force. The claimant had also referred to 4 October, and described that he had drank wine with the intention of taking an overdose, but that the police had arrived to arrest him before he could do so. The letter records features of depression with "*poor sleep, poor appetite, loss of interest as well as a feeling of worthlessness, helplessness and lack of confidence*". It was recorded that there was no evidence of delusions or perceptual abnormalities. The letter referred to a genetic predisposition to developing a mood disorder, but no previous psychiatric contacts. It refers to there having been two attempts at suicide in the last eight weeks and the possible risk of suicide. Under the final headings of "Plans and Conclusions," the Consultant Psychiatrist gave his opinion that the claimant should be supported, and consideration given to alternative employment. He concluded "*I am of the view that returning to work with Hampshire Constabulary or indeed the Police Force, will be counter therapeutic and may lead to further deterioration of his mental state. He should be supported in considering alternatives to his employment status*".

41.41 This letter was copied to the claimant and he subsequently passed it on to OH and to senior officers at Hampshire Constabulary. This meant that both OH and the respondent's management were aware of the Consultant Psychiatrist's recommendations, including that the claimant continuing to work for the police might damage his health.

41.42 On 19 November 2014 Sergeant Willcocks referred the claimant again to OH. In the referral, issues were raised around possible ill health retirement, which the claimant had expressed an interest in pursuing.

41.43 The position by late November 2014 was therefore that the claimant was actively considering ill health retirement or possible resignation as options, and a consultant Psychiatrist had recommended that he should not return to work as a police officer. At this stage, the position was still that a police officer under misconduct investigation would not usually be prevented from resigning, should he wish to do so.

41.44 At the same time, the claimant knew that he was being initially investigated in respect of whether allegations should be pursued relating to the Facebook incident. The claimant was being advised by the Police Federation that he should consider resignation. He was still signed off sick. Sergeant Willcocks was, at this stage, as he consistently was throughout, keen to ensure that there were up-to-date OH reports, and that the claimant continued to focus on the possibility of achieving a return to work in the future.

41.45 In late November 2014, Sergeant Willcocks was informed that PSD

wished to serve a Rule 15 Notice in relation to gross misconduct allegations arising out of what may be referred to as the "Facebook incident". It is evident that the claimant's Federation rep had expected that this would be the next step, and this would have come as no surprise to the claimant. Sergeant Willcocks was, for understandable reasons, not keen that the Notice should be served during his support meeting with the claimant. The Police Federation also suggested that papers could be served on them, rather than on the claimant direct. Although Sergeant Willcocks thought he had obtained agreement that a Rule 15 Notice would not be served at the meeting he had organised with the claimant from 25 November 2014, it is clear that senior officers within PSD had taken the view that this would be an appropriate time to serve the papers, knowing that the claimant would be present to receive service of the Notice, but that Sergeant Willcocks would be present to provide support to the claimant, should it be needed.

41.46 At the meeting on 25 November 2014, Sergeant Willcocks was not best pleased that his advice had been ignored, but a PSD officer did serve the Rule 15 Notice with various allegations on gross misconduct arising from the Facebook incident (and indeed relating to further allegations which arose from further Facebook posts which the claimant had made the previous day, on the evening of 24 November 2014). These further allegations relating to 24 November made various allegations against named police officers, as well as references to freemasonry and devil worship and sexual innuendo in relation to a police officer.

41.47 The Rule 15 Notice set out in detail the information which had come to light, and confirmed that a gross misconduct investigation had been recommended in order to consider these matters and conduct further evidence, as well as inviting the claimant's response.

41.48 Sergeant Willcocks was relieved that the claimant took the allegations well, noting that not only was the Notice not unexpected, but the claimant had himself posted further Facebook entries the previous evening, which he must have known would worsen the disciplinary position he was in. At this meeting there were also further discussions between Sergeant Willcocks and the claimant in which the claimant expressed his dissatisfaction with his current Police Federation rep. There was discussion about the possibility of resignation, which had been recommended by the Federation rep. The record taken by Sergeant Willcocks did not appear to indicate that the claimant had finally decided upon one cause of action or another, but they were evidentially investigating together the possibility of resignation or ill health retirement, or alternatively of being eased back into work in due course. At this point the claimant was still signed off until mid-December 2014, but would review this with his GP.

41.49 The Tribunal also notes that on 30 November 2014 Sergeant Willcocks recorded that the claimant indicated that there were three paths open to him. He expressed the view that "*he will invariably leave the job by either the disciplinary route from the latest papers*

served over gross misconduct, although he appreciates there is mitigation around his actions with respect to his mental health. Alternatively he could resign. However, he is pursuing ill health retirement which will be a major factor in his OH appointment Thursday".

41.50 At this point the claimant was still hoping that ill health retirement would be a real possibility, with all its associated financial and pension advantages.

41.51 Around this time, there was also discussion about having a meeting to discus the way ahead. An OH Report dated 4 December 2014 from an OH Advisor confirmed that the claimant was not yet fit to attend work, and referred to the fact that he had been booked in for an opinion to be given by the Force Medical Officer on 17 December 2014. This was discussed at a meeting on 4 December 2014, at which the possibilities were again discussed and Sergeant Willcocks proposed a "MERG" (management employee risk group) meeting. Sergeant Willcocks also spoke to HR, and requested a Caseworker to be allocated to the claimant, whose role would be to coordinate the management response from within the HR department.

41.52 On 15 December 2014, the claimant submitted a written response to the Facebook misconduct allegations, in which he admitted to the allegations as factually alleged, but provided the explanation that it indicated he "*was not thinking straight due to having a mental breakdown*", also asserting that he would never have made the comments on Facebook and knew that it was "*purely down to my irrational behaviour due to a severe decline in my mental health and constant paranoia*". He apologised for his actions.

41.53 On 5 January 2015 the PSD completed the report into the Facebook conduct allegations. The recommendation by the Investigating Officer was that the claimant should face formal disciplinary action, whilst noting the claimant had put forward mitigation that his behaviour was as a result of suffering from a mental breakdown. The Tribunal would observe that this was a reasoned recommendation, framed in sensible terms, and it would be difficult to criticise either the conclusion or flagging up the ill-health mitigation.

41.54 The report was forwarded up the management chain. The DCI initially recommended a fast-track hearing. That particular recommendation was not accepted by the Chief Superintendent, who determined that the matter should go before a gross misconduct hearing panel. He concluded that "*the conduct is discreditable and the comments he has made are offensive and inappropriate*". He considered the fast track procedure but decided to opt for a standard hearing, on the basis of the potential mental health issues that would need to be considered in the case. The decision having been made, the procedure would then be to notify the claimant and refer the matter to be dealt with under the relevant procedures leading ultimately to a gross misconduct hearing. The

Tribunal was not taken to those specific procedures, but it is not in dispute that there were regulations dealing with the procedure which needed to be followed thereafter. The Chief Superintendant did not formally make his decision on the incident until 5 February 2015, and there was some concern about how this should best be communicated to the claimant.

41.55 Meanwhile, there was continuing support given to the claimant by Sergeant Willcocks. They discussed possible outcomes ranging from return to work, to a gross conduct dismissal. Although it is clear that the Police Federation was advising the claimant as to the likelihood of the latter, Sergeant Willcocks was keen to keep all options open, including a return to work, and made it clear to the claimant that dismissal was by no means inevitable.

41.56 A case management review meeting was organised on 19 January 2015, with Sergeant Willcocks, Detective Constable Regan (as the Investigator), Chief Inspector Tribe (who was responsible for this area), and an HR Manager. It was confirmed at that meeting that the recommendation had been made to proceed with a gross misconduct hearing. In relation to managing the case generally, it was agreed that a case conference would be arranged to give the claimant the opportunity to discuss his concerns directly with OH, HR, and Management, with both his federation rep and Sergeant Willcocks present at the meeting.

41.57 Sergeant Willcocks spoke to the claimant shortly after the meeting, on 21 January 2015, and again discussed options with him. Sergeant Willcocks was determined to remain positive about the possibility of return to work and discussed with the claimant possible future arrangements for this, as well as other options. He provided, as usual, a risk assessment in respect of the claimant.

41.58 It should also be noted, that by this time the claimant had been notified by the Force Medical Officer that the latter was not prepared to recommend an ill health retirement, which came as a disappointment to the claimant, who had plainly taken the view that this would be a suitable outcome for outcome. In the hopes of progressing the matter, and without any direct support on this particular point from the Police Federation, he decided to commission privately an expert psychiatric report, which he hoped would assist his case for being granted ill health retirement. He made contact with a Dr Qureshi, a Consultant Psychiatrist based in Birmingham, with a view to obtaining an expert report.

41.59 Although Dr Qureshi's subsequent report indicates very clearly that this was prepared in contemplation of Employment Tribunal proceedings, the claimant was adamant that this was not a matter he raised with Dr Qureshi. He explains that his main aim was to seek expert support to obtain his desire to achieve an ill health retirement.

41.60 Meanwhile, as Dr Qureshi was completing his report, Detective Constable Regan received confirmation of the decision that the

allegations that she had been investigating would go to a gross misconduct hearing.

41.61 By this time the claimant had been notified that the theft allegations had been discontinued against him, and so any misconduct hearing would be to deal only with Facebook incidents and associated allegations. Detective Constable Regan did not speak directly to the claimant at this stage, but notified Chief Inspector Tribe and Sergeant Willcocks, as well as the claimant's Federation rep, as to what would happen. She explained that this meant that the file would go to a lawyer to prepare the equivalent of charge sheets, and she would then be given the date for the hearing. The Federation rep had suggested that she emailed this update to the claimant. She explained that she was planning to do that shortly, on a day that the representative and Sergeant Willcocks were at work and the claimant could have access to them. She went on to do so on 9 February 2015. Sergeant Willcocks, who was aware that Detective Constable Regan had just made contact with the claimant, then called the claimant in order to provide support and discuss his case with him.

41.62 The claimant asked Sergeant Willcocks, during their telephone conversation of 9 February 2015, if it was worth fighting the allegations or just resigning, "*as dismissal for this would cause issue over future employment*". DS Willcocks advised that any consideration in this area should be managed through his Federation rep, who was better placed to discuss outcomes. The claimant explained that he could not seek ill health retirement whilst under investigation for gross misconduct, and asked what effect the process would have on his pension. Sergeant Willcocks against explained he did not know the answer, but said he would seek clarification.

41.63 Meanwhile, on the same day, Dr Qureshi provided a psychiatric report on the claimant, which he sent to the claimant and which the claimant in due course forwarded on to the respondent.

