Case Number: 3201921/2016

EMPLOYMENT TRIBUNALS

Claimant: **Mrs Meranda Chan Kwok Cheong**

Respondents: **(1) London Borough of Newham**
(2) The Governing Body of Tunmarsh School

Heard at: **East London Hearing Centre**

On: **9, 11, 12 & 16 May 2017 and 13 June 2017 (in chambers)**

Before: **Employment Judge C Ferguson**

Members: **Ms B Saund**
Ms M Long

Representation

Claimant: Mr P Lockley (Counsel)
Respondents: Mr S Harding (Counsel)

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:-

1. **The Claimant's complaint that the Respondents failed comply with a duty to make reasonable adjustments succeeds as regards:**

    a. **The failure to offer the Claimant one-to-one teaching work on a temporary basis.**

    b. **The failure to fund further sessions with the Claimant's treating psychologist.**

    c. **The failure to alter the venue and time of sickness absence meetings.**

    d. **The failure to offer EMDR therapy.**

2. **The remainder of the Claimant's complaints are dismissed.**

3. **A remedy hearing will be listed as soon as possible with a time estimate of one day. Directions are contained in a separate Order.**

REASONS

INTRODUCTION

1. The Claimant (DOB: 13 November 1969) is the Head of Science for Tunmarsh School, a Pupil Referral Unit ("PRU") in the First Respondent borough. She commenced employment with the First Respondent on 19 April 2010.

2. By an ET1 submitted on 31 October 2016 and subsequently amended by consent, the Claimant complained of disability discrimination (harassment and failure to comply with duty to make reasonable adjustments), victimisation and detriment because of making a protected disclosure. The Claimant's complaints arise out of the management of her sickness absence following an assault by a student and a further incident in which she was threatened by a student. She has been absent from work due to ill health since 30 June 2015.

3. The First Respondent defended the claim. The Second Respondent was joined to the proceedings at a preliminary hearing on 9 January 2017, but it is not clear whether it was ever sent the ET1 and ET2 response pack and it has not submitted any response. In any event the First Respondent has assumed responsibility in respect of the complaints made by the Claimant. In light of this and for simplicity we refer to the First Respondent below as "the Respondent".

4. The parties had agreed the following list of issues in advance of the hearing:

Disability discrimination

4.1 R accepts that C is a disabled person for the purposes of s.6 of the Equality Act 2010 ("EqA").

Failure to make reasonable adjustments

4.2 Did R fail to make reasonable adjustments as follows:

4.2.1 Failure to offer an outreach position

(i) Did R apply a PCP of requiring C to carry out her specific role, in which there is a genuine risk of assault?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her disability caused her to be in constant fear of attack and ultimately unable to work in such a high-risk role.

(iii) If so, did R take such steps as it was reasonable to take to avoid that disadvantage? C alleges that R failed to search for, identify and/or offer her lower-risk positions, such as an outreach role.

4.2.2 Failure to fund further sessions with C's treating NHS psychologist, as recommended in the Occupational Health ("OH") report of 27 October 2015

(i) Did R apply a PCP of offering only a fixed range, number or value of therapy sessions to an employee injured while at work?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her particular disability meant that she required further sessions with her established psychologist, which she was denied as a result of the PCP, preventing her recovery and return to work.

(iii) If so, ought R reasonably to have funded further sessions for C?

4.2.3 Failure to offer managed counselling referral

(i) Did R apply a PCP of requiring C to attend work at a given level in order to avoid receiving warnings and possibly being dismissed?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her disability caused her to be off work and so incur the sanctions identified above.

(iii) If so, did R take such steps as it was reasonable to take to avoid that disadvantage? C alleges that R failed to refer her for managed counselling, which was likely to have resulted in a quicker recovery, so avoiding the sanctions.

4.2.4 Failure to offer a later time for meeting of 14 July 2016

(i) Did R apply a PCP of requiring C to attend sickness absence meetings on school premises during school hours?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her disability caused her to be too nervous to attend such meetings.

(iii) If so, ought R reasonably to have altered the time of the meeting to avoid that disadvantage?

4.2.5 Failure to offer a neutral venue for Stage 2 review on 13 January 2016

(i) Did R apply a PCP of requiring C to attend sickness absence meetings on the school's own premises?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her disability caused her to be too nervous to attend such meetings.

(iii) If so, ought R reasonably to have altered the location of the meeting to avoid that disadvantage?

4.2.6 Failure to offer timeous referral for specialist support for PTSD

(i) Did R apply a PCP of requiring C to attend work at a given level in order to avoid receiving warnings and possibly being dismissed?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C

avers that her disability caused her to be off work and so incur the sanctions identified above.

(iii) If so, did R take such steps as it was reasonable to take to avoid that disadvantage? C alleges that R failed to refer her timeously for specialist PTSD support, which was likely to have resulted in a quicker recovery, so avoiding the sanctions.

4.2.7 Failure to offer EMDR therapy

(i) Did R apply a PCP of offering only a fixed range, number or value of therapy sessions to an employee injured while at work?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her particular disability meant that she required specialist treatment in the form of EMDR (eye movement desensitisation and reprocessing), which she was denied as a result of the PCP, preventing her recovery and return to work.

(iii) If so, ought R reasonably to have authorised EMDR for C?

4.2.8 Threat of dismissal

(i) Did R apply a PCP of requiring C to attend work at a given level in order to avoid receiving warnings including the threat of dismissal?

(ii) If so, did that PCP put C at a substantial disadvantage compared to colleagues who did not share her disability? C avers that her disability caused her to be off work and so to incur the threat of dismissal.

(iii) If so, did R take such steps as it was reasonable to take to avoid that disadvantage? C alleges that R ought to have amended its sickness absence policy to allow C more time to recover.

