EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs S Claxton	**v**	The Chief Constable of Northamptonshire Police

Heard at: Cambridge **On:** 13, 14 & 15 January 2020

Before: Employment Judge Ord

Members: Mr T Wilshin and Mrs CA Smith

Appearances
For the Claimant: Mr T Claxton, Claimant's Husband.
For the Respondent: Mr N Smith, Counsel.

JUDGMENT

1. It is the unanimous decision of the Employment Tribunal that the claimant's complaints that she was the victim of discrimination on the protected characteristic of disability and suffered unlawful deductions from her wages are not well founded and the claimant's claim is dismissed.

REASONS

Background

1. The claimant was employed by the respondent from 1 August 1997 and at the time she presented her claim to the Employment Tribunal was still employed. She had worked for a number of years as a Police Community Support Officer (PCSO) working in that role since 2005.

2. She was re-deployed from the role on medical grounds and this claim related to allegations of unlawful discrimination around that re-deployment. The claimant relied upon the protected characteristic of disability. The claimant says that as a result of her re-deployment she suffered unlawful deductions from her wages.

3. The claimant is an insulin dependent diabetic and the respondent has accepted that the claimant is a disabled person within the meaning of s.6 of the Equality Act 2010.

4. At a preliminary hearing on 7 March 2019 Employment Judge Spencer clarified the claims and issues for the Tribunal to consider at the final hearing.

5. The claimant says that the respondent failed to make reasonable adjustments and/or subjected her to indirect discrimination following an occupational health assessment which indicated that the claimant would be fit to carry out her role as a PCSO provided that she worked regular hours, in particular starting between 8-10am and finishing between 4-7pm. The respondent's position is that that would not be a reasonable adjustment for a PCSO and it would not meet the needs of the service, would place an undue burden on other community support officers and further that if the provisions, criteria or practices (PCPs) on which the claimant relies in relation to her claim of indirect discrimination put the claimant and other disabled employees at a disadvantage when compared to non-disabled employees such provisions, criteria or practices were proportionate means of achieving a legitimate aim.

The issues

6. The issues for the Tribunal to determine were as follows:

    6.1 Did the respondent have the following provisions, criteria or practices?

        6.1.1 The requirement for a PCSO to work outside the hours of 7am – 7pm (in particular to work until midnight).

        6.1.2 The requirement for the claimant to be able to drive for more than 30 minutes at a time.

        6.1.3 A requirement for the claimant to be able to undertake the role of Scene Guard.

    6.2 In relation to the complaint that the claimant had suffered indirect discrimination on the protected characteristic of disability, did the respondent apply those provisions, criteria or practices to the claimant at any relevant time?

    6.3 Did the respondent apply or would the respondent have applied those provisions, criterion or practices to non-disabled employees?

    6.4 If so, did they put disabled employees at one or more particular disadvantages when compared to non-disabled employees?

6.5 Did the claimant suffer such disadvantage or disadvantages at any relevant time?

6.6 If so, has the respondent shown the provisions, criteria or practices to be a proportionate means of achieving a legitimate aim?

6.7 In relation to the complaint that the respondent failed to make reasonable adjustments:

6.7.1 Did any of the alleged provisions, criteria or practices put the claimant at substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, at any relevant time?

6.7.2 If so, did the respondent know or could the respondent reasonably have been expected to know that the claimant was likely to be placed at any such disadvantage?

6.7.3 If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The claimant suggests that the respondent:

(i) Could or should have been more flexible about working hours and allow the claimant's working hours as a PCSO to be restricted to 7am-7pm only.

(ii) Could have been flexible about the restriction regarding driving (the claimant in any event saying she was capable of driving for more than 30 minutes).

(iii) Could have been flexible about the requirement to undertake the role of Scene Guard (which the claimant says she was capable of in any event).

6.7.4 If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

6.7.5 If the claimant succeeds in whole or in part, to what remedy is she entitled?

The hearing

7. Prior to the hearing the respondent had made an application for the hearing of a matter between the same parties presented in October 2019 (in which case the claimant complains that she has been unfairly dismissed and the subject of disability discrimination) be heard together with this case. The respondent was invited to renew its application if so desired in the face of the Tribunal at the commencement of the hearing, but no such application was made.