41.64 Dr Qureshi provided a very detailed report, written in a reasonably authoritative way. This sets out the history of the medical problem, refers to other medical documentation and recorded various symptoms the claimant had suffered, including "*periodic uncontrollable outbursts of anger and frustration but he denied being violent*". It recorded the belief expressed by the claimant to Dr Qureshi that "*retirement is the only option as he has lost his trust in the Police Force*". It also makes reference to the Force Medical Officer having informed the claimant that he would not be recommending retirement on health grounds, and that he would have to resign. It noted that the claimant was still on sick leave and was receiving half his salary, which was causing financial difficulties. It sets out various matters to do with the claimant and his treatment, and summarises entries from the GP records from 18 February 2014 through to 15 December 2014. He noted that the GP (on the latter date) had recommended retirement on medical grounds. He referred to other correspondence, including the letter

from the Consultant Psychiatrist of 10 November 2014. As to the claimant's current mental state, he came to the conclusion that there was no evidence of memory dysfunction or cognitive impairment, and no evidence of delusion or perceptual disturbances.

41.65 Dr Qureshi concluded that the claimant was suffering from PTSD and a depressive order of moderate severity, and noted that the PTSD diagnosis was November 2014 but in his opinion the condition predated this (he did not indicate when the claimant was likely to have been first suffering from PTSD). He refers to "*phobic anxiety which was made worse by any situation regarding the police"* and noted that the impact of events that occurred had caused traumatisation to the degree "*where he cannot face returning to work and subsequently he has remained on sick leave*". Dr Qureshi offered the opinion that "*I believe he has reached a point where he is no longer capable of even considering returning to the Police Force as a viable option as his motivation and volition have been dented*". He went on to say, "*In my opinion he has reached a state of permanent disability regarding his mental health and extensive treatment to date has had little impact in ameliorating it. In fact he finds even the thought of returning to work in the Police Force disabling and traumatising*". He went on to say "*I believe he should seek alternative employment in an environment where he does not feel threatened*".

41.66 On 12 February 2015 the claimant emailed this report to Sergeant Willcocks and to his Police Federation representative. It was also passed on to OH. On 14 February 2015 the claimant was referred again to OH, albeit no report was received back before the claimant resigned. The referral form prepared by Sergeant Willcocks asked for a general update. In the event, the claimant did not have attend a further OH appointment before his resignation.

41.67 Sergeant Willcocks arranged to meet with the claimant on 14 February 2015 at a neutral location. He gave the claimant the opportunity to discuss his case and to explain to Sergeant Willcocks and his Federation representative (who was present) as to what was in his mind and his concerns. The claimant has given little evidence about this meeting, but Sergeant Willcocks has described in credible detail what was discussed, reflected in a detailed email report he completed shortly after the meeting.

41.68 At the 14 February meeting, the claimant confirmed that he was considering his options and ultimately he would wish to pursue ill health retirement, and was concerned that his pay was due to drop to zero shortly. Later on, he also explained his family situation, including his break up from his wife. Sergeant Willcocks continued to strike a positive note about the possibility of returning to work in due course, but it was noted that the psychiatric reports had advised that returning to police employment would be detrimental to his mental health. The claimant explained he was considering resignation, partly in view of his concerns that one possible outcome of the conduct hearing would be a gross misconduct

dismissal, which would have a negative impact on his future employment. It was made clear to the claimant both by Sergeant Willcocks and his Federation representative, that he would need to make his own decision, taking advice as required. During the conversations the claimant stated that he was considering resigning, but he also believed he would need to find a new job prior to leaving.

41.69 In the context of the claimant's suggestion that he might resign, he was advised that the Chief Constable still had the right to decline any resignation to allow any disciplinary investigation to conclude. The Federation representative advised the claimant that while an investigation for gross misconduct was ongoing, the Force would not reconsider the question of ill health retirement, which would in any event require a great many steps to be followed before such retirement could be approved. The claimant was encouraged to re-contact employee support, and there was discussion as to support and treatment which the claimant could access. There was also discussion as to the forthcoming case conference which would take place on 12 March 2015, which would be able to identify any other support which might be needed.

41.70 Amongst other exchanges of emails following the meeting, the claimant emailed his "Out Of Force Federation Representative" (a police officer working for a different constabulary who would be supporting the claimant at his misconduct hearing, without any conflict of interest). This email was copied to Sergeant Willcocks. In this email to his Federation representative, the claimant referred to the fact that "*I may resign if my chances are low at the hearing as ultimately my mental health has to come first*". In his reply to the claimant on 16 February 2015, the Federation representative confirmed to the claimant that the misconduct hearing would not be before May 2015, and also explained that he would be away for the rest of the week (which was half term) and suggested that that they met on or after 24 February 2015, when he was available.

41.71 It was also confirmed that the claimant would have a further medical appointment with the Force Medical Officer, which would take place on 12 March 2015. An appointment letter was sent to the claimant, and this was confirmed by email to Sergeant Willcocks on the morning of 19 February 2015.

41.72 The Tribunal would note that by 21 February 2015 the position was therefore as follows: In respect of misconduct allegations, the claimant was aware that a conduct hearing would be going ahead not before May 2015, and that this could result in his dismissal for gross misconduct, albeit this outcome was by no means certain, especially in light of his medical mitigation. He had, however, expressed his concerns that he thought he might be dismissed and wished to avoid this as it would be likely to cause difficulties in future employment. He had wanted to progress ill health retirement, but clearly understood that this was not a matter which could for the time being be pursued, and in any event would take some time to be achieved after the disciplinary matter had been dealt with. He

had actively considered the possibility of resigning and had expressed concern in any event of the effect on his mental health were he to remain in the Force, or to be dismissed for gross misconduct. He knew he would have to consider his future. He had ready access both to his local Police Federation representative and also to the Out of Force Federation Representative, who would be assisting him at his conduct hearing, and whom he was expecting to meet on or shortly after 24 February. He also knew that he was shortly, on 12 March 2015, to have a further medical appointment with the Force Medical Advisor, and that he would also the same day be attending a case conference in relation to his medical condition and matters such as adjustments which might be required were he be able to return to work.

41.73 There is no evidence suggesting that at this stage the claimant had formed any settled view as to whether he definitely would or would not resign, albeit he was aware of the possibility that if he did resign his resignation would be refused because of the pending misconduct hearing.

41.74 On 21 February 2015, however, the position changed radically.

41.75 On the early afternoon of Saturday 21 February 2015 a 999 call was made. The police were called to the claimant's home address with a complaint that the claimant had assaulted his wife and her sister, and had damaged property. The police arrived at 1527 and the claimant was arrested on suspicion of assault by beating and criminal damage. The official note of the arrest records that arrest was necessary to "*allow the prompt and effective investigation; prevent person causing loss or damage to property; prevent person causing physical injury*". The claimant was taken to Fareham police station and was processed in the usual way. When it became apparent that he was a police officer, then PSD were immediately informed. It would be the normal practice for the PSD to take over the criminal investigation of a police officer from the local police officers.

41.76 It is clear that the claimant was in an agitated state, and had been drinking. Whilst being transferred to the police station, and whilst in custody, the claimant threatened to take his own life, tied a cloth around his neck and attempted to self harm by swallowing tissues, and there were other concerns about his behaviour. He was assessed as being very threatening towards the arresting officers, and refusing to cooperate whilst in custody. He was placed under fifteen-minute checks and monitored on CCTV, in view of concerns as to self harm. This was subsequently increased to constant observation, and it was decided that he would need an appropriate adult to accompany him in interview. The claimant was assessed by a nurse as not fit to be interviewed, but that he did not require a full mental health assessment.

41.77 The claimant was ready for interview by late evening on 21 February 2015, but in fact the interview was postponed until the following morning. The claimant spent the night in the cells. On the

morning of Sunday 22 February 2015, Sergeant Spall of the PSD interviewed the claimant in the presence of an appropriate adult and the duty solicitor. Sergeant Spall assessed the claimant as having sobered up, and that he was at this stage "*very coherent and articulate*". He was asked questions about the previous day's incident, which he was able to answer, and Sergeant Spall formed the view that the claimant was well able to state his case in interview.

41.78 Whilst still at the police station the claimant spoke to a female police officer, whom he recalled was an Inspector, who spoke to him in her capacity as a Federation Representative, having been informed of his arrest. The Tribunal has been provided with no evidence from this police officer, and as this advice given in private, the respondent has no independent account of what was said at the meeting. However, the claimant reports that this Federation representative told him she was aware that he was facing gross misconduct allegations, and suggested that if he did not resign it was likely that matters would progress to a hearing, and the likely outcome was that he would be dismissed. The claimant reports that she told him that he should consider resigning from the Force rather than being dismissed. The claimant also explains that he was told by the Federation representative that if he did not resign by the beginning of March 2015, then he would no longer be permitted to resign due to a change of the misconduct relations for Police officers.

41.79 The parties agree that if that advice was given about the future prohibition on resignation, it would be broadly correct, albeit (as indicated above) the Tribunal had evidence indicating that the Force was already becoming reluctant to accept resignation as a means of avoiding disciplinary action.

41.80 The claimant also reports that the Federation representative told him that if he did not resign within the next two days "*PSD would be gunning for me and would serve gross misconduct papers on me*".

41.81 Sergeant Spall was not party to this conversation. The Tribunal accepts his undisputed evidence that he did not have discussions with the claimant about his case, save for brief mention that if the claimant did resign (which might have been mentioned to him by the claimant or the Federation representative) the deputy Chief Constable might refuse to accept such resignation. The Tribunal notes that when giving oral evidence, during his re-examination, the claimant categorically confirmed that all the discussion he had about resignation described in his witness statement at the police station on 22 February 2015, was discussion with the Police Federation representative, and not discussion with any other police officer. Indeed, he confirmed that he did not discuss the case with the PSD Officers and explained that he was very quiet and there was no conversation in the car as he was being driven back to his mother's house. He also went on to explain, in re-examination, that the Federation representative told him on this occasion that if he did not resign, once the gross misconduct allegations went ahead

"*there would be no going back, and he could not resign and he could be out of a job*".

41.82 On the face of it, it would appear that there was enough information to charge the claimant with the criminal offences for which he had been arrested. The arresting officer had collected evidence, and there had been no objection from the Duty Solicitor when the case was put to the claimant in interview. However, it would appear that because the allegation involved domestic violence, the procedure would normally be to obtain CPS advice before charging. Whatever the process to be followed, plainly the claimant knew that he was facing allegations of assault and criminal damage, and had been interviewed on the basis that there as a case against him on both of those criminal charges.