Harassment

4.3 C relies on the following acts as amounting to harassment:

4.3.1 Failing to pay contractual sick pay

4.3.2 Wrongly demanding repayment of sick pay

4.3.3 Delaying resolution of the alleged overpayment of sick pay

4.3.4 Fixing meetings that placed C in the proximity of her attacker

4.3.5 Threat of dismissal

4.3.6 Miscalculating and/or misrecording the length of C's pensionable service

4.3.7 Failing to correct the errors regarding C's pensionable service in a

timely manner

4.3.8 Manner of handling sickness absence:
- (i) A formal improvement plan was not issued
- (ii) The two Stage 2 outcome letters were not received until the threat of dismissal pack was received on 30 June 2016
- (iii) The Stage 2 outcome letters in the dismissal pack do not provide warning of possible future dismissal
- (iv) Records of Stage 2 meetings were not made and signed by C
- (v) Suggested Appendix 3 sample form was not used to record meetings
- (vi) A review date was not set so therefore the move to Stage 3 and the threat of dismissal which arrived on 30 June 2016 came as a shock to C
- (vii) R decided not to go ahead in C's absence with the third Stage 2 meeting scheduled for 12 February 2016. Therefore, this meeting should have been re-scheduled under Stage 2 before a move to Stage 3 of the sickness absence procedure ("SAP") resulting in threat of dismissal received on 30 June 2016
- (viii) An up to date OH physician's report should have been obtained prior to threat of dismissal received on 30 June 2016. The most recent OH physician's report available at this time was dated 28 January 2016, five months earlier
- (ix) R did not consider ACAS advice on dealing with long-term absence, as set out in paragraph 5.2 of its SAP

4.4 In relation to each act identified at paragraph 4.3 above:

4.4.1 Was the act unwanted conduct?

4.4.2 Was it related to C's disability?

4.4.3 Did it have the purpose or effect of violating C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

Victimisation

4.5 Did C do a protected act as defined in s.27(2) EqA? C relies on the allegation of disability discrimination contained in her grievance of 1 August 2016.

4.6 If so, did R subject C to a detriment because of that act, in that it failed to deal with C's grievance in a timely manner?

Detriment because of making a protected disclosure

4.7 Did C make a protected disclosure as defined in s.43A of the Employment

Rights Act 1996 ("ERA")? C relied on the allegation, contained in her grievance of 1 August 2016, that R committed breaches of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 ("RIDDOR").

4.8 If so, did R subject C to a detriment because of that act, in that it failed to deal with C's grievance in a timely manner?

5. The Claimant and her husband gave evidence on her behalf. On behalf of the Respondent we heard from Elizabeth Shirley, School Finance and Business Manager for Newham PRUs, Elgan Prosser, Deputy Head Teacher at Tunmarsh School, Jackie Hewison, former Head Teacher of Newham PRUs, and Jane Howard, Schools' HR Officer for Newham Partnership Working ("NPW").

THE LAW

Duty to make reasonable adjustments

6. A person has a disability for the purposes of the EqA if he or she has a physical or mental impairment, which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (s.6 EqA). Schedule 1 EqA expands upon that definition, specifying that the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected. Schedule 1 EqA also provides that the effects of medical treatment are to be disregarded in determining whether an impairment has a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

7. Pursuant to s.20 EqA, where an employer has a provision, criterion or practice ("PCP") that puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, it has a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. The duty does not apply if the employer does not know, and could not reasonably be expected to know that the disabled person has a disability and is likely to be placed at the disadvantage referred to (paragraph 20 of Schedule 8 EqA).

8. S.21 provides that an employer discriminates against a disabled person if it fails to comply with a s.20 duty in relation to that person.

9. In determining whether a PCP puts a disabled person at a substantial disadvantage in comparison with non-disabled persons, it is no answer to say that the PCP applies equally to all employees. The question is whether the arrangements place the disabled person at a substantial disadvantage because of his or her disability. (Griffiths v Secretary of State for Work and Pensions [2017] ICR 160).

10. It is not necessary for the claimant to identify adjustments that ought to have been made; the duty arises by virtue of the statutory test being met (Cosgrove v Ceasar and Howie [2001] IRLR 653).

11. As to the "reasonableness" of a particular adjustment, this is a question of fact for the Tribunal to be determined on objective grounds (see, e.g., Smith v Churchills Stairlifts [2006] ICR 524, paragraph 45 per Maurice Kay LJ). The EHRC Statutory

Code of Practice provides guidance on the type of factors to be considered. The factors listed (at paragraph 6.28) are:

11.1 Whether taking any particular steps would be effective in preventing the substantial disadvantage;

11.2 The practicability of the step;

11.3 The financial and other costs of making the adjustment and the extent of any disruption caused;

11.4 The extent of the employer's financial or other resources;

11.5 The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

11.6 The type and size of the employer.

12. Although the likelihood of a proposed adjustment being effective is a relevant factor, it is not necessary for the employer (or tribunal) to be certain that a proposed adjustment would be completely effective in order for it to be reasonable (Noor v Foreign and Commonwealth Office [2011] ICR 695).

13. In Croft Vets v Butcher [2013] EqLR 1170 the EAT upheld a finding by a tribunal that it was a reasonable adjustment for the employer to fund a particular form of psychotherapy for an employee suffering from work-related stress.

Harassment

14. S.26 EqA provides, so far as relevant:

> **26 Harassment**
>
> (1) A person (A) harasses another (B) if—
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of—
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> …
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
>
> (a) the perception of B;
>
> (b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

…

15. The EAT considered the meaning of the words "related to" in Unite the Union v Nailard [2017] ICR 121. It held that s.26 requires the tribunal to focus on the conduct of the individual(s) concerned and ask whether the conduct is associated with the protected characteristic. For example, failure to deal with an allegation of, say, sexual harassment by a third party is not automatically "related to" sex unless there is something about the alleged harasser's own conduct which is related to sex.