8. In any event it appears to us that the complaints in that second set of proceedings relate to the alleged removal of reasonable adjustments whilst the claimant was working as a vulnerable adult administrator (the post to which she was re-deployed from her role as PCSO), stress and anxiety in that role and to matters relating to her dismissal. Accordingly, there would not appear to us to be any advantage in deferring this case and no clear connection between the issues in the second set of proceedings and in the instant case were apparent.

9. The claimant gave evidence and prior to the respondent's case her husband asked whether he was able, as a representative, to also give evidence. Mr Claxton had prepared a written witness statement, but that had not been disclosed in accordance with the orders of the Tribunal made at the case management hearing on 7 March 2019 (and as subsequently amended by the Tribunal).

10. During the course of discussion regarding this, it became apparent that issues of disclosure, preparation of the bundle and exchange of witness statements had not taken place in accordance with the Tribunal's orders. This was apparently due to delay on the part of the respondent. An adjournment was granted so that Mr Smith could understand why the orders had not been complied with but the relevant instructing solicitor was not available. However, Mr Smith was content to raise no objection to Mr Claxton submitting his statement and giving evidence during the course of the hearing, Mr Claxton was satisfied that he was able to proceed and was not disadvantaged by any late disclosure of documents or witness statements and on that basis the Tribunal gave leave for his evidence to be heard.

11. On behalf of the respondent evidence was called from:

    11.1 Sergeant Lee Flavell who was the claimant's immediate line manager prior to her re-deployment;

    11.2 Inspector Dave Rayfield who was Sergeant Flavell's line manager;

    11.3 Ms Deborah Johnston, Senior HR Advisor;

    11.4 Superintendent Chris Hillery; and

    11.5 Ms Caroline Oppido, HR Manager.

12. The respondent submitted witness statements from Ms Carolyn Gallacher and Heather Clarkson, neither of whom were called to give evidence. Their statements were therefore given the appropriate degree of weight as their evidence had neither been sworn to, nor tested under cross examination. Reference was made to a bundle of documents.

The Facts

13. Based on the evidence presented to us, we have made the following findings of fact.

14. The claimant has for many years been an insulin dependent diabetic. In November 2017 as a result of what she described as deteriorating health and on advice from her General Practitioner (or the specialist diabetic nurse working alongside her GP) she approached her line manager requesting a change of her working conditions.

15. The claimant had already been receipt of a verbal warning under the respondent's capability policy in July 2017 due to her substantial absence record. In the same month as that warning, Sergeant Flavell arranged for her to be relocated so that she was based at a station closer to her home as she had indicated that her health would be improved working from a beat closer to her home police station.

16. Sergeant Flavell confirmed that the claimant's attendance improved in the short term, but she was then absent from work for a period beginning 20 November 2017. Notwithstanding that absence from work it was on 29 November that the claimant approached him describing a deterioration in her condition and asking about a change in her working arrangements.

17. According to his evidence, which was not challenged on this point, Sergeant Flavell was told by the claimant that the medical opinion she had received meant that she would require far more routine in her work. There was some dispute about the precise discussion which took place on 29 November 2017. Sergeant Flavell set out in an email to the claimant that afternoon his record of the discussion, in particular thanking the claimant for seeing him and saying:

> "You told me that you are currently undergoing a variety of medical tests, essentially your diabetes is deteriorating which will result in more intrusive intervention in terms of trying to manage it. Medical opinion is that your current role will not lend itself to being able to manage this properly and you will need far more routine afforded to you. You said that your preference is to be re-deployed although voluntary redundancy is an alternative but a less-preferred outcome.
>
> Following the medical capacity policy that was brought to your attention in July 2017, I will now be writing to HR to inform them of the above and ask that they look at other roles for you within the organisation as per that policy."

18. That email was sent to the claimant at 15:04 that afternoon and at no time did she suggest that its contents were an inaccurate report of the discussion she had had.