41.83 The claimant was released on bail to return in due course to a police station, and it was after that that he was given a lift home by Sergeant Spall. Sergeant Spall explained to the claimant that he would serve the notice of misconduct investigation in the next few days, but that the PSD investigation would then go on hold until the criminal matter had been dealt with. In terms of the criminal investigation, the next step would be to send an investigation report to the CPS for a decision on whether or not the case would proceed to a criminal prosecution.

41.84 Sergeant Spall then emailed a detailed report to his superiors as to the situation regarding the claimant. He also added the comment that he believed the claimant was highly likely to offer his resignation, either later that evening or first thing in the morning, but he had told the claimant that the Deputy Chief Constable may well refuse. He also pointed out to his superiors that he had not yet served any papers for this new matter, which needed to be assessed, and as such the claimant might have a small window to resign prior to this new allegation being assessed and it being captured by the new legislation. It was common ground that the new legislation would normally prevent the Force from accepting a resignation from an officer who was subject to formal misconduct investigation. He had provided a risk assessment and satisfied himself that welfare was in place. The email contained a detailed summary of the events and of the investigation, which also contained comments that there was compelling video evidence to support the case against the claimant. It noted that a risk assessment had been completed prior to release and noted that the claimant had a doctor's appointment for the following Tuesday. It also noted that Sergeant Willcocks would be contacting the claimant that evening to offer support to the claimant.

41.85 It is clear that Sergeant Spall must have made some form of contact with Sergeant Willcocks to update him, to be able to confirm that Sergeant Willcocks would offer support. At some stage after having been notified of the claimant's resignation (see below) Sergeant Spall also contacted the claimant's estranged wife (as the alleged victim) and confirmed that she had no objection to the police accepting the resignation which, would necessarily mean that they

would not pursue any internal misconduct allegations in relation to the alleged assault and criminal damage.

41.86 There was a telephone conversation between the claimant and Sergeant Willcocks in the early afternoon of Sunday 22 February 2015, during which the claimant told Sergeant Willcocks that he wished to resign.

41.87 Sergeant Willcocks made it clear, during this telephone conversation, that he could not take the resignation over the phone, but as the claimant was adamant that he wanted to resign he agreed to take the paperwork with him when he came to visit. He took advice from PSD as to the mechanism for resigning, and printed off the appropriate resignation paperwork, populated with the claimant's personal details.

41.88 Later that day, Sergeant Willcocks came to the claimant's home and as was his usual practice he set out a detailed email summary of the meeting which he sent to his superiors shortly afterwards. He also gave clear oral evidence to the Tribunal as to the contents of the meeting.

41.89 During the discussions between the claimant and Sergeant Willcocks, they spoke about his arrest and bail conditions. The Tribunal accepts Sergeant Willcocks' evidence that the claimant was intent on resigning, but was aware that it might not be accepted, because of the claimant being subject to disciplinary proceedings for the Facebook allegations, and a disciplinary investigation in respect of the assault and criminal damage. The Tribunal accepts that Sergeant Willcocks was reluctant to provide the claimant with the resignation paperwork until they had talked the issues through, and he had satisfied himself that the claimant had genuinely come to the conclusion he wanted to resign, and that he had "*fully considered it and this was not just a kneejerk reaction*". The claimant confirmed in cross-examination that Sergeant Willcocks had used the expression "kneejerk reaction" at the meeting. They discussed other options which they had previously talked about, but the claimant was adamant that he wanted to resign. In cross-examination the claimant was taken to Sergeant Willcocks' record of the meeting and accepted that this conversation took place, before Sergeant Willcocks was prepared to provide him with the resignation paperwork.

41.90 The resignation form is a standard police document headed "End of Employment/Service," of four pages, that sets out the police officer's details. The claimant filled in a number of details in his own handwriting, and signed the form. He confirmed that his last day of duty was that day, Sunday 22 February 2015, and that he was giving notice to end his employment, as set out below. He confirmed that he was resigning and that the reason for resigning was "resigned under investigation". The form indicated that the Chief Constable or deputy Chief Constable would like to see him before he retired, and the claimant ticked a box indicating that he did not wish such an appointment.

41.91 The Tribunal notes that before submitting his detailed report Sergeant Willcocks emailed the application for resignation from the claimant to the PSD and his superior, confirming that the claimant had been advised that the Deputy Chief Constable might not accept the resignation and that the claimant was fully advised "*that he needed to be sure it was a fully thought out decision and not a 'kneejerk'. He was also advised that any future reference would indicate 'resigned under investigation'*". Sergeant Willcocks confirmed that the claimant fully accepted all these points and "*continues to request resignation*".

41.92 Following the above email, Sergeant Willcocks then later in the evening sent a more detailed summary of his discussions with the claimant, including what had been said about resignation and support and recording that the claimant had stated that he was not suicidal or having self-harm feelings at this time, but "*he now just wants to get through the court case and move on with his life away from his marriage and the constabulary*".

41.93 The position as of late on Sunday 22 February 2015 was therefore that the claimant was fully aware that as well as the earlier misconduct investigation leading to a misconduct hearing due to take place in May 2015, he was now likely to be charged with assault and criminal damage and that PSD were also investigating that matter as police misconduct. He had been considering the possibility or resignation for some weeks, well before the assault/criminal damage allegations, with advice from the Police Federation. He submitted his resignation after a lengthy discussion with Sergeant Willcocks, who had satisfied himself that this was a properly reasoned decision which genuinely reflected what the claimant had decided what he wished to do.

41.94 Sergeant Spall had prepared the formal notice of investigation, ready to be approved, into allegations of criminal damage, battery and common assault. In the event this was never served on the claimant, because his resignation was processed on Monday 23 February 2015, and the question of taking further misconduct action against the claimant therefore did not arise.

41.95 At some stage on Monday 23 February 2015, the head of Professional Standards, in consultation with the Deputy Chief Constable, made the decision to accept the claimant's resignation. He took into account a number of factors, including public perception and the view of any victims and complainants, in light of the reputational risk of the police being seen to allow a police officer to avoid misconduct proceedings by way of resignation. One of the factors taken into account was that the claimant's estranged wife was happy with this course of action. Chief Superintendant Mark Chatterton decided to accept the claimant's resignation. He was aware of the circumstances leading up to the claimant's resignation, and of his mental state and welfare needs. He was aware of the earlier misconduct matter relating to the Facebook posts and of the likely commencement of a further conduct investigation involving

the assault/criminal damage allegations.

41.96 On the early afternoon of 23 February 2015 Sergeant Spall notified various police officers of the decision to accept the resignation, and of the necessary administrative actions to be taken. He confirmed that it had been agreed that the last day of service would be that day of 23 February 2015 (the Monday the resignation was accepted, rather than the Sunday it was submitted) but in accordance with the usual arrangements the claimant would be given four weeks pay in lieu of notice, plus any annual leave and time off in lieu to which he was entitled.

41.97 The claimant was advised the same day that his resignation had been accepted. The Tribunal has been provided with an email timed at 1459 on 23 February 2015, when the claimant emailed Sergeant Willcocks in an email headed "resigned and accepted today" dealing with administrative matters to do with the paperwork and such matters as P60s and payslips. Sergeant Willcocks replied and confirmed that they would discuss it the following day.

41.98 The Tribunal notes that none of the emails to or from the claimant indicated any second thoughts or reluctance to progress with the resignation.

41.99 The claimant's clear decision that he wished to go through with his resignation was also reflected in a telephone conversation between Sergeant Willcocks and the claimant in the early afternoon of Tuesday 24 February 2015.

41.100 During the telephone conversation, there was again no suggestion by the claimant that the claimant was unhappy with his resignation being accepted. Sergeant Willcocks also explained to the claimant that Chief Inspector Tribe, in charge of the Unit, had offered to meet him informally. Although the claimant was grateful for the offer, and he had nothing personal against Chief Inspector Tribe, "*he just wanted to move on from the police now*".

41.101 In subsequent email traffic, the claimant gave no indication that he wished to withdraw his resignation or had had second thoughts. He did however, on 1 and 3 March 2015 send emails to Sergeant Willcocks making further allegations against other police officers. The claimant also, in an email dated at 1208 on 3 March 2015 indicated he was having a "*massive melt down*".

41.102 The Tribunal notes that although a meeting with a Force Medical Officer and a case conference had been scheduled for 12 March 2015, clearly these did not go ahead as the claimant had ceased to be a police officer on 23 February 2015.

41.103 Sergeant Willcocks also visited the claimant on 3 March 2015. At that meeting the claimant confirmed that he did not wish to go ahead with the case conference or medical appointment, which had previously been arranged, and that he did not wish to meet with Chief Inspector Tribe. During that meeting there were various

discussions about the support which the claimant had received, the circumstances of his resignation and the claimant's concerns. Although the claimant had not been expecting any further help from the Police Federation, he had in fact received contact from a solicitor to work through his complaints with him, which had in fact been arranged by the Federation. He did discuss with Sergeant Willcocks his various complaints against the Force, and his contact with Solicitors, but did not give any indication that he had had further thoughts about his resignation.

41.104 Sergeant Willcocks visited the claimant again on 4 March 2015 and during this meeting the claimant confirmed that although he was grateful for the offer of further contact he did not wish to have further support from Sergeant Willcocks. During their discussions, when the last of the personal kit was handed over, the claimant referred to his concerns as to earlier bullying and so on, and to his receipt of legal advice. Various other matters were also discussed, during which Sergeant Willcocks reiterated he was happy to be contacted should the claimant wish to do so. There was again no suggestion of second thoughts over the resignation, nor any suggestion that the claimant might still wish to return to the police Force.

41.105 In respect of the criminal investigation into assault and criminal damage, the CPS eventually decided not to proceed with the prosecution. This was a decision which surprised the respondent's PSD staff, who had believed there was a strong case against the claimant. In any event, the decision was not taken until the end of March 2015, more than a month after the claimant had resigned. The Tribunal notes that because of his resignation this incident was not being investigated as a misconduct matter, but the Tribunal accepts Sergeant Spall's evidence that although the disciplinary investigation would be put on hold pending a decision on prosecution, a decision by the CPS not to pursue charges would not prevent a misconduct allegation going ahead, had the claimant still been a serving officer, and that he was expecting the investigation to have taken place as an internal disciplinary matter.

41.106 Although disciplinary proceedings would not automatically follow, the Tribunal notes that DS Spall had formed the view that there was a clear case against the claimant, and it is clear that it would have been likely that he would have recommended that the investigation should continue.