Victimisation

16. Pursuant to s.27 EqA, a person (A) victimises another person (B) if A subjects B to a detriment because B makes an allegation that A or another person has contravened the EqA.

17. The fact that a claimant's protected characteristic is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment. (Ahmed v Amnesty International [2009] ICR 1450).

Detriment because of protected disclosures

18. It is unnecessary to set out the law in this area in any detail. S.47B ERA provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure, as defined by Part IVA ERA.

FACTS

19. Much of the factual background was not in dispute, but where there was disagreement between the parties this is indicated below. We make the following findings.

20. The Respondent operates PRUs at three sites across the borough. Tunmarsh School is a secondary PRU in Plaistow. Ms Hewison described the school as follows:

> "It provides a range of educational programmes for 72 students aged 11-16, with a wide variety of emotional and behavioural needs and who are unable to attend mainstream school. Some have been permanently excluded from mainstream school or are at risk of permanent exclusion; they are generally disaffected. The students are both troubled and troubling, the majority have very disrupted and disturbed family backgrounds and some are Children Looked After. Many are affected by abuse, drug and alcohol dependency, domestic violence, bereavement, mental health issues, gang association, child exploitation, criminal activity, eviction, etc. Some are on the autistic spectrum or are diagnosed with disorders such as Attention Deficit Hyperactivity Disorder (ADHD), Conduct Disorder and Oppositional Defiance Disorder (ODD) and are supported by multi-agency professionals with whom we work very closely."

21. Tunmarsh School also operates an "outreach" service which delivers tuition in students' homes for children aged 4-18 who are unable to attend mainstream school for medical (chronic illness or terminal illness) or mental health reasons. In addition there are some students deemed too unsafe to teach on-site at Tunmarsh or in their homes. These high-risk students are taught in public places, such as public libraries.

22. A separate site in North Woolwich hosts another secondary PRU called New Directions and a primary PRU called RIET. The third site is a unit within Newham University Hospital called the Coborn Centre for Adolescent Mental Health. This is a service for children aged 11-18 with severe and enduring mental health needs.

23. The Claimant commenced employment as Science Coordinator (later renamed Head of Science) at Tunmarsh School on 19 April 2010. She was already a very experienced classroom teacher and head of department, but this was her first role in the special educational needs sector.

24. Ms Hewison was appointed Head Teacher of Newham PRUs, including Tunmarsh School, in September 2013 and remained in that post until she retired on 31 August 2016. Ms Shirley has been the School Finance and Business Manager for Newham PRUs (Tunmarsh School, New Directions and RIET) since July 2013. Mr Prosser joined Tunmarsh School in September 2014 as a Lead Teacher and became the Claimant's line manager. Since September 2016 he has been a Deputy Head Teacher at Tunmarsh School.

25. Newham Partnership Working (NPW) provides HR and payroll services, among other services, to all schools in the Respondent borough, including Tunmarsh School. Jane Howard has been the Schools' HR Officer for casework and policy at NPW since May 2014.

26. It is not in dispute that the Claimant was a very good teacher and head of department. Until the assault described below the Claimant had good relationships with all her colleagues, including Ms Hewison, and it was not suggested that she had had any issues with sickness absence.

27. On 27 January 2015 the Claimant was assaulted by a 15-year-old male student to whom we shall refer as Student A. The circumstances were that she was teaching another student in a classroom when Student A banged on the door. She let him in and he subjected her to verbal and physical abuse. A Teaching Assistant arrived and tried to help the Claimant, but Student A kicked the Claimant and she sustained an injury to her hand. She went to the Senior Management Team ("SMT") room nearby to seek help but no-one was there. She then went to the staff room where she received some first aid before going home. Student A was later prosecuted and convicted of assault by beating. He was moved to New Directions, where he remained a student until he left on 24 June 2016.

28. Following this incident the Claimant was signed off work by her GP, initially due to the hand injury for two weeks, but then extended to 12 March 2015 with the reason given as "assault". The GP certificates for this period were later amended to state "stress related to assault".

29. On 27 February 2015 Ms Hewison wrote to the Claimant to invite her to a "duty of care meeting". The letter stated that the meeting was not called under the formal

sickness absence procedure, but that the Claimant was welcome to bring a friend or union representative. It requested the Claimant to obtain replacement GP certificates because "assault" is not a medical condition. It concluded, "Please confirm to me that you will attend this meeting as instructed". The Claimant's evidence, which we accept, was that no-one from School management had contacted her before this letter to express sympathy or ask after her wellbeing. She reacted badly to the letter and considered it to be threatening, putting pressure on her to return to work too soon. On the advice of her union representative she did not attend the meeting. She was subsequently signed off until 27 March 2015 and undertook a psychological assessment for NHS treatment.

30. We find that this letter marked the start of a worsening in the relationship between the School and the Claimant. Given the circumstances which led to the Claimant's sickness absence and her previously good relationship with Ms Hewison we find that the letter was surprisingly formal and failed to demonstrate real sympathy for the Claimant's situation. The Claimant's negative reaction to it was arguably excessive, possibly because of the stress from which she was already suffering. We consider it would have been sensible and helpful for the School to have maintained informal contact with the Claimant during this time.

31. On 27 March 2015 the Claimant's GP issued a certificate recommending a phased return to work over a period of one month. At a meeting with Ms Hewison and Ms Shirley on 31 March 2015 the phased return was agreed and the Claimant returned to work in April 2015 after the Easter holidays.

32. During this period the Claimant expressed her fears of a similar incident occurring again and made a number of requests for class support, i.e. the presence of a Teaching Assistant in her classes. This was provided for some lessons, but not all. There is no specific complaint about this in these proceedings so we need not make detailed findings, but we note that Mr Prosser accepted in his oral evidence that the Claimant raised concerns with him that the support being provided was "patchy".