19. The claimant denied discussing voluntary redundancy or re-deployment. We find as a fact that whilst the claimant would have preferred at all times to remain as a PCSO there was discussion on 29 November 2017 around re-deployment or redundancy in the event that the changes which she was requiring to accommodate her condition were not practicable.

20. There is no suggestion that this discussion was anything other than amicable and it had been instigated by the claimant.

21. A subsequent referral was made to the respondent's occupational health team on 3 December 2017. In the referral Sergeant Flavell refers to "medical opinion …. that [the claimant] should seek re-deployment to an office based role" which we find as a fact was his understanding after the meeting with the claimant on 29 November 2017. He also said that it was his understanding from speaking to the claimant that "she is in no position to return to work in the full capacity of a PCSO but would return to work if her needs could be met by applying further reasonable adjustments which ultimately appear to be taking up an office based role".

22. That referral was copied to the claimant and no comment on it was received by the respondent.

23. The report from the occupational health doctor said that the claimant could perform her current post duties for a period of 3-4 months whilst consideration was given to her re-deployment in the longer term; that she needed to be deployed to work that entailed fixed day time hours (which could include weekends) which the doctor described as the "key consideration". He further stated that the working hours needed to be within the start time of 8am-10am with a finishing time of between 4pm-7pm with the actual working hours being the same within any one working week. This was said to be needed "to facilitate her maintaining adequate control (of her diabetes)".

24. The report went on to say that the claimant needed appropriate facilities to carry out blood sugar tests, eat and have insulin injections at least once per shift and that it was "best for this to be at fixed times". Further that she preferably should work in an area which was populated such as town centres, be able to return to her base location by foot relatively easily and that if she was able to travel to and from her base by bus this would prevent issues arising regarding her ability to drive to work as a result of low blood sugar levels in the morning which might in turn help her attendance levels.

25. At the time this report was prepared the claimant was still absent from work through sickness. She had had substantial sickness absence in the previous 12 months and confirmed that she was on occasion unable to attend work on time as she needed to stabilise her blood sugar levels in the morning which could take a significant period.

26. The respondent had previously undergone a review of its community policing arrangements. This was driven by a combination of budgetary restraint and an effort to ensure that the respondent's resources were applied in the most efficient way.

27. As part of that review the number of police officers working on neighbourhood work was reduced from 100 to 44. This meant that there was an increased burden placed on the PCSOs.

28. Further, the review identified a need to alter the working hours of PCSOs so their shifts would finish at midnight rather than 10pm as the incidents of anti-social behaviour, the management of which was a key part of the role of a PCSO, was greater later in the evening and in particular at the end of the week/weekends.

29. This review was carried out in 2016/2017. Having identified that the neighbourhood policing team did not, as a result of its then working practices, deliver the most effective policing service to the community a working group was set up in consultation with the relevant staff association (The Police Federation) and the relevant Trade Union (Unison) the outcome of which was the reduction in the number of neighbourhood police officers, an increase in the type of work to be carried out by PCSOs and a change in their shift patterns so that they worked up to midnight including at weekends. The respondent also removed policing sectors so that local neighbourhood teams covered larger areas and scheduled appointments to be attended by PCSOs up to midnight.

30. In January 2018 the claimant attended an informal meeting to discuss the occupational health report. Inspector Rayfield, Sergeant Flavell and two representatives from the respondent's Human Resources team were present along with the claimant and her Trade Union representative.

31. During that meeting the claimant confirmed that she needed more structured work but that her role as a PCSO was unpredictable. She also confirmed that her condition was deteriorating.

32. The claimant was told that the outcome from the occupational health referral suggested start and finish times which did not meet the core role of a PCSO.

33. The outcome of the meeting was that the claimant would work as a PCSO for a period of one month working only the shifts identified by the occupational health report and that a case conference would then be held to discuss the position. The claimant was encouraged to apply for other roles that she felt able to undertake within the respondent's undertaking and that the medical re-deployment process would be instigated.