41.107 The claimant contacted ACAS on 21 May 2015 and ACAS early conciliation completed on 21 June 2015.

41.108 The claimant then presented his claim form on 20 July 2015, through his solicitors. This alleged, for the first time, that the resignation should not have been accepted, albeit the Tribunal was provided with no evidence suggesting that this had been raised at any stage previously.

Conclusions

Introductory Remarks

42. As indicated above, this is a case that very much turns upon its own facts and it would be appropriate to make some introductory comments about the facts as a whole. The Tribunal has considered all the evidence and submissions in the round before reaching any conclusions. It is, however, worth remarking that it is clear that the claimant was suffering from disabling medical conditions from mid-2014 onwards, as conceded by the respondent. The Tribunal would observe that the concession as to disability went no further than that which was set out earlier in this judgment, and the Tribunal was not invited to come to the conclusion that the claimant was in fact a disabled person before mid-April 2014. Certainly, whether or not the claimant might or might not have been disabled prior to mid-April, there is no evidence supporting any such specific conclusion. The burden of proof is upon the claimant to establish that he was disabled at an earlier stage, and the claimant has not discharged that burden.

43. One of the central themes in the case was the degree of gravity which should have been attached to what has been broadly described as the "Facebook incident" albeit it also included text messages and oral abuse to police officers at the claimant's home. One of the claimant's underlying arguments in the Employment Tribunal case is that the respondent should not have treated this as a matter of misconduct which required a formal investigation and/or misconduct hearing. The Tribunal has considered the contents of the claimant's posts, the content of what he said to other police officers, and the contents of text messages, and notes that after a thorough investigation the respondent Police Force took the view that this was certainly an allegation of gross misconduct. They also took the view that the proper forum for determining this would be a formal disciplinary hearing. The claimant admitted the facts, and the view was evidently taken that the mental health issues raised by the claimant were matters of mitigation. It was also concluded that this was not a matter which should form any sort of accelerated procedure, but should have a full hearing so that a panel could consider all the matters put forward by the claimant. That would appear to be an eminently sensible approach.

44. The Tribunal considers that, objectively, any employee who posts highly inflammatory and derogatory remarks about his colleagues on a public social media forum, as well as using inappropriate language to colleagues, has put himself in a situation which would be likely to result in a misconduct investigation, with the possibility of allegations of gross misconduct. In this case, the claimant being at the time a serving police officer, the Tribunal considers that it would plainly have been in the public interest for the matter to be properly aired through an investigation and a hearing. There is nothing untoward in the respondent taking that view. Indeed, it would have been surprising had any other view have been taken. Of course, it does not follow that merely because the facts were admitted and what the claimant did was highly inappropriate, that he would inevitably be dismissed for gross misconduct. However, no such decision had been taken – this was a matter which would be considered in the appropriate forum, namely the disciplinary

hearing. The claimant had raised mental health issues, which were referred to in the investigation report, and police management were aware of this issue. Whether or not it might be capable of amounting to a defence to the allegations was not an issue which was ever tested, because the hearing never went ahead after the claimant's resignation.

45. The Tribunal considers it is plain, and indeed acknowledged by the respondent at the time and subsequently, that at the very least the mental health issues would be a matter of mitigation which would not doubt be put forward at the hearing and considered by the disciplinary panel. Without looking at this point at the detail of the evidence and the procedures, the Tribunal considers that it is clear in principle that this was a matter which could be expected to be investigated and dealt with as a disciplinary matter, and indeed the public interest in dealing with matters appropriately with police officers would suggest that this was something which members of the public would expect to take place.

46. The tribunal considers, in summary, that it was plainly reasonable and in the public interest that the misconduct allegations relating to the Facebook posts should be considered at a disciplinary hearing. To suggest otherwise, or to argue that the allegations "are incapable of being gross misconduct" is wholly unrealistic.

47. Another key theme in the case is the level of support provided to the claimant. It should be noted that the claimant was, throughout, under the treatment of his GP and was indeed referred to a specialist, and was being treated by the NHS, not by the Police Force. The respondent was under no duty to take on the role of the NHS and to manage the claimant's medical treatment. However, the Tribunal notes that the claimant was given access to various support mechanisms within the Police Force, even if he did not seek to use all of them, and the respondent was plainly concerned to obtain up-to-date Occupational Health reports from time to time. The Tribunal considers a particularly significant factor in this case was the very high degree of sympathetic support provided to the claimant by Sergeant Willcocks. The Tribunal considered that Sergeant Willcocks was an impressive witness, as indeed acknowledged by the claimant himself, who went out of his way to provide the claimant with a very considerable degree of support, offering helpful and encouraging advice and doing his best to give the claimant every opportunity to be fit to return to work, even when others might have taken (and did take) the view that the future was bleak. As indicated above, Sergeant Willcocks also had a clear recollection of events, assisted by his detailed and comprehensive contemporaneous notes of meetings and conversations with the claimant which assisted their Tribunal in understanding the events in question. It is also clear from those notes and from Sergeant Willcocks' evidence that although from time to time there was discussion about a number of possibilities including resignation, there was plainly no pressure at all put on the claimant to resign. Far from it: Sergeant Willcocks' was plainly at some pains to ensure that at all stages all possibilities were explored, and that the claimant should not feel he was being pressured to take any one particular approach. Indeed, once the claimant had told him he wished to resign, Sergeant Willcocks was cautious in taking matters further until he had satisfied himself that the claimant had made up his minds to adopt such a course, and had only done so having carefully considered the alternatives.

48. A central theme of the case is that the claimant has complained as to pressure put on him to resign. He may have felt under pressure, albeit as a result of his own actions, but it is abundantly clear from the evidence that there was no pressure exerted by the respondent. It is clear from the claimant's own evidence that if others sought to advise him that he should resign, any such advice (which the claimant may have seen as "pressure") can only have come from his own Police Federation representatives, and not from the respondent. This is a very serious weakness in his case.

49. The Tribunal also considers that the events of 21 February 2015 are central to the case, albeit the situation had probably already reached tipping point for the claimant. As set out in the findings of fact, the position by early February was already that the claimant had been turned down for ill health retirement, which would have been his first preference. By 14 February 2015 he knew that even if there might be a future potential argument for ill health retirement, the matter could not be progressed whilst disciplinary proceedings were pending. The position at that point was therefore that he could if he wished resign, or he would inevitably face disciplinary proceedings, and he knew that a hearing would take place on or after May 2015.

50. As at the middle of February 2015, the claimant had plainly taken the view, perhaps encouraged by advice from the Police Federation, that the disciplinary hearing could well result in his dismissal for gross misconduct. Sergeant Willcocks had been keen to make it clear to the claimant that this was by no means inevitable and that there were other possibilities, that it is clear that the claimant was concerned that this was a likely outcome which he wished to avoid. It is also clear by this stage that two consultants, including his own recently received expert report, had concluded that he was not fit to work as a Policeman. Indeed, both Dr Ogeleye's and Dr Qureshi's report had made it clear not only that he would not be fit to return to work as a policeman, but were he to do so this would be detrimental to his mental health. He had provided a copy of the reports to the respondent's management and he also therefore knew that the senior officers in the Force were aware that his expert had reached those conclusions.

51. Faced with this situation, it would have not have been at all surprising if the claimant had at that point decided to resign, rather than to face disciplinary proceedings which might result in a gross misconduct dismissal, and knowing that his own medical advisor had suggested in any event that he should never return to work for the Police Force. Plainly the claimant also knew, and indeed expressed to Sergeant Willcocks, that such a finding could affect his future job prospects. This also has to be seen in the light of advice which the claimant appears to have received from the Police Federation suggesting to him in the circumstances it would be in his interest to resign at this point.

52. It would therefore have been an entirely rational decision for the claimant to have resigned from the Force, even before the events of 21 February and 22 February 2015.

53. The Tribunal considers it is a matter of huge significance that the claimant was involved in a serious incident, plainly at a time when he was under the

influence of alcohol, which led to allegations of assault and criminal damage. The Tribunal accepts that, at least on 22 February 2015, the case against the claimant appeared to be a strong one.

54. It is inevitable in those circumstances that any policeman, and certainly this claimant, would be expected to take the view that whatever jeopardy his career might already be in, that this incident was likely to lead to further, and extremely serious, disciplinary allegations.

55. The position by the afternoon of 22 February 2015, when the claimant reports receiving further robust advice from a Police Federation representative, was plainly that he was now in much greater jeopardy of a gross misconduct dismissal than he had been previously. Any police officer, whatever his mental state, could be expected to think very seriously about resignation, if that was to avoid an increasingly likely eventuality of a gross misconduct dismissal. Furthermore, the claimant was perhaps in an unfortunate position because of the changing rules about accepting resignation, as he was advised by the Police Federation representative (correctly, as it turned out), that he had only a narrow window of opportunity to attempt to resign, and that if he did not do so within the next week or so, the Force would not be able to consider his resignation and he would be required to face disciplinary proceedings. Although no formal decision was ever taken to commence a formal investigation into the claimant's conduct arising from the assault and criminal damage allegations, it is abundantly clear from the evidence of Sergeant Spall, supported by the evidence he gathered in his initial investigation, that the intention would have been to open a disciplinary investigation, had he not resigned first. Again, any police officer, regardless of his mental state, could be expected to give significant weight to the Police Federation advice to consider resignation in the immediate future. The choice would therefore be to resign within the next few days, or inevitably go forward to a disciplinary hearing, with the strong probability that there would be additional allegations relating to assault and criminal damage. It is also relevant that had Sergeant Spall arranged for the issue of a new investigation notice (which he had already prepared for signature), and once that had been served on the claimant, then even before the rules changed that would make it much less likely that a resignation would be accepted.

56. There is perhaps a slight air of unreality in the claimant's case.

57. Firstly the claimant's case relies on the assertion that the decision to resign was not properly taken, despite Sergeant Willcocks going to some length to satisfy himself that the claimant had properly thought it through and that it was not "kneejerk reaction", when an entirely rational police officer could in any event have been expected to come to the same conclusion. Plainly it was not lost on the claimant that if he did not resign at that stage, the likelihood would be, at least in his mind or the mind of any reasonably informed police officer, that he would within a few months be dismissed for gross misconduct. Due to the length of his sick leave, the claimant was at the point of losing his sick pay, and an extension of service (if he remained on sick leave) would not have resulted in further wages. In all the circumstances, and the Tribunal readily appreciates why the Police Federation should have advised him it was in his interest to resign.