33. The Claimant also gave evidence, which we accept, that she was not performing to her normal standards and she had become somewhat withdrawn.

34. The Claimant was referred via her GP for CBT with an NHS psychotherapist and was granted leave to attend six weekly sessions from May 2015.

35. There was a dispute between the parties as to whether the Claimant faced a "genuine risk of assault" in her role. Ms Hewison did not accept that the risk was any greater than in a mainstream school because of the procedures in place and staff training. We are not in a position to make a finding about the relative risk compared with other schools, but we consider it obvious that the makeup of the student body at Tunmarsh made it a risky environment in which to teach, requiring resilience and skill on the part of teachers. All teachers are issued with radios which link to a duty teacher if support is needed. It has never been suggested that the Claimant managed the incident with Student A badly or that she could have avoided the assault. The fact that she was subjected to a serious assault, through no fault of her own and despite her considerable experience, made it perfectly rational for her to fear a repeat attack, whatever the objective risks were.

36. Unfortunately, the Claimant's fears were realised to some extent in a further incident on 19 May 2015. On this occasion she was teaching without any classroom support and a student to whom we shall refer as Student B picked up a pair of scissors and threatened to "slash" her. He also referred to the incident with Student A. The Claimant called the duty teacher on the radio. She went home very distressed.

37. It appears that the Claimant was off sick on 22 May 2015, possibly self-certified, but thereafter returned to work. On 30 June 2015, however, she was signed off work again by her GP with the reason stated as "assault".

38. In early July 2015 the School referred the Claimant to its Occupational Health service, run by Medigold Health Consultancy Ltd. The referral form stated the reason for absence as follows:

> "Meranda was absent following an assault by a student onsite at Tunmarsh. Meranda sustained an injury to her hand which she recovered from. Meranda has however experienced post event anxiety which has impacted on her confidence at work and emotional well being."

The form noted that the Claimant was "not as confident" with colleagues and that she "feels quite vulnerable and not as confident as prior to incident".

39. The OH advisor, Ms Lim, met the Claimant on 13 July 2015 and prepared a report dated 17 July 2015. The report notes that the Claimant was worried that a further incident might occur. The report does not mention the second incident. It notes that the Claimant was having counselling and was taking medication. Under the heading "Summary and Recommendations" the report states:

> "In my opinion Mrs Cheong would be expected to be able to return to work with adjustments within 4 to 6 weeks. I would expect that she would be able to return to work at the beginning of next term in September. I recommend that she works reduced hours for 6 to 8 weeks. After that she can gradually increase to her full time hours over a 4 week period.
>
> **Specific Questions**
>
> 1. It may take a while before she regains her full confidence. The length of time it takes is dependent on the individual. As mentioned previously she does not have any problems of working with challenging students as she often has a good teaching relationship with them. The student involved in the incident was not one of her students and she did not have a teaching relationship with him. She is concerned that this will occur again. I suggest while she is still recovering, one to one teaching for a period of time or have the help of a teaching assistant for a period of time.
>
> 2. In my opinion Mrs Cheong is not likely to fall under the Equality Act 2010."

40. The Claimant continued to be signed off by her GP over the summer holidays. On 2 September she submitted a further certificate saying that she was unfit to work until 18 September 2015. Again, the reason given was "assault".

41. By letter dated 3 September 2015 Ms Hewison notified the Claimant of a "Stage One Trigger Level Meeting", to take place with Mr Prosser and Ms Howard on 10 September 2015. This referred to the Newham Schools Sickness Absence Policy ("SAP"), which states that such a meeting will normally be triggered by six working days' sickness absence and/or three spells of sickness absence in any six-month period. However the policy also contains a section on absences arising from accidents, injury or assault at work, which states as follows:

> "During the period that an employee is absent due to an accident, injury or assault that occurred at work, it is important for Managers to remain in contact with the employee and follow much of the good practice in the Sickness Absence Policy. This could include, calling a duty of care or exploratory meeting to ascertain more information regarding the exact cause of the absence, referral to Occupational Health, discussing and implementing appropriate support strategies. However, the [Local] Authority recommends that it is not appropriate to start the formal Stage 1 of this procedure until the employee has been absent for at least 6 months."

42. No specific complaint is made in these proceedings about the decision to call a Stage One meeting, but we note that the Claimant had not in fact been absent for six months by the time the meeting was called.

43. The procedure consists of two further stages: Stage Two – Formal Improvement Action Plan – and Stage Three – Hearing to Consider Dismissal. It also provides for an appeal against dismissal.

44. The Stage One meeting took place as planned on 10 September 2015, attended by Mr Prosser and Ms Howard. The Claimant attended with her union representative, Mr Iain Hale. The Claimant said that she had lost confidence and felt anxious about returning to the school, but that she did want to get back to work. She asked whether they could find her a one-to-one teaching post on the outreach scheme to allow her to regain her confidence. She confirmed that she was still attending counselling at Goodmayes Hospital. Mr Prosser asked the Claimant to obtain replacement GP certificates that specify a medical condition instead of "assault" and it was agreed that the Claimant would inform him after a further GP appointment on 18 September whether she would be able to return to work on 21 September on a phased basis. In an outcome letter the Claimant was informed that if she did not feel able to resume her duties in the reasonably near future, her sickness absence would continue to be monitored and the School would move to the next stage of the SAP.

45. On 18 September 2015 the Claimant informed the School by email that she had been signed off until 24 September following a GP appointment the previous day. She also said that she had requested replacement certificates. On or around the same date she submitted a GP certificate which stated that she was unfit to work from 22 May to 24 September 2015 due to post traumatic stress disorder.