34. On 1 February 2018 the claimant wrote to Superintendent Hillery asking why under the Service Demand Model (SDM) – which was the outcome of the review of community/neighbourhood policing – she was unable to remain in her current role and asked for a reasonable adjustment on a disability passport to cater for day time hours.

35. The matter was considered by Superintendent Hillery and Chief Inspector Lara Alexander-Lloyd. The respondent's position as expressed by them in emails of 2 February 2018 was that having a PCSO working day shift only would not meet the organisational needs of the respondent.

36. The occupational health case conference took place on 19 February 2018. Doctor Baker (the occupational health doctor and the respondent's force medical officer) was present along with the claimant, Chief Inspector Alexander-Lloyd, Sergeant Flavell and Miss Johnston from the respondent's Human Resources team.

37. At that meeting the claimant was advised (again) that the job description for PCSOs had changed to include a shift pattern of working up to midnight and to include more spontaneous working so that the days could not be structured. Reference was made to previous adjustments which had been made to the claimant's role which had not resulted in any sustained improvement in the claimant's attendance.

38. Doctor Baker's view was that whilst the claimant could work a full weekly rota the hours needed to be consistent and repeated the need for a start time of between 8-10am and a finishing time of between 4-7pm together with the requirement of a set lunch break to enable the claimant to take her bloods, inject if appropriate and to eat. He also advised that the claimant should not drive for longer than 30 minutes (although we find as a fact that this was in relation to distance from home to work). Doctor Baker supported medical re-deployment for the claimant.

39. The notes of the meeting include Miss Johnston asking the claimant if she understood why the proposed adjustments could not be accommodated within her core role as a PCSO and the claimant's reply which was that she did.

40. The claimant wrote to Heather Clarkson in the respondent's Human Resources department on 4 April 2018. She had lodged a Fairness At Work (FAW) complaint, which we have not seen. Miss Clarkson replied that there was at that stage no FAW matter to be investigated as the claimant's capability process was ongoing. In her reply the claimant said that she:

> "had to take out a bullying case against Inspector Dave Rayfield several years ago ... this case was led by Dave HILL ... [and] it was Mr HILL's decision to move Mr RAYFIELD … due to complaints as received by fellow female officers".

She further said that:

> "I will attend the [capability] meeting on 19th of this month as I have no other option but to do so, but I do not appreciate the suggestion of sitting with Mr RAYFIELD to discuss my issues, as when I last sat alone with him … on 11 January … he said he "has a very good memory"."

41. The claimant did not ask for Mr Rayfield to be removed from the process which is something which she has advanced should have occurred during the course of her evidence.

42. There is no evidence of any complaint being raised by her against Inspector Rayfield in 2007. Inspector Rayfield said he was unaware of any such complaint and we accept that evidence. There is equally no evidence to support the allegation that Inspector Rayfield was moved as a result of complaints, or of other complaints having been made. The matter was recorded at the preliminary hearing in this way:

> "… although it is not a freestanding complaint, it is apparent that a core part of the claimant's case is that the respondent's decision was taken by … Inspector Rayfield and that … was unfairly influenced by the fact that the claimant has raised a successful grievance in 2007 in respect of bullying by Inspector Rayfield that had resulted in him being removed from his post."

43. At no time has either party raised criticism of or challenged to this report in the case management orders, which was sent to the parties as long ago as 18 March 2019.

44. Although the respondent says that no record of a grievance as long ago as 2007 would be retained the claimant does not say she raised a formal grievance, but does not now say that she raised a formal grievance. There is no record, as we have said, of any complaint being raised by the claimant or other employees against Inspector Rayfield and there is no evidence to support the suggestion that he was re-located as a result of any such complaint. As a fact we find that Inspector Rayfield was not moved as a result of any complaints having been made, there was no formal complaint raised by the claimant nor by any other person at the time.