58. The claimant now argues that the resignation should not have been accepted, even though he did not argue this at the time despite, having had ample opportunity to raise the issues, and his argument has not been plausibly put at the Tribunal hearing. Had the respondent refused to accept the resignation at the time, despite the claimant clearly setting out that it was his wish to end his employment as a police officer, he would therefore have had to accept he would need to attend a disciplinary hearing.

59. As indicated above, the claimant also knew at this stage that his treating consultant and his independent medical advisor had in any event recommended he should not go back to work. Although it has been argued the claimant should at this stage have been given more support and that the respondent should not have accepted his resignation, the Tribunal considers that this argument has not been logically presented, or clearly articulated, on the claimant's behalf. The claimant was already receiving medical treatment arranged through his GP, and very considerable support both from Sergeant Willcocks and from the Police Federation, as well as access to other support mechanisms. If the respondent had delayed accepting the claimant's resignation, the claimant has not suggested how this would in fact have benefitted him, especially as he acknowledges that the respondent's managers were aware of the recommendation which his own consultant had put forward at to his future employability by the Force. His own medical evidence indicated that it would make him ill if he remained in the Force. He had taken advice from the Police Federation and discussed his options with Sergeant Willcocks, and has not suggested what other discussions or factors he would have wished to have taken into account before confirming his decision to resign. These factors very much underpin the Tribunal's findings on the individual heads of claim.

60. In terms of the specific heads of claim, the tribunal has dealt with them below in the same order in which they appear in the "further information," which has been treated by the parties and the Tribunal as setting out the issues in the case. The Tribunal has been assisted by the helpful summary of the law provided by Ms Sleeman in her written submissions on behalf of the claimant.

Conclusions as to Harassment

61. The claimant relies on two allegations of harassment related to disability, brought under Section 26 of the Equality Act 2010. There is no need to set out the statutory provisions in full, but the tribunal notes that in the first place there must be unwanted conducted related to a relevant protected characteristic, and if there is the Tribunal needs to consider whether (in this case, as articulated by Ms Sleeman) this has the effect of "creating a degrading or humiliating environment" for the claimant.

62. Of the two allegations of harassment the first one is "*placing the claimant under pressure to resign at a time when he was vulnerable and medically was not fit and able to make an informed decision regarding his future*".

63. The respondent objects to the allegation for a number of reasons: Firstly, the respondent argue that the respondent did not in fact put pressure on the claimant to resign at any stage, but that Sergeant Willcocks encouraged the claimant to return to work. The respondent also complains that the evidence

placed before the Tribunal did not indicate that the claimant was "vulnerable and medically was not fit unable to make an informed decision".

64. As for the alleged pressure to resign, the claimant's case was that although the information appeared to have been conveyed by Federation representatives, some or if not all of the comments came from the PSD officers in attendance. The Tribunal considers that that argument was always somewhat misconceived, and that in light of the evidence as it unfolded at the Tribunal hearing, is entirely untenable. It was not put to the PSD officer (Sergeant Spall) that this was the case. Indeed, both Sergeant Spall and the claimant gave evidence which appeared to be inconsistent with any such conclusion. Although Ms Sleeman argued that Sergeant Spall accepted he probably did tell the Federation representative he would be serving papers within a couple of days, the Tribunal considers this was a fairly obvious point which an experienced Federation representative (and in this case the claimant explains that she was an Inspector) would have worked out for herself. If a PSD officer had attended and gathered initial evidence in a relatively straightforward assault and criminal damage case, the details of which had been put to the claimant in interview, in the presence of his solicitor, it would plainly be expected that papers would be served within a coupe of days. Had Sergeant Spall attempted to hide the situation for the Police Federation, doubtless he would have been criticised for doing so. Indeed, the procedures expected matters to move on swiftly and the Tribunal heard that Sergeant Spall, in following his usual practice, had indeed prepared a notice ready to be shown to his superiors to be approved if appropriate. The Tribunal considers that in fact not only did the respondent not put any pressure on the claimant, but that on one analysis the Police Federation did not but merely pointed out to the claimant the pros and cons of different courses of action and the risk to him were her not to resign in the near future.

65. The claimant also suggests that the circumstances the claimant was in, including the fact that he had been interviewed with an appropriate adult, after suicide attempts, amounted to some form of pressure. The Tribunal would commend Ms Sleeman for her zeal in presenting the claimant's case at its very highest, but considers that such arguments are not strong. The claimant has not presented medical evidence indicating he was not fit to be interviewed or investigated, and indeed after initial concerns when he arrived at the Police Station in an intoxicated and agitated and aggressive condition, a decision was made not to investigate him until he was in the right mental state and with an appropriate adult present. The Tribunal does not consider that this is a matter capable of amounting to pressure from the respondent.

66. While the Tribunal accepts that the claimant would no doubt have felt under pressure, albeit as a result of problems apparently of his own making, in that he plainly faced further disciplinary and criminal proceedings, it is simply wrong to conclude that the respondent put pressure on the claimant to resign at any stage. The claimant was under pressure by the circumstances he was in (or had put himself in), but he was not being pressurised to resign. On that basis the allegation of harassment as brought is simply unsustainable.

67. Furthermore, because of the somewhat convoluted way in which the allegation is brought, the second part of the allegation requires the claimant to show that not only was the claimant vulnerable, but he was medically not

fit and able to make an informed decision regarding his future. The claimant has provided some evidence as to his mental state, but has not provided sufficient evidence from which the Tribunal could conclude he was not able to make an informed decision. The Tribunal notes that Sergeant Spall did not interview the claimant until the claimant had been assessed as ready to be interviewed, in the presence of an appropriate adult and a solicitor, and that the solicitor made no objection to the interview going ahead. Sergeant Spall's evidence that he found the claimant lucid, calm and able to answer questions was not challenged in cross-examination. Later the same day Sergeant Willcocks took pains to satisfy himself that the claimant had properly considered his position and that the resignation was not a kneejerk reaction. The medical evidence (which did, of course, recommend that the claimant should not go back to work as a police officer) did not indicate that he was not capable of making a decision on his future. Stronger evidence in those circumstances would be expected, to demonstrate that the claimant was not in a position to make an informed decision regarding his future and the Tribunal considers that evidence has not be brought. The claimant knew precisely what position he was in at that stage having spent some time previously taking and considering advice including from the Police Federation. There has been no argument that the respondent was in some way vicariously liable for any advice given to the claimant by the Police Federation.

68. The position in respect of the first harassment is therefore that the allegation is not capable of succeeding, because the Tribunal has found, without hesitation, that the respondent did not place the claimant under pressure to resign. The Tribunal would go no further, but would observe that the claimant has chosen, rather unwisely, to bring his allegation based on the positive assertion that he was not able to make an informed choice, in circumstances when it was clear that he did indeed make an informed choice, without there being adequate evidence suggesting that he was medically unfit to make such a decision.

69. This allegation of harassment is not well founded.

70. The second allegation of harassment is "*accepting his resignation when he was vulnerable and medically was not fit and able to make an informed decision regarding his future*". The same criticisms, as above, can validly be made about the second part of that allegation.

71. The respondent also argues that this was not unwanted conduct. The Tribunal notes that a matter cannot be harassment unless it is "*unwanted conduct related to a relevant protected characteristic*" (section 26(1)(a) of the Equality Act 2010). The claimant had indicated that he wanted to resign, and what the respondent did was to permit the claimant to do what he said he wished to do, namely to resign, let alone establishing any link to the protected characteristic. The Tribunal considers there is considerable force in this argument.

72. The respondent also relies upon the fact that the circumstances were in the context that the claimant had been considering resigning for some time, that two consultant psychiatrists had recommended that he should stop working for the respondent in order to prevent deterioration of his health, that he was facing a gross misconduct hearing which may have resulted in his dismissal

for gross misconduct, and that he has just been arrested for assault and criminal damage and was aware that further misconduct allegations may follow. Had he not resigned he may have been dismissed, which would have made it harder for him to find a job, quite apart from any impact that might have had upon his mental health. It is also suggested it was relevant that he was due to drop to zero pay, due to the length of his sickness absence.

73. The Tribunal has reminded itself that this was not a case where there is evidence of an over-hasty resignation (in light of Sergeant Willcocks' verification that this was the claimant's settled view), and that there was no attempt to withdraw the resignation during or after the claimant's exchanges with Sergeant Willcocks. This was despite ongoing access to advice from the Police Federation and from his solicitors. Indeed, until the submission of the ET1 some five months later, there was no suggestion at all that the resignation was not voluntary, or was not what the claimant genuinely wanted to do. The Tribunal agrees with the respondent that the decision to accept the resignation was made in light of knowledge of the background facts, and indeed of the medical opinion that for the claimant to remain in his job could cause deterioration in his mental health. The Tribunal agrees with the respondent it was appropriate for the respondent to accept the claimant's resignation, and there is perhaps something of an unreality about this allegation. Had the respondent refused to accept the resignation, it would have laid itself open to a rather more justifiable allegation that it was indulging in unwanted conduct which could have severe repercussions upon the claimant, who had made his wishes entirely clear.

74. The claimant plainly wanted the respondent to accept his resignation. That is why he submitted it. He acted at the time entirely in keeping with his continuing wish to leave the Police Force, and never suggested anything else in the five months prior to his ET1.

75. The Tribunal agrees with the respondent that this allegation is not capable of being an act of harassment. This allegation of harassment is not well founded.

76. The Tribunal has not needed to consider the question of whether the respondent's acts were related to disability in the way alleged, or actually had the effect of creating a degrading or humiliating environment. It should be observed that the Tribunal would take the provisional view that there is no proper evidential basis for concluding that the facts would be capable of falling within the definition at section 26(1)(b)(ii) (and 26(4)) of the Equality Act 2010.

Conclusions as to Discrimination Arising from Disability

77. The next issue raised in the "further information" relates to discrimination arising from disability under Section 15 of the Equality Act 2010. Again, there is no need to set out the wording of the statute in detail save that the initial burden is upon the claimant to show that he was treated unfavourably "because of something arising in consequence of his disability". There are three allegations, as set out below. The Tribunal has taken into account the case law to which it was referred, especially *Basildon & Thurrock NHS Foundation v Weerasinghe* and *Pnaiser v NHS England*. The Tribunal accepts that it needs to focus on the words "because of something" and

identify whether that "something" arose in consequence of the disability, and also to consider whether the treatment complained of was "because of" that. *Pnaiser* makes it clear that the "something" need not be the main or sole reason, but must at least have a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

78. In each case the initial allegation is denied by the respondent, but it is submitted in the alternative that if there is a case to answer, the respondent would rely on the defence under Section 15(1)(b) that the respondent can show that the treatment is a proportionate means of achieving a legitimate aim.