46. Ms Shirley replied to the Claimant's email, copying in Mr Prosser and asking him to put a plan together for a proposed phased return to begin on 25 September.

47. Around this time Ms Howard was looking at the possibility of the Claimant working at the Coborn Unit, an idea that appears to have come from the Claimant's

union representative. The Claimant confirmed in an email to Ms Howard that she was interested but asked if a visit could be arranged. She also wanted to know whether the phased return to work plan would still apply and whether she would retain her head of department role.

48. On 23 September Ms Shirley wrote to the Claimant "to confirm the arrangements for your phased return". The letter set out a timetable for the Claimant to return to her existing role, starting on 25 September and gradually increasing her hours and duties over a period of eight weeks. As to the Coborn role, the letter stated that the phased return related only to the Tunmarsh Head of Science post, that the Coborn post would be 0.6 of the full time equivalent with no team leader responsibilities. Further, the letter stated "If you were to take the Coborn position you would need to resign from your current Tunmarsh position". Ms Howard admitted in cross-examination that, in hindsight, it was wrong for the School to have said that the Claimant would need to resign from her current role in order to take up the Coborn role.

49. Nothing was communicated to the Claimant about her request for an outreach post. The School's evidence as to the availability of an outreach post was not consistent. The ET3 states that the School identified that there were "no Outreach Teaching posts vacant on the structure" and therefore there was no position to offer to the Claimant. It also states that it is "questionable" whether the Claimant would have been willing to take up such a post given that she would be working one-to-one without back-up or support staff, or whether the post would have been suitable considering the Claimant's condition. None of the Respondent's witnesses dealt with this issue in their statements. In cross-examination, Ms Shirley, Mr Prosser and Ms Hewison all said that there were no outreach posts available, although they acknowledged that this applied only to permanent positions. As to whether outreach work could have been found for the Claimant to do on a temporary basis, Ms Hewison rejected this possibility on the basis that she would not have wanted to set a precedent. It was also suggested at one stage that the Claimant would have needed specialist training to undertake outreach work. Ms Howard, however, said that the School took the view that outreach would not have been suitable because it was less safe than classroom teaching, so they did not look into whether there was an available post. Given that Ms Howard attended the Stage One meeting and it was her task to consider possible alternative roles, we consider her account to be the best evidence of what happened. A decision was made soon after the meeting that outreach would not be suitable for the Claimant and that was the end of the matter.

50. There are several aspects to the factual dispute as to the possibility of the Claimant doing outreach work. Was such work available? Would it have been suitable for the Claimant in light of her medical condition? Would she have been capable of doing the work?

51. We accept the Respondent's evidence that there was no vacancy for a permanent teaching post on the outreach scheme in September or October 2015. We find, however, that it would have been possible for the Respondent to find one-to-one teaching work for the Claimant to do on a temporary basis in order to help her regain her confidence. The Respondent's witnesses explained that the number of outreach students fluctuates because referrals can be made by the local authority at any time. The teaching is mostly provided by permanent teaching staff, but sometimes agency staff are used where there is increased need. A table was produced that appears to show that no agency staff were being used on the outreach scheme in September or

October 2015 and a handwritten note on the table states that there were eleven permanent outreach teachers at the time. However, given that the nature of the work is such that the overall number of teaching hours fluctuates, we find that it would have been possible for the Claimant to take on a small number of hours of outreach teaching on a temporary basis. There was a period of some seven weeks between the time when the Claimant requested a one-to-one post at the meeting on 10 September and the advice from OH on 27 October that she was now unfit to do any work. That was ample time for the School to make arrangements for the Claimant to take on some of the outreach work. Ms Hewison's objection that this would have resulted in another member of staff being underemployed and "set a precedent" is relevant to the question of reasonableness and is addressed below.

52. As to the suitability of the work, we accept that some of the students on the outreach scheme are high risk and in the circumstances it clearly would not have been appropriate for the Claimant to teach those students without another member of staff being present. Ms Hewison's evidence, however, was that many of the outreach students are unable to attend the school site because of chronic or terminal illness and she accepted that there was no reason why the Claimant could not have taught those students. When pressed she said that there were "probably" more students in that category than in the high-risk category.

53. Finally, we do not accept that the Claimant would have needed specialist training to undertake outreach teaching. She was capable of teaching Science to any outreach student who was unable to attend school for medical reasons, as Ms Hewison accepted in cross-examination.

54. The Claimant's evidence, which we accept, was that she was "confused and upset" on receipt of the letter of 23 September. It did not address her request for an outreach role or include any reference to support from a Teaching Assistant, as recommended in the OH report. She became more anxious and stressed and on 24 September she was signed off work for a further month. As a result, a further referral to OH was made.

55. The Claimant attended an appointment with the OH Physician, Dr Ashby, on 23 October 2015 and he produced a report dated 27 October 2015. This stated that the Claimant was suffering from a moderate depressive illness, secondary to symptoms of post-traumatic adjustment disorder which appear "severe and unabated". The Claimant was now unfit for any work. This was likely to persist for another two to three months. A return to work sometime in the first two months of the following year was anticipated. The Claimant had had the full quota of CBT sessions available on the NHS, but "would seem to require further sessions". In the recommendations section of the report, it states:

> "I understand that the Council does have an Employee Assistance Programme. If it is possible to use the programme to fund further sessions with her treating psychologist, this would be the most valuable contribution to Mrs Cheong's recovery. If it is not possible to do this, I would recommend that counselling/CBT services available through the employee Assistance Programme should be reserved for the time being until the way forward is clearer.
>
> …
>
> I recommend that we review Mrs Cheong just before Christmas 2015, by

> which time the effect of her antidepressant medication will be more clear and, hopefully, it will be possible to give you more detailed advice concerning her return to work."