45. On 19 April 2018 a capability meeting was held by Inspector Rayfield. The claimant was present with her trade union representative and also in attendance was Sergeant Flavell and Miss Johnston. Having reviewed the claimant's attendance history and the medical advice obtained at the medical case conference in February, reflecting on the reduced number of police officers and the increased demands on PCSOs and further reflecting on the Chief Inspector's opinion, shared by the Superintendent in charge of local policing, that it was not reasonable to have a PCSO working solely day shifts as this would place an undue burden on other colleagues, further considering the fact that the role of the police is that of an emergency service so that fixed breaks cannot be guaranteed the conclusion was that it was in the best interests of the claimant and in line

with the needs of the respondent that the claimant should be medically re-deployed.

46. The outcome was confirmed to the claimant in writing on same date.

47. The claimant subsequently commenced work in the force control room but she found that environment difficult and was then tasked with work relating to the Stay Safe Card campaign in May 2018.

48. On 23 May 2018 the claimant lodged a fairness at work complaint. In that complaint she expressed concern about the role of Inspector Rayfield and referred to issues raised about him in 2007.

49. Although the matter was not directly part of the complaints which the claimant raises in these proceedings it is appropriate for us to deal with it. There was no formal complaint made by the claimant against Inspector Rayfield at the time, as she accepts. The claimant says that she raised informal concerns and was told that she did not need to make a formal complaint as the officer was being moved to another location (whether as a result of complaints which the claimant said others had also made or as a result of an operational requirement no one has been able to say, but Inspector Rayfield in his evidence has said that when he was moved he understood that it was as a result of an operational requirement).

50. We have heard evidence from the respondent's Human Resources Officer that searches have been made in the Inspector's personnel records and there is no evidence of any complaint at the time. We have further heard that if such an informal complaint had been made it would have been recorded but in relation to grievances documents would not be retained for more than 10 years.

51. The thrust of the complaint from the claimant is that Inspector Rayfield did not handle the claimant's situation fairly because of the alleged complaint raised in 2007 (a complaint which Inspector Rayfield denied any knowledge of).

52. It was accepted on the claimant's behalf, during the course of the hearing, that had the same decision been made by another officer the claimant would not be questioning it and we find as a fact that the claimant's capability and medical re-deployment processes were handled fairly and appropriately. There is no evidence before us of undue influence or bias on the part of Inspector Rayfield or of any inappropriate conduct in relation to the handling of the matter by the respondent, either through Inspector Rayfield or otherwise.

53. Although it is not part of the claimant's case before us she made a complaint about the handling of her fairness at work complaint on 23 May 2018, one month and four days after the outcome of the capability meeting. We decline to make any findings in that regard. It is not part of

the claimant's case in these proceedings, her complaints end with the decision to medically re-deploy her.

54. During the course of the hearing the claimant did not make specific reference to the issue of Scene Guarding, save to say that she had done this work in the past.

55. The issue relating to Scene Guarding, we find on the basis of evidence we have heard, relates to two matters. First that the claimant may need to work beyond her "approved" hours to carry out such work, and second that as a Scene Guard she may not be able to leave a scene to take breaks as required. No suggestion was made as to how those difficulties could be overcome. Although the claimant had done this work in the past she was facing, and had raised with her employer, a deteriorating medical condition which required on the basis of the medical evidence obtained for her to work specific and limited hours which were consistent with at least one scheduled regular break.

56. In relation to driving, the claimant had previously asked to be moved to a base location which was closer to her home. She was, from time to time, unable to attend work at her designated start time due to low blood sugar levels which could take a considerable period of time to stabilise. The medical report prepared by the occupational health doctor was not entirely clear but was read as meaning that the claimant should not be required to drive for more than 30 minutes. The decision is this regard was that the claimant, in her then current role, would be required from time to time to attend scheduled appointments across the whole of the force area and therefore would be required to drive for more than 30 minutes.

57. That was an appropriate reading of the information from the occupational health doctor in his report and at the occupational health conference held on 19 February 2018 which recorded that:

> "Doctor [Baker] advised that due to medical parameters [the claimant] should not drive for longer than 30 minutes."

58. We note Inspector Rayfield was not at that meeting. The notes of it informed his later decision. At the case conference Doctor Baker also supported medical re-deployment of the claimant, a position from which he has not resiled.