79. The first allegation of discrimination arising from disability is "*subjecting him to misconduct proceedings relating to the Facebook comments*". The respondent argues that it has not been established that the Facebook posts, and linked verbal abuse and abuse by text message, arose from the claimant's disability. "Motive" is not the same as "causation", but in this case is obvious that the sole reason for subjecting the claimant to misconduct proceedings was because of what the claimant had done by his social media posts, his text message and his comments to police officers at his home. That decision was plainly not in any sense because of the claimant's disability – the issue here is different from that which the EAT faced in *Pnaiser*. In this case, if the misconduct proceedings are capable of being unfavourable treatment, the initial matter in contention is whether the "something" (the claimant's anti-social acts) arose in consequence of the claimant's disability.

80. The respondent relies upon the fact that the claimant had previously sent similar emails to the PSD on 17 February 2014, at a time when he had not established that he was disabled, and there was no evidence that he was suffering from anything more than stress at work. They also rely on the fact that the emails were the day after the claimant had found out he would be investigated for theft, and that those emails appeared to be a reaction to allegations against him resulting in an investigation, rather than anything arising from his disability. Similarly, the respondent relies upon the fact that the Facebook posts came shortly after the claimant being told that the theft investigation would be progressing, and that on a proper analysis the posts were because of his dissatisfaction of him being investigated, not because of his mental illness. Comment is also made of the allegations of unlawful antisocial conduct being after consumption of alcohol; acting in an anti-social way whilst intoxicated does not need to be linked to any underlying disability. Indeed, one might comment that any police officer would be aware that normally healthy and law-abiding citizens may indeed get themselves in all sorts of trouble whilst under the influence of alcohol.

81. The respondent points out that there is no medical evidence to support the claimant's case that the reason he made the posts was because he was suffering from a mental illness. The respondent also argues that this was not unfavourable treatment, as it was not in dispute that the claimant had done the acts complained of, and that the reason that he was investigated was because he had done those acts and that this was a duty the respondent had to investigate these matters and could not properly be construed as unfavourable treatment arising from disability.

82. The Tribunal would observe that it is clear that the claimant was subjected to misconduct proceedings because of inappropriate comments posted on Facebook, as well as inappropriate texts and abusive language to an officer when he came to visit. It is clear that the latter is clearly the "something arising", and *might* be characterised as being unfavourable treatment because of that "something". However, the claimant's acts must also be something arising in consequence of his disability. The respondent is right to point to the lack of any clear medical evidence linking the incidents to the underlying disability (medical conditions including depression, anxiety and/or PTSD), especially when the claimant had done something very similar in February, at a time when the respondent argues he was not disabled.

83. The Tribunal recognises the inherent difficulty in the issue as to whether subjecting the claimant to misconduct proceedings was in fact "unfavourable treatment because of something arising in consequence of his disability". The Tribunal notes that whilst on the face of it being subjected to a disciplinary investigation and misconduct proceedings appears to be unfavourable, one can argue that such investigation is the inevitable consequence of posing inappropriate comments and doing the other admitted acts, and in that sense to take the required and indeed expected action can hardly be categorised as "unfavourable". The Tribunal also recognises that the claimant has not called any clear medical evidence establishing the causation, instead relying on some rather vague inferences to be drawn and the claimant's own assessment of his medical condition.

84. The Tribunal would be minded to conclude that the evidence presented at the hearing does not in fact support, to the required standard, the conclusion that the misconduct proceedings were unfavourable treatment because of something arising out of disability. At the same time it recognises that this is something of a grey area, and it would be possible to take a broad view that there may be sufficient linkage that this part of the claim is established by drawing broad inferences from the medical evidence, even if the medical condition/disability was not the sole reason.

85. In any event, the Tribunal considers that it is perhaps more helpful to assume that the first part of section 15 of the Equality Act 2010 is made out, and to focus instead at the justification defence. Taking a broad view, the underlying question is perhaps whether the respondent should have taken the actions it did in respect of a disabled police officer, and whether those acts might properly be characterised as discrimination.

86. The respondent relies, in the alternative, upon the statutory defence under section 15(1)(b). The necessary legitimate aim, which was perhaps not formulated with great clarity, is nevertheless reasonably straightforward. The gist of this was along the lines of the duty or expectation that apparent misconduct, especially by a police officer, should be properly investigated and dealt with by due process. That is unquestionably a legitimate aim. The Tribunal considers that it is uncontroversial that, as indicated above, that public and highly inappropriate conduct by a police officer should be subjected to conduct proceedings. To commence such proceedings does not, of course, exclude the possibility that in the light of medical evidence a panel would decide to take no further action, or that they would view that as strong mitigation in considering a proportionate sanction. In this case, there

was no sanction, because the claimant was permitted to resign before the disciplinary proceedings came to fruition, so the allegation relies upon "subjecting him to misconduct proceedings". At the time of resignation, matters had progressed as far as preparing for a conduct hearing, albeit a final date had not yet been confirmed.

87. The Tribunal considers that the investigation was a proper one and the conclusion reached and recommendations made were perfectly proper and indeed acknowledged the fact that the claimant had raised his mental state as a relevant factor. Regulations set out the procedures to be followed, and it is not suggested that the respondent's actions were outside the scope of those regulations. The Tribunal is not at all persuaded by the claimant's suggestions that in reality these allegations were not matters of great importance, noting that he had made highly scurrilous complaints in a public medium against named individuals. It is entirely reasonable to expect that an investigation would take place. The public would expect it, and the individuals named (and the officers abused at the claimant's home) would also expect it. The investigation was properly conducted in accordance with the appropriate procedures and the legislative framework for conducting disciplinary hearings. The recommendation to take matters forward to be resolved at a disciplinary hearing were entirely appropriate and proportionate, and would ensure that a disciplinary panel had all the relevant facts and issues raised before they decided upon an outcome. The idea that the matter should simply be concluded, because the claimant also had mental health issues, is a very weak argument, which would doubtless have led to accusations of a cover-up and of the Force failing to set suitable standards of conduct within its own officers.

88. Assuming that the claimant was able to prove facts sufficient that the Tribunal could conclude that Section 15(1)(a) is made out, the Tribunal has little hesitation in accepting the respondent's defence that the decision to subject the claimant to misconduct proceedings relating to the Facebook comments and associated acts was certainly a proportionate means of achieving a legitimate aim.

89. The Tribunal would repeat that the procedure followed, which is a well established statutory procedure, by no means presupposed that the claimant would be unable to provide an explanation as part of his defence or strong mitigation which could have been taken into account. The complaint is of the proceedings themselves and the Tribunal considers that those disciplinary proceedings were wholly unexceptionable and proportionate.

90. The first allegation of discrimination arising from disability is not well founded.

91. The next allegation is "*placing him under pressure to resign at a time when he was vulnerable and medically was not fit and able to make an informed decision regarding his future*."

92. For the reasons set out above in respect of harassment, the Tribunal considers that this allegation is somewhat misconceived, and is in fact incapable of taking matters anywhere. There was no pressure placed on the claimant by the respondent to resign, at any stage. That itself would completely defeat the allegation, but, similarly, the claimant has not

established that the decision to resign was made when he was medically not fit and unable to make an informed decision, an addition to the allegation which the Tribunal considers to be somewhat unhelpful. The Tribunal does not accept he was unable to make an informed decision regarding his future.

93. This is not capable of amounting to discrimination arising from disability, and the second allegation of discrimination arising from disability is not well founded.

94. The third allegation of discrimination arising from disability is "*accepting his resignation when he was vulnerable and medically not fit and able to make an informed decision regarding his future*."

95. In the same way that this can be criticised as not amounting to unwanted conduct for the purposes of harassment, there is a significant flaw in the claim as seeking to argue that it is "unfavourable treatment" to accede to what the claimant wished to do, namely to resign his employment. Similarly, the claimant has not provided evidence sufficient that the Tribunal would be satisfied he was medically not fit or able to make an informed decision at the time he resigned, especially in light of the Federation advice he has received and the fact that objectively it appeared to be a perfectly sensible and considered decision.

96. In any event, even if the Tribunal had been minded to take a much more liberal approach to the evidence and the law, it would have had no hesitation in considering that there was a legitimate aim, namely acting in accordance with the claimant's expressed wishes, and also ensuring that they acted in a way which was least likely to cause a deterioration in the claimant's health. The Tribunal considers that it is difficult to argue that for an employee who wishes to resign, and has made it clear that he wishes to do so after having discussed this at length and having taken Federation advice, that is in some way discriminatory to do what the employee has asked for. All the more so where that employee has provided his employers with medical evidence suggesting his continued employment may damage his health. It is hard to see how it would be disproportionate to accept that resignation, and the Tribunal would reject any such argument.

97. The claims of discrimination arising from disability are not well founded.

Conclusions as to Reasonable Adjustments

98. The claimant brings claims of failure to make reasonable adjustments under Section 21 of the Equality Act 2010, relating to five separate provisions, criteria or practices (PCPs). Again, there is no need to set out the wording of the statute in full, which is helpfully set out in the claimant's submissions. The Tribunal notes that the claimant also referred to the case of *Carreras v United First partners Research*, in respect of identifying the PCP. The Tribunal recognises that a PCP can be approached with a degree of flexibility, albeit it is rather more helpful for a legally represented claimant to try to plead the PCPs, and the adjustments claim, more coherently in the first place.

99. The first PCP relied upon is "*subjecting officers whose performance is perceived to have fallen below a certain level to the misconduct process*".

Ms Sleeman confirmed that this (and all references to the investigation and disciplinary or misconduct proceedings) was a reference to the Facebook allegations.

100. The Tribunal did not find the way the claimant had expressed the claim to be a very helpful one. The issues, as set out in the "Further Information", set out the claim in a rather complex way, which departed from the statutory structure. It started with the adjustments sought, whereas the correct approach is first to identify what PCP is relied upon, and whether the claimant has established whether that PCP has been applied. The next step would then be to determine whether that PCP puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with non-disabled persons. Only then does the duty to make adjustments arise.

101. In this case, the respondent accepts that a *similar* PCP was applied. Plainly it is unhelpful to muddle up performance and misconduct, as the claimant has done. The PCP does, however, make better sense if the word "performance" is removed, and the word "conduct" substituted, and even better sense if it is amended to read "*subjecting officers to the misconduct process, if they are perceived to have committed misconduct*". Whilst the actual PCP pleaded is somewhat nonsensical, applying the *Carreras* approach, the Tribunal is satisfied that the difference is not one of great substance, and it is broadly clear what the claimant is trying to allege. The respondent does not take a point on this.