56. On 18 November 2015 the Claimant was invited to a Stage Two meeting under the SAP, which eventually took place on 3 December 2015 with Mr Prosser and Ms Howard. The Claimant attended with her union representative.

57. The Claimant's evidence was that she felt during the meeting that Dr Ashby's advice was being ignored because she was told to contact the Employee Assistance Programme ("EAP") telephone counselling service and was told categorically by Ms Howard that further face-to-face sessions with her NHS psychologist could not be funded. The Respondent's ET3 states that the Claimant did not make a request to receive funding for this treatment through the School and that if she had done, the School would have granted it. Ms Howard accepted in cross-examination, however, that the Claimant did request funding for this treatment at the meeting on 3 December. We find that she did.

58. There was a dispute between the parties as to the meaning of Dr Ashby's recommendations. The Respondent claims that Dr Ashby did not recommend that the School fund further sessions with the Claimant's NHS psychologist. There was some confusion among all the witnesses as to the scope of the EAP programme, but we consider that the Respondent's witnesses were disingenuous in denying that Dr Ashby had recommended that the School fund further sessions with the Claimant's NHS psychologist. His role is to advise on the clinical issues and he made a clear recommendation that "the most valuable contribution" to the Claimant's recovery would be further sessions with her existing psychologist. He envisaged that this could be funded via EAP, but it is obvious that that was not the essence of his recommendation. Whatever the precise source of the funding, his recommendation was that the School should pay for the Claimant to continue the treatment that she had already had under the NHS. If that was not possible, he suggested that any other treatment that may be available via EAP be "reserved" until the situation could be reviewed in December.

59. We note at this point that the arrangements between the School and its OH provider, Medigold, were not fully explained in the evidence. Our understanding from the limited evidence that we had on the issue is that the Respondent has a contract with Medigold to conduct OH assessments and produce reports. Additionally, the School subscribes to the EAP, which is a confidential telephone service offering support to staff. It is not clear whether the EAP is operated by Medigold. Specific treatment for individual members of staff can be arranged through Medigold, but this is charged separately to the School. It would appear that the Claimant's request for the School to fund further sessions with her existing psychologist could not have been granted through the Medigold system (or the EAP), but the Respondent does not dispute that it could have provided such funding independently.

60. In addition to the medical issues, there was some discussion at the meeting on 3 December of the Claimant's return to work. The Claimant said that she did not consider the Coborn role to be suitable because of the unpredictable behaviour of the students there. Mr Prosser advised that on return to Tunmarsh the Claimant's classroom would be next to the SMT office and staff would be told to prioritise any radio requests from her. The Claimant's evidence was that she did not feel reassured by this given that the SMT office was empty when she went there for help during the

incident with Student A.

61. The bundle contains a letter dated 8 December 2015 from Mr Prosser to the Claimant entitled "Outcome of Stage Two Improvement Action Plan". The Claimant claims that she did not receive this until 30 June 2016 when it was included in the Stage Three pack that was sent to her. She doubts whether it was genuinely produced or sent at the time. We accept the Claimant's evidence that she did not receive it, but we do not consider it necessary to make a finding about when the letter was produced or sent.

62. The Claimant attended a further appointment with Dr Ashby on 18 December 2015, resulting in a report dated 22 December 2015. Dr Ashby reported that since the last appointment the Claimant's GP had increased her antidepressant medication. The Claimant felt that she was very slowly improving, but her reaction to thoughts of returning to work in the School, in any capacity, was deteriorating. The Claimant told him that the School were unable to fund a continuation of treatment with her NHS counsellor, but confirmed she could self-refer to the EAP and she was going to try that. He said, "At this time, there would not appear to be anything else that the Council can do to assist Mrs Chan Kwok Cheong to return to work". He advised that the Claimant's condition would "bring her within the auspices of the Equality Act 2010" and suggested that if the School was able to maintain the Claimant in employment there should be a review of her progress in six to eight weeks' time.

63. On 4 January 2016 Mr Prosser wrote to the Claimant inviting her to a "Stage Two Review Meeting" at the School on 13 January. The Claimant was somewhat confused by the letter because she had not received an outcome letter following the meeting on 3 December. She emailed Mr Prosser to ask whether it would be possible for the meeting to take place in a more neutral venue. She also explained that she had not yet managed to access the EAP. The request for a neutral venue was repeated in a subsequent email, but the Claimant does not appear to have had any response to the request. The venue was in fact changed to NPW's offices, but the Respondent accepts that no-one communicated this to the Claimant or her union representative.

64. The Claimant did not feel able to attend a meeting at the School, so her husband attended on her behalf. On arrival at the School he was informed that the meeting venue had changed.

65. The Claimant alleges that the failure to communicate the change of venue was deliberate and was intended to cause her distress. We do not accept that. She had previously attended a meeting at the School, on 10 September and 3 December 2015, and there was nothing in the OH reports to suggest that she was now unable to attend the School site for a meeting. The fact that the venue was changed shows that the School were willing to accommodate her request and this is inconsistent with the Claimant's suspicion that her managers were deliberately seeking to cause her distress or anxiety.

66. The attendees at the meeting were Ms Kirsten Macleod, Deputy Head Teacher, Ms Shirley, Ms Howard, the Claimant's husband and Mr Hale. Mr Prosser explained in his oral evidence that a decision had been taken for Ms MacLeod to take over his role in dealing with the Claimant's case, he presumed because it had become more serious and needed a more senior member of staff. Much of the meeting on 13 January 2016 involved discussion of whether the two incidents of assault/ abuse by students had

been properly reported under RIDDOR. As to the Claimant's health, Ms Macleod suggested that the Claimant could try to access therapy through a website, www.brief.org.uk. We had very little information about this, but the Claimant's evidence, which was not contested on this issue, was that it seemed to be an organisation dedicated to training people to deliver therapy and she could not see how it could help her. There was also discussion about the Claimant's sick pay, which we deal with separately below. As to the Claimant's possible return to work, the Claimant's husband explained that her main concern was that a similar incident could happen again.