59. Doctor Baker did clarify the issue of driving at a subsequent date, but not until well after the matters complained of in these proceedings had concluded. By a further occupational health report dated 18 Mach 2019 he said that there had not been an absolute limit of 30 minutes suggested by occupational health, but that the proposed limit related specifically to the claimant's then role as it involved consideration of driving conditions (traffic, road type, geography etc) and was "to help her and HR in terms of consideration of role deployment at that time".

60. It is against that factual background that the claimant brings her complaints.

The Law

61. Under s.6 of the Equality Act 2010 disability is a protected characteristic.

62. Under s.19 of the Act a person discriminates against another if they apply to that person a provision, criteria or practice which is discriminatory in relation to a protected characteristic of that persons. Such a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of a claimant's if it is applied or would be applied to persons who do not share the characteristic; puts or would put persons who do share the characteristic at a particular disadvantage when compared with persons who do not share it; puts or would put the claimant at that disadvantage, and it cannot be shown to be a proportionate means of achieving a legitimate aim.

63. Under s.20(3) of the Act if a provision, criterion or practice of an employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, then the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Under s.21 a failure to comply with that requirement is a failure to comply with the duty to make reasonable adjustments.

64. In the case of Nottingham City Transport Limited v Harvey (EAT0032/12) a practice denotes something which takes place more than on a one-off occasion and has an element of repetition about it.

65. In Chief Constable of West Yorkshire Police and West Yorkshire Police Authority v Homer [2012] IRLR 601 it was confirmed that a tribunal must consider whether the respondent has in fact applied the PCP which the claimant alleges and it must be that PCP which places those who share the protected characteristic in question at a particular disadvantage.

66. In Essop v Home Office (UK Border Agency) the Supreme Court emphasised that all stages of the test for indirect discrimination must be met, including that the provision, criterion or practice is not justified. In other words, it must be shown that there is such a provision, criterion or practice, that it is applied to those who do not share the protected characteristic, that it puts those who do share the characteristic at a particular disadvantage and that it puts or would put the claimant at that disadvantage. Thereafter it is for the respondent to show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

67. In MacCulloch v ICI [2008] IRLR 846, the Employment Appeal Tribunal set out four legal principles with regard to justification which was subsequently been approved by the Court of Appeal (Lockwood v DWP [2013] IRLR 941). First the burden of proof is on the respondent to establish justification; second that the Employment Tribunal must be satisfied that

the measures must "correspond to a real need …. are appropriate with a view to achieving the objectives pursued and are necessary to that end"; that this involves the application of the proportionality principle (i.e. that necessary means reasonably necessary); that an objective balance is required to be struck between the discriminatory effect of the measure and the needs of the undertaking – the more serious the disparate and adverse impact, the more cogent must be the justification for it, and it is for the Employment Tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweighs the later.

Conclusions

68. Applying the facts found to the relevant law, we have reached the following conclusions.

69. The respondent had a provision, criterion or practice that those working as neighbourhood PCSOs were required to work shifts up to midnight. They applied this to all persons in that role. In any complaint of indirect discrimination group disadvantage is an important feature.

70. The claimant clearly did suffer disadvantage because she was unable to continue in the role on the basis of the medical evidence provided by the occupational health doctor. She could not work until midnight and required what have been described in this case as "day time hours" with predictability as to finishing times and breaks.

71. The reason for the requirement that those PCSOs should be put on shifts up to midnight was to meet the demands of the community. A key part of the role of a PCSO is to deal with anti-social behaviour and the respondent had carried out an investigation to assist them in the most efficient application of their resources. That demonstrated that the greatest need for the work of the type which the claimant was carrying out was late in the evening, up to midnight, and in particular at the end of the week including weekends.

72. The protection of the public, including the deterrents or management of anti-social behaviour is a key part of the respondent's and a core element of the role of a PCSO working in the neighbourhood team as the claimant was.

73. We have no hesitation in finding that the respondent, having undertaken a review of how to apply the resources at its disposal to best serve the needs of the community and meet its obligations as a police force in the area of community policing introduced the new working hours for PCSOs for those reasons and that to do so was a proportionate means of achieving the legitimate aim of protection of the public and the management and control and deterrents of anti-social behaviour. The respondent has satisfied us that the measure corresponds to a real need and is both appropriate and necessary.