102. Because of the rather confusing way the claim has been pleaded, the Tribunal considers it may be helpful to consider the three PCPs together, and then the substantial disadvantage alleged, especially as there is some overlap between the PCPs and the proposed adjustments.

103. The second PCP is "*referring officers to the misconduct process without first considering their welfare and/or their medical condition/disability*".

104. The Tribunal did not find the construction of this PCP to be particularly clear, and the wording appears to anticipate a particular finding that reasonable adjustments were not made. Although the respondent initially conceded this PCP, clearly this was on the basis that there was no *unreasonable* failure to consider welfare or medical conditions/disability, to any greater extent that had been admitted, the respondent later walked back from this concession. In any event, Ms Sleeman confirmed that she wished to adopt this wording, albeit taking abroad *Carreras* approach the Tribunal considers this effectively puts a further gloss on the first PCP, and is more of a signpost to the arguments which more properly relate to disadvantage and to adjustments. However, perhaps the point is academic, as the respondent relied on the fact that the statutory procedure did not provide an express step for welfare and medical condition to be considered as a factor when officers were "referred to the misconduct process". That process does not relate to the ultimate decision on the case, but the decision relating to whether the facts justified commencing the process. Indeed, it is difficult to see how significant issues relating to alleged misconduct could be properly dealt with within a police force without conducting an investigation, and without the decision-making process under the statutory framework.

105. Similarly, the third PCP is "*referring officers to the misconduct process*

without first obtaining medical evidence in relation to medical conditions/the disability". This is, again, perhaps something of a gloss on the first PCP, and again perhaps relates more properly to the disadvantage or reasonable adjustments. Comment is made below in respect of the approach to this PCP, in conjunction with the first two (overlapping) PCPs.

106. The approach taken to the issues by the claimant in his "further information" was to list the adjustments, then to list a number of factors said to amount to disadvantage arising from these PCPs, namely facing misconduct proceedings which he was informed could result in his dismissal, facing misconduct proceedings for matters arising in consequence of his disability, enduring the stress of attending the misconduct hearing, his health being further adversely affected by the commencement of the misconduct proceedings and being pressurising into resigning because of the pending misconduct hearing. The Tribunal has tried to make sense of the rather convoluted case which the claimant has chosen to bring.

107. The respondent disputes that the claimant was placed at a substantial disadvantage, in that he faced misconduct proceedings that could result in his dismissal, because the claimant was not at any substantial disadvantage in relation to non-disabled officers. That must be correct, in respect of the disadvantages of being disciplined at all, or the risk of being dismissed. The risk was the same for all (albeit the claimant had a possibly arguable defence, or at the very least mitigation, which might not be available to non-disabled Police Officers, which might enable him to avoid dismissal).

108. The Tribunal agrees with the respondent that it has not been provided with any specifically clear evidence that the claimant was at any more of a disadvantage than a non disabled officer would be, especially noting that a non-disabled officer might have a stress-related reaction to the knowledge that he was being subjected to disciplinary proceedings. The claimant appears to be arguing that because he had a disability, he should in some way have been exempted from disciplinary proceedings, or that on a proper analysis of his personal and medical history, such proceedings would not have progressed. There is no merit in this argument. The Tribunal has had full sight of all the personal and medical evidence called by the claimant, including evidence post-dating the decisions complained of, and there is nothing which can reasonably be construed as calling into question the steps taken by the respondent. The disciplinary proceedings were a consequence of the claimant's actions, in the same way that they would have been had he not been disabled, and the practical career consequences for him were the same. The Tribunal considers that for this disadvantage to be made out, there would need to be evidence that this was more disadvantageous to the claimant, or someone sharing his characteristic, and the evidence he has called is insufficient.

109. On the broader question of taking into account welfare and medical condition, or obtaining medical evidence, but relying on the underlying point rather than the claim as actually pleaded, there is perhaps more justification in the conclusion that if there is any disadvantage, it is more likely to impact on somebody with a disability than somebody who was not disabled, albeit a non disabled person might also have a relevant medical condition, and might have a more adverse reaction. It is a somewhat circular definition to construct a PCP which relies on not considering disability, as impacting upon

somebody with a disability. Whilst the Tribunal has some sympathy for those who have to interpret the sometimes challenging statutory wording, this is a claimant who has been legally represented all along. It is unfortunate that the way that the case has been constructed has required a somewhat over-complex analysis of the facts and the law, when it should have been possible to bring the case in a much more straightforward way. The Tribunal also agrees with the respondent that the claimant has not properly established (as he alleges) that he faced misconduct proceedings from matters arising in consequence of his disability. To try to import section 15 of the Equality Act 2010 into the reasonable adjustments legislation is not a helpful approach, and the Tribunal agrees with the respondent that it is taking the chain of causation too far, when it is abundantly apparent that the claimant faced disciplinary proceedings as a result of his conduct. That is quite simply the reason. To try and import other statutory provisions into this part of the claim, and to construct a longer chain of causation, is something of an abuse of the reasonable adjustment legislation.

110. There is perhaps more merit in the argument that the claimant had to endure the stress of a pending misconduct hearing. Although the respondent has argued that all employees may endure stress in that position, the Tribunal is sympathetic to the underlying argument that somebody with a pre-existing condition of depression (or related conditions) might be expected to suffer greater stress than a non-disabled person. As for the claimant's health *actually* being adversely affected by the commencement of misconduct proceedings, the Tribunal considers the claimant's evidence in support of this is not strong. The evidence of any adverse affect of the misconduct proceedings on the claimant is by no means clear. It is certainly not clear that a non disabled person would necessarily have suffered less advantage.

111. The final area of allegedly disadvantageous treatment relates to being pressured into resigning, which the Tribunal considers is a somewhat misconceived allegation. On the facts, the Tribunal has found that there was no such pressure on the claimant to resign, and in any event the Tribunal considers the claimant has not properly articulated how this would be a substantial disadvantage compared to a non-disabled person pressured into resigning. In any event, the disadvantages and potential adjustments relating to this particular allegation need not be considered further.

112. Notwithstanding the very considerable flaws in the claimant establishing these three PCPs were applied to the claimant as alleged, and that they placed him at a substantial disadvantage compared to non disabled people, the Tribunal has in any event gone on to consider the broader point as to whether any further adjustments would have avoided the possible disadvantages for the claimant of proceeding with the misconduct investigations and formal misconduct process.

113. It should be reiterated that the Tribunal considers that the claimant has not established that he was subjected to PCPs putting him at a substantial disadvantage compared to non disabled persons, save with the arguable underlying point in relation to disciplinary proceedings potentially causing more stress to him because of his pre-existing depression and related medical conditions (his disability). The Tribunal has, however, gone on to consider whether the respondent would have been in breach of its duty to

make reasonable adjustments, in the light of adjustments proposed by the claimant (even though most of these relate directly to unarguable PCPs).

114. In relation to the suggested adjustment of not referring him to PSD, or subjecting him to disciplinary proceedings, the Tribunal agrees with the respondent's case that once an allegation comes to the attention of the Appropriate Authority within the police, which indicates a conduct of the police officer may amount to misconduct or gross misconduct, the regulations apply and proceedings under them must proceed without delay. Similarly, when the evidence initially comes to light it is plainly appropriate (and expected within the regulatory framework) that this should be investigated, so that the decision-maker has the information on which to found his or her judgment. It is abundantly clear that the conduct of the claimant in the matters alleged fell very far below acceptable standards. At the very least, it may have amounted to misconduct, and indeed all the witnesses (and the claimant himself, in cross-examination) accepted that it was likely to be seen as gross misconduct, and that this would be a justifiable construction to put upon the facts. The Tribunal considers it would not have been reasonable to exempt the claimant in some way from what not only expected under the statutory regime, but which reasonable members of the public would expect the police to do, and which would indeed be reasonable for any employer even without the additional criteria of police officers expected to have a higher standard of conduct.

115. It would not have been reasonable to have considered welfare or disability prior to subjecting to misconduct proceedings, in the sense that these factors are alleged by the claimant to have provided grounds not to investigate under the misconduct proceedings. This must in any event be seen in the context that in fact the claimant's welfare and medical condition was a matter which the respondent was made aware of, and which also informed the contents of the investigation report. Indeed, it also informed the way that the claimant was supported and that the Force communicated with him, during the period in question. It was not relevant to obtain medical evidence prior to referring him for investigation, albeit OH reports were in fact obtained, and the investigation did in fact take account of the claimant's mental state and of any other information supplied by the claimant in the context of explaining his actions or informing how they were dealt with.

116. The Tribunal considers that the respondent was right to say that it had a statutory duty to investigate misconduct allegations, regardless of the state of the claimant's health, and that they did so in a reasonable way. It would not have been reasonable to exempt the claimant, or discontinue the misconduct process, because of the medical issues brought to their attention. These were medical matters that could, and no doubt would, be properly considered at any subsequent conduct hearing.

117. Especially in light of the very considerable level of support given by, and coordinated by, Sergeant Willcocks, the Tribunal is satisfied that any disadvantage that the claimant might have suffered under Section 20(3) of the Equality Act 2010, was dealt with by such steps as it was reasonable to take to avoid the disadvantage. If subjecting the claimant to an investigation and a disciplinary process did put him at a substantial disadvantage, then it would be wholly unreasonable to avoid that disadvantage by not investigating him, or by circumventing the statutory procedure. What the

respondent needed to do was to put in place reasonable support mechanisms, and ensure that the investigation was informed by what the claimant said about the relevance of his medical condition. This was done, and the high level of good-quality support and advice offered by Sergeant Willcocks, with regular OH updates, ensured that step could be and were taken which effectively mitigated the disadvantages which may have been suffered. In essence, the Tribunal would reiterate that the disadvantage was not caused so much by the respondent's actions but by the claimants' own conduct in the first place, where the respondent was under a duty to investigate this properly.

118. On the basis of the decision to investigate the claimant and to instigate misconduct proceedings, and the way that these procedures were handled, the respondent was not in breach of its statutory duty. These claims of failure to make reasonable adjustments are not well founded.

119. The fourth PCP is "*requiring police officers to be fit for the job they are employed to do, namely a police officer carrying out the full range of police duties, without adjustment or restriction*". The Tribunal considers that this is a poorly worded PCP, which again presupposes, by referring to a lack of adjustments, that it is a self-defining failure to make reasonable adjustments. If the PCP was to be proved, it appears to be designed to prevent the respondent from relying on any defence to the allegation. This is a misuse of the statutory provisions and somewhat unhelpful to the Tribunal. It amounts to an inappropriate and unnecessarily convoluted way of pleading the case, and in practical terms does not assist the claimant at all.