67. The Claimant attended a further appointment with Dr Ashby on 25 January, resulting in a report dated 28 January 2016. This report states that the Claimant had made little or no progress since December. She remained too anxious to work or meet with the School. Dr Ashby concludes:

> "In general terms, I would feel that she is likely to require specialised support from a counsellor or clinical psychologist who is experienced in handling post-traumatic stress disorder cases.
>
> I will get back to you as soon as we can identify what would be most suitable for Ms Kwok-Cheong and it would be sensible to tie in a review with the treatment decided on."

68. On receipt of this report Ms Shirley wrote to the Claimant to notify her of a Stage Two Review Meeting with Ms MacLeod on 12 February. The Claimant responded, referring to Dr Ashby's view that she was too anxious to meet with the School and saying that she would be unable to attend.

69. On 11 March 2016 Ms Shirley submitted a request to Medigold for counselling sessions for the Claimant. The cost of this, to be borne by the School, was £128 for "Assessment and Report". Ms Shirley also pre-authorised six counselling sessions, at a cost of £68 each, as well as interim and final reports, costing £60 each. The total authorised expenditure was therefore £656.

70. On 17 March an administrator from Medigold emailed Ms Shirley to confirm that the assessment had been arranged for 21 March. The email also stated:

> "We are organising her assessment with an EMDR qualified practitioner to ascertain whether EMDR therapy is clinically indicated for her, as the reports provided mention trauma and PTSD symptoms.
>
> If this treatment is indicated in her assessment report then the cost is £318.50 per sessions (each sessions in 9 0mins). The assessment will be charge at the normal rate.
>
> I have attached some information on the treatment for PTSD."

71. Attached to the email was a document produced by "Wellbeing Solutions Management" (who, it seems, provide counselling services arranged via Medigold) explaining what PTSD is and the available treatments, namely CBT and EMDR. In cross-examination Ms Shirley accepted that she did not open the attachment.

72. The Claimant attended the assessment on 21 March and a report was produced dated 5 April 2016. It stated:

> "**Initial Description of Presenting Issue from Medigold referral**
>
> Client was attacked in January 2015. She returned to work for a while but then went off sick to date. She remains clinically depressed and anxious and feels unable to return to work for fear that she will be attacked again.
>
> **Summary & Update of Presenting Issue**
>
> The employee was attacked in January 2015, and is still taking anti-depressants. She presented with PTS (post-trauma) symptoms; she is a high anxiety state and avoids situations that she feels could be stressful as a way of managing her anxiety, and is often focusing on "What if she had been killed."
>
> The employee feels scared to go back into teaching as she feels she has lost her confidence in managing her students.
>
> **Assessment Notes**
>
> The employee presented as anxious at the assessment.
>
> The employee feels that since she was attacked, her life has changed dramatically. She said that even deciding what to buy for dinner causes her a high level of anxiety; that things that she once did without thinking cause her huge anxiety.
>
> The employee attended for a course of CBT (Cognitive Behavioural Therapy) for about three months which although she found it helpful at the time in managing post-trauma symptoms such as flashbacks, it doesn't appear to have helped her in the longer-term. Although the rational part of her understands what she learned i.e. what to do when she gets hyper-alert, she said that she often forgets it when the flashback happens.
>
> The employee would benefit from EMDR (Eye Movement Desensitization and Reprocessing) to help with the PTS and to process the trauma.
>
> **Impact on Workplace Functionality**
>
> From the clinical perspective it appears that a return to work is likely to cause the employee a great deal of stress. She feels that she would be in a constant state of alert in case one of her students attacks her again. The employee has the sense that she would not be able to assess the situation as she once did very effectively, before she was attacked.
>
> **Recommendations**
>
> The clinical recommendation is for a course of EMDR to enable the employee to be able to work through and process the trauma."

73. The report recommended eight sessions, which would cost the School £2,548 in

addition to the £128 assessment fee.

74. On 14 April 2016 Ms Howard had a conversation with Ms Shirley, confirmed in an email, in which she advised Ms Shirley to move to Stage Three of the SAP. This seemed to be triggered by a conversation Ms Howard had had with Mr Hale, the Claimant's union representative, in which he said the Claimant's mental health issue was "making it hard for her to be able to think about more than one thing at a time" and that she was currently concerned about the fact that she had not received her correct pay. Ms Howard's oral evidence was that Mr Hale had said the Claimant could not see a "way forward" and when Ms Howard relayed this to her line manager, Mr Tom Alexander, he advised it was a case for Stage Three. Ms Howard could not recall whether she had seen the assessment report recommending EMDR before her conversations with Mr Hale and Ms Shirley.

75. Also on 14 April 2016 the administrator from Medigold emailed Ms Shirley to chase a response to the assessment report. It appears that Ms Hewison and Ms Shirley discussed this on 15 April 2016 and decided that the School would not authorise the EMDR sessions. Ms Shirley informed Medigold by email on 16 April and on 18 April the administrator replied saying, "Thanks – I will let the counselling team know and close her case". She also asked whether the Claimant would be informed that the treatment was not authorised. It appears that Ms Shirley did not respond to that and the Respondent accepts that no-one did inform the Claimant. The first the Claimant knew of the decision was in the Stage Three report that she received on 30 June 2016.

76. The Respondent's ET3 states that the decision not to fund the EMDR sessions was taken because the School "had no confidence that further expensive treatment would be successful". This was based on the amount of time the Claimant had been off sick, the fact that she had had counselling through the NHS that was "unsuccessful" and the fact she had been offered "Brief Therapy" and the school had already authorised six sessions of therapy in March.