74. Accordingly, the application of the provision, criterion or practice that the claimant should work additional hours (outside 7am-7pm) is not an act of indirect discrimination. The requirement was a proportionate means of achieving a legitimate aim being the efficient application of policing resources in the respondent's force area based on appropriate research and to ensure the application of resources in the most efficient way to meet the policing needs of the area.

75. There has been no evidence put before us that a requirement for an individual to be able to drive for more than 30 minutes at a time if they were employed as a PCSO working on the neighbourhood team was applied to all serving PCSOs. That is the second part of the claimant's complaint that she suffered indirect discrimination on the protected characteristic of her disability.

76. The absence of any evidence that this was applied to all means that the claimant has not established that this amounted to a provision, criterion or practice within the meaning of the Equality Act. Indeed, it is clear from the occupational health referrals and in particular the report of March 2019 that this was an indication from the occupational health doctor made in relation to the claimant's particular situation bearing in mind the nature of the driving with which she was involved. It was designed to help her and the respondent's Human Resources team to come to an agreed conclusion when considering the issue of re-deployment. It was a medical recommendation designed to protect the health and safety of the claimant. Such a recommendation does not amount to a provision, criterion or practice. It is a "one-off" matter which applied to the particular circumstances of the claimant and to those particular circumstances alone. Accordingly, the respondent did not have a provision, criterion or practice requiring PCSOs to be able to drive for more than 30 minutes. It cannot be a provision, criterion or practice to refer to something which applied only to the claimant.

77. The third limb of the claimant's complaint that she suffered indirect discrimination relates to the requirement for her to undertake the role of Scene Guard. This is a feature of the standard role and responsibilities of a PCSO working in the neighbourhood team. It has not been suggested, and there has been no evidence led before us, to explain how one serving PCSO could be excused those duties. The claimant's complaint is that this is a requirement which put disabled employees at one or more particular disadvantage when compared with non-disabled employees, that it put the claimant at that disadvantage as was not a proportionate means of achieving a legitimate aim.

78. The need to establish group disadvantage is essential in such a claim. No evidence has been put before us to establish that disabled employees would be put at a particular disadvantage when working as a PCSO because of the need to act as a Scene Guard. As we have said group disadvantage is an essential part of any claim for indirect discrimination, but even if we were satisfied that the provision, criterion or practice would

put disabled employees at a particular disadvantage compared to non-disabled employees, and even if we were satisfied that the claimant was put to that disadvantage, we would find that the requirement was a proportionate means of achieving a legitimate aim. Guarding the scene of a crime and/or protecting persons within an area where there is a disturbance or criminal activity is an obvious and necessary part of the role of a serving PCSO. The role is a re-active one and resources are applied to a place of need as and when they are required. The respondent must be able to apply the resources at its disposal to meet the need with which it is presented.

79. In relation to both the need to work until midnight and the need to undertake the role of Scene Guard, we accept the respondent's evidence that excusing the claimant from those duties would place an undue burden on those other officers working in the same role as the claimant.

80. Had we been required to do so, we would have found that this provision, criterion or practice was a proportionate means of achieving a legitimate aim of carrying out those duties which are part of the core role of a PCSO. However, as we have said the claimant has not established either group disadvantage or particular disadvantage in her case arising from this requirement (particularly bearing in mind the claimant's evidence that she was able to carry out the role).

81. For those reasons the claimant's complaint that she suffered indirect discrimination are not well founded and fail.

82. The claimant relies upon the same provisions, criteria and practices to bring her claim for a failure to make reasonable adjustments.