120. The respondent denies that this PCP was applied to the claimant at all. The underlying aim for any employer must be to try to ease an ill or disabled employee gently back into his or her contractual role over time, subject to any temporary or permanent adjustments required. That is uncontentious, and is different from the PCP alleged in this claim. The respondent's case is that the claimant was reintroduced from long-term sickness on a phased return, was not asked to do night shifts until further medical evidence was obtained, and that he was moved from one appointment to another so that the new role would fit in better with his preferences and needs. Chief Inspector Tribe made this adjustment because of concerns as to his going to the Unit as Basingstoke, which it was felt would not assist with his recovery. The evidence was that the respondent was obtaining medical reports and actively considering ways to enable the claimant to return to work, during the periods of his sick leave. Whether or not that was an adequate reaction (although it appeared to be an entirely reasonable response), those facts would not seem to be in dispute and therefore it is self-evident that the respondent did not expect the claimant to carry out the full range of his duties, and did not fail to make adjustments or restrict duties. This PCP, as worded, was doomed to fail.

121. Notwithstanding the provisions of *Carreras*, The Tribunal considers that the claimant, despite the Tribunal querying this PCP at the start of the hearing, has nailed his colours firmly to the mast. It is inexplicable why the claimant has chosen to present a claim, when he should have known he would never be in a position to prove such facts as to establish a *prima facie* case. This PCP was plainly not applied to him, or at all. It is quite clear that the claimant, in light of his medical condition, was not required to be fit to

carry out the full range of duties without adjustment or restriction. To allege so would be blindly to disregard the facts of the case. The Tribunal considers that this allegation is unarguable. Even if the Tribunal had been minded to take an extremely liberal approach to completely reinterpreting the way the claim is brought, the disadvantage alleged again makes little sense. There are only two substantial disadvantages alleged in relation to this PCP, as follows.

122. The first substantial disadvantage relied upon is that the claimant was not supported with a return to work, whereas the Tribunal accepts the respondent's case, quite clearly the claimant was supported with a return to work. This is not capable of amounting to a substantial disadvantage compared to a non disabled person. Similarly, the allegation that "he was not supported whilst off work", quite apart from not properly dealing with the statutory issues as to the comparative disadvantage, was simply incorrect. It is abundantly clear from the evidence before the Tribunal that the claimant was given very considerable support whilst off work, by Sergeant Willcocks and others. He was also allowed access to the Police Federation, and given support from the HR team. He had access to other internal support mechanisms, even if he chose not to use them. There was regular medical monitoring, and the information acquired thereby was used to inform how his case was managed. There is simply no proper basis for concluding the claimant was placed at substantial disadvantage compared to a non-disabled person.

123. The next substantial disadvantage is said to be that the claimant's health deteriorated. The Tribunal does not consider that this made out at all. There is not any adequate evidence before the Tribunal linking any health condition to a deterioration resulting from any such PCP (even if such a PCP could be made to fit within the facts and the legislative framework). This is no more than speculation on the part of the claimant, and is simply unarguable.

124. The issue of making adjustments (or further adjustments) did not arise, albeit it is implicit in the Tribunal's analysis so far that in reality, however, the respondent went out of its way to keep the claimant's case under review and to make all such adjustments as were reasonable. The Tribunal also considers that the adjustments proposed by the claimant are somewhat exaggerated and unrealistic. The claimant argues that he should have been provided with access to a caseworker and that the respondent should have made sure that a case conference took place. The reality was that the claimant was allocated a welfare officer who contacted him on a weekly basis, and was in fact much more advantageous to him than a caseworker. The latter was an internal HR management mechanism, not a person appointed to support the employee, and that person would merely have been a point of contact within the HR department, who could be contacted anyway. A caseworker was in any event allocated, but due to sickness and a merger of HR Departments, the nominated caseworker changed. In any event, the Tribunal agrees that there is no evidence suggesting that being allocated a caseworker from an early stage would have made any difference. Similarly, the issues relating to arranging a case conference are also somewhat exaggerated, especially in light of the regular meetings between the claimant and Sergeant Willcocks, when each time there were detailed minuted discussions as to what could be done to assist the claimant. It had been agreed that a case conference involving the claimant and his

Federation rep would take place on 12 March 2015, even if there is nothing suggesting that this would have assisted in alleviating any disadvantage in relation to the PCP in question. There is no basis for considering that it would have made any material difference, had such a meeting taken place earlier.

125. This reasonable adjustments head of claim is not well founded.

126. The fifth and final PCP relied upon is "*accepting officers' resignation without question or investigation as to whether they are in a fit state to make such a decision and without first offering an alternative to resignation whilst matters are further considered*". Again, the Tribunal considers this is a frustratingly convoluted PCP, which does not make a great deal of sense. However, it is the specific allegation which Ms Sleeman has chosen to rely upon, again in the face of concerns expressed by the Tribunal at the start of the hearing.

127. The respondent's case is that it is not accepted that this PCP was applied, in that Sergeant Willcocks did expressly consider that the claimant was in a fit state to make such a decision, and only did so after questioning the claimant in order to investigate whether this was a kneejerk reaction or was properly thought through. There was no suggestion from the claimant's Federation representatives that he was not able to make such a decision. He was in contact with the Police Federation solicitors immediately after his resignation, and could have taken further Police Federation advice, but still gave no indication of having second thoughts, or made any suggestion that he had resigned when in no fit state to do so. This argument only emerged in his ET1, months later. Not only did the claimant's treating psychiatrist and his chosen medical expert not expressly suggest that he would be incapable of deciding whether or not to resign, but they had both in fact recommended that he did not return to work for the Police. As the respondent points out, the claimant had already indicated to his Federation representative and to Sergeant Willcocks on 14 February 2015 that he was actively considering resignation. He had plainly thought through the issues, in light of his medical prognosis and the risk of being dismissed for gross misconduct. That was before he was arrested on suspicion of assault and criminal damage.

128. After the appellant had been arrested, it was no surprise at all that he then indicated that he wished to resign, knowing that he was likely to face further misconduct allegations.

129. The respondent also makes a point that had the respondent refused to accept the resignation, it ran the risk of the claimant's health further deteriorating, placing management in a very difficult position.

130. The Tribunal agrees with the respondent that this is a misconceived PCP, which does not reflect the facts in the case. The weakness of the claim is exacerbated by the matters said by the claimant to amount to substantial disadvantage in accepting the resignation, which rely (factually) upon the claimant being pressured into making life-changing decisions, when the Tribunal has found that there was no such pressure. A second substantial disadvantage over non-disabled people is said to be that "the claimant's employment ended". If one rejects the self-fulfilling prophecy inherent in the proposed wording of the PCP, plainly whether somebody is disabled or not

disabled, if their resignation is accepted their employment will end. It is difficult to see why that places a disabled person at a substantial disadvantage over a non-disabled person.

131. The claimant's proposed adjustment was not to accept the claimant's resignation. Largely for the reasons set out above, the Tribunal considers it was in any event entirely appropriate to accept the claimant's resignation. The Tribunal considers that it is not a tenable argument that the adjustment should be not to accept the resignation, when the claimant has clearly expressed the wish to resign, this had been discussed at length with his Federation representatives, and Sergeant Willcocks had confirmed that this was what he wanted to do and it was not a kneejerk reaction. In any event there was by then a medical report confirming that his health could deteriorate if he remained in employment. The claimant argues that a reasonable adjustment would have been to have been allowed a period of advice and support. There is in fact no indication that in the period following the resignation the claimant ever wished to retract his resignation; he had already had considerable support from Sergeant Willcocks, as well as from the Police Federation, and other sources of internal support were available to him but not approached. It is abundantly clear that the issue of resignation or of ending the employment in other ways had been repeatedly discussed, with appropriate support and advice. On 22 February 2015 the claimant was permitted a private and unrestricted meeting with a Federation rep of Inspector's rank, during which he consulted on his possible resignation. Later the same day he had detailed discussions with Sergeant Willcocks, who would not process the resignation until he had satisfied himself that this was clearly what the claimant had resolved to do, and that the decision had been taken on a rational basis. The claimant could have discussed the matter further, and have taken further advice, but did not wish to do so. On the claimant's own case, the suggested adjustments had in fact already been put in place; anything further would have been unnecessary. There would have been no reasonable basis for the respondent to do anything else.

132. This reasonable adjustments head of claim is not well founded. Overall, none of the claims of failure to make reasonable adjustments succeed.

Jurisdiction

133. In light of the conclusions above, there is no need for the tribunal to consider whether there were continuing acts linking the in-time acts with earlier alleged discrimination. Or, to put it in statutory language, whether there was conduct extending over a period of which the final act was in time (section 123(3) of the Equality Act 2010). As there was no discrimination, the issue does not arise.

Remedy

134. The Tribunal having determined that none of the claims were well founded, plainly no remedy matters arise.

135. The Tribunal would, however, observe that the claimant was not dismissed for gross misconduct, because he had resigned, but that there must have been a very substantial risk of dismissal, had he not resigned. It is hard to asses the level of likelihood of dismissal, but he would unquestionably have

faced a disciplinary hearing, with allegations which on the face of it could be expected to amount to gross misconduct.

136. More to the point, perhaps, the Tribunal considers there is considerable force in the respondent's argument that whatever the outcome of the conduct allegations, the reality was that that two consultant psychiatrists had recommended that the claimant cease working for the respondent in order to prevent deterioration in his mental health. The Tribunal has not been provided with any evidence sufficient to suggest that the claimant would have been given advantageous ill health retirement, and there is no evidential basis for coming to a conclusion that he would or might have been offered this. The claimant might have called such evidence, but did not do so. Whilst the Tribunal makes no finding on the point, it considers that it is inevitable, in the circumstances, that the claimant would never have returned to his job as a Police Officer. The Tribunal also considers that even, as the claimant suggests, had his resignation initially not been accepted or had he been given further time, there is absolutely no contemporaneous evidence suggesting that his view as to resignation would have changed. The first indication of any difference was his claim form in late July 2015, albeit even then, the claimant did not suggest that there was any uncertainty in his mind as to his resignation. The Tribunal accepts that even if some or all the claims had been made out, employment would have terminated within a relatively short period of time, at a stage when the claimant would in any event have exhausted his sick pay and there would be no (or trivial) loss of wages.

137. Any financial compensation would have been extremely limited.

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Employment Judge Emerton

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Date: 7 February 2017

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

9th February 2017

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FOR THE TRIBUNAL OFFICE