83. In relation to the first requirement (to work outside the hours of 7am-7pm) we are satisfied that this put the claimant at substantial disadvantage because the medical evidence was that this would be detrimental to her health and wellbeing. The respondent knew that it placed the claimant at such disadvantage, indeed that was the reason, or the principle reason, why the claimant was placed on medical re-deployment. Given what we have already said regarding the need for this provision, criterion or practice, however, the claimant has not established any steps the respondent could have taken to avoid that disadvantage and we do not identify any ourselves. We accept the respondent's evidence that to limit the claimant's working hours would have placed an undue burden on other PCSOs and that it would have detrimentally impacted upon the respondent's effort to deploy the resources at its disposal in the most efficient way to ensure the service it provided to the public was as efficient as it could be.

84. In those circumstances it would not have been reasonable for the respondent to have allowed the claimant to work the limited hours which were recommended by Doctor Baker. We did hear evidence that part-time and/or limited working was accommodated for those returning to work after

a period of absence for limited periods only (i.e. as part of a phased return to full work). Whilst that was used to make a suggestion on behalf of the claimant that the claimant could therefore have carried out reduced duties on a permanent basis the accommodation of limited duties during a limited return to work period only is very different from rescheduling others work on a permanent basis. The respondent said it would not have been reasonable to do so and we agree. It would not have been a reasonable adjustment to allow the claimant to work only between 7am-7pm as recommended by the occupational health report if she was to continue to work as a PCSO working on community/neighbourhood policing. To do so would not have met the needs of the respondent and would have detrimentally impacted on others.

85. In relation to the second alleged provision, criterion or practice, the requirement for the claimant not to drive more than 30 minutes at a time if she was to remain employed as a PCSO in neighbourhood/community work, this was not a provision, criterion or practice. It was identified by Doctor Baker that the claimant should not carryout driving for more than 30 minutes in his report of 2017. This was his medical advice designed to identify matters which could be detrimental to the claimant in terms of her work. Clarification of that advice did not come until March 2019, long after the matters about which the claimant complained in these proceedings, but at any event this was not a PCP within the meaning of the Act.

86. Finally, issues around Scene Guarding in relation to a claim of a failure to make reasonable adjustments can be repeated word for word in relation to our findings in relation to indirect discrimination. The important points are that it is a core element of the role of a PCSO which is a reactive role and an unpredictable one. It is not only unreasonable to expect the respondent to excuse the claimant from a core element of her role (and thus if a resource needed to be applied to a particular location excluding her from consideration for that role at a time when resources are limited) but also acting as a Scene Guard might well be needed beyond 7pm and thus the claimant's reduced hours, if they had been allowed, would have impacted upon this part of her ability to carry out the role also.

87. However, it was not the requirement to undertake the role of Scene Guard which placed the claimant at a disadvantage but in fact the need to work up to midnight. Working up to midnight could include carrying out the role of Scene Guard but it is the hours and the need to apply a resource when it is required that created the situation whereby the claimant required medical re-deployment.

88. Accordingly, for those reasons the claimant's complaint that the respondent failed to make reasonable adjustments is not well founded.

89. We should in addition make the following points:

    89.1 First, although much was made by the claimant of Inspector Rayfield's position and allegations were advanced of bias on his part, there is no evidence to support that and when asked as part of closing argument on the claimant's behalf what parts of Inspector Rayfield's decision demonstrated bias, no answer was forthcoming. Indeed, it was said on the claimant's behalf that had the decision to medically re-deploy the claimant been made by another individual it would have been accepted.

    89.2 During the course of her evidence the claimant was asked by the Tribunal whether she considered that it would have been reasonable to allow her to work day time only, her reply was that as she understood the service delivery model, no. When asked by counsel for the respondent if she accepted that the introduction of the service delivery model meant that her de-deployment was inevitable, she agreed.

90. Notwithstanding those replies when asked during closing submissions what it was that the claimant says the respondent should have done but did not do, the only suggestion that came forward was to allow her to work day time hours, a proposal which we have established was not a reasonable adjustment.

Summary

91. The claimant did not suffer indirect discrimination on the grounds of her disability and the respondent did not fail in their duty to make reasonable adjustments.

92. The complaints are not well founded and the claim is therefore dismissed.

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Employment Judge Ord

Date: …29 January 20……..

Sent to the parties on: .....

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For the Tribunal Office