77. Ms Hewison and Ms Shirley's evidence about the reasons for the decision did not wholly support that assertion and there were slight differences between them. Ms Shirley suggested at one stage that she took the view the treatment was unlikely to work, but the thrust of her evidence was that the decision was taken purely on financial grounds. In her witness statement she gave a lengthy account of the School's financial situation. It has an annual budget of £2,741,300 and in the last four years there has been an annual surplus well in excess of £100,000. In the financial year 2015-16 the surplus was £211,298. She said that in 2015 a decision was made to save any surplus to pay for fixtures and fittings in a possible new building for the School. The new build project was subsequently put on hold in December 2016. In cross-examination Ms Shirley acknowledged that there was flexibility in the budget and that she could have found the money to pay for the EMDR therapy.

78. It transpired during cross-examination that Ms Shirley mistakenly believed that the cost of the EMDR treatment would be in addition to the cost of the counselling already authorised. This was clearly incorrect. Apart from the £128 assessment fee, the cost of the counselling sessions had not been incurred. The email from Medigold on 18 April made it clear that the Claimant's case was now closed. Ms Shirley said in her witness statement, "If the additional premises costs, sickness absence cover or previous treatment not have being incurred (sic), funding for the EMDR may have been

secured." When asked whether the School would have funded the EMDR if they had realised it was instead of the counselling that had already been authorised, not in addition to it, Ms Shirley said they would have considered it.

79. It appeared from Ms Hewison's evidence, on the other hand, that she was more concerned about the principle of funding the treatment than the actual cost of it. She said she had a number of staff with mental health issues and she was concerned that if she funded private medical treatment for the Claimant she would be faced with numerous similar requests from others.

80. It was clear from the oral evidence that neither Ms Shirley nor Ms Hewison gave any serious thought to the issue of whether the EMDR treatment was likely to be successful in assisting the Claimant's return to work. Our view is that the information they had at the time, in particular the assessment report and the information on PTSD provided by Medigold, suggested that there was a good chance of the Claimant being able to return to work if she had the treatment. If they were in any doubt about that, they could have asked Medigold for a more detailed opinion on that issue and we consider it highly likely that they would have advised it had a good chance of success. We note that in a subsequent OH report by Dr Ashby, dated 28 November 2016, he said, "With EMDR it is likely that [the Claimant] would be able to return to work within a period of two to three months following the treatment." He also described the treatment as having "a very reasonable chance of success".

81. On 30 June 2016 the Claimant received a letter from Ms Hewison requiring her to attend a "Stage Three Formal Head Teacher's Hearing" on 14 July 2016 at 2pm at the RIET site. The letter stated, "At the hearing I will be considering your continued unacceptable sickness absence level and as a result of this whether you should be dismissed." A report prepared by Ms Shirley was enclosed, setting out the history and explaining that funding for the EMDR sessions was not approved by the School.

82. The Claimant's evidence, which we accept, was that this letter followed a "long silence" from the School and she was extremely shocked to receive it. She was waiting to be informed about a decision on the EMDR treatment and was hopeful that it would be authorised.

83. On 5 July 2016 the Claimant emailed Ms Hewison to request that the meeting be moved to 4pm to ensure that all students have left the site by the time she arrives. The Claimant explained in her evidence that RIET is on the same site as New Directions and she was aware that Student A was attending New Directions (in fact, he had left by this date but the Claimant was unaware of that). Ms Hewison replied saying that the meeting would be at RIET in a room away from the pupils, "so can I suggest that we stay with a 2pm meeting assuming that your representative can attend?" Our impression was that by this time Ms Hewison had lost any sympathy she may have had for the Claimant and was therefore reluctant to accommodate any request of this kind.

84. In the event the meeting did not take place. It was postponed initially due to the unavailability of the Claimant's union representative but was then put on hold because the Claimant applied for ill-health retirement. Nothing turns on it in these proceedings, but we note that the Claimant's ill-health retirement application was ultimately turned down on the basis that a consultant psychiatrist had recommended EMDR and this was considered to be highly effective in treating the type of symptoms experienced by the Claimant.

85. On 1 August 2016 the Claimant submitted a grievance, sending copies to Ms Howard and to the School's Management Committee. Ms Howard responded saying that the grievance was more properly directed to the School and that in any event the grievances would not be heard until the result of her ill-health retirement application was known and the new school term starts in September. No-one from the School Management Committee responded. We accept Ms Hewison's evidence that this was because the letter would have arrived during the summer holidays and she then retired on 31 August 2016.

86. Ms Shirley's evidence, which we accept, was that she was informed on 11 October 2016 that the Claimant's ill-health retirement application had been refused. She made a further referral to OH on 14 October 2016 and this resulted in the report of 28 November referred to above. Shortly after the OH referral the Claimant presented her ET1 and effectively all matters were put on hold once the ET1 had been received by the Respondent. Largely due to staff capacity at the School, they decided to give priority to defending these proceedings.

87. The Claimant has alleged that the failure to deal with her grievance was a deliberate omission, motivated by the fact that she had alleged disability discrimination and/or the fact that she alleged a breach of RIDDOR. We do not accept that the content of the grievance had anything to do with the School's failure to respond. It was the result of a number of factors, including the timing of the grievance corresponding with the school holidays, a change of Head Teacher and the fact that the Claimant brought these proceedings.

88. The Claimant has also claimed that the School failed to comply with the SAP in a number of respects and that this constituted harassment. The Respondent's witnesses candidly acknowledged that there were shortcomings in the way the SAP was applied in the Claimant's case, specifically in that no formal improvement action plan was ever agreed and the Claimant was not properly warned of the possibility of dismissal. We do not accept that any of these failings were related to the Claimant's disability, still less that they were motivated by it. We accept that the School was genuinely attempting to follow the SAP and any errors were the result of oversight or, at worst, carelessness.

<u>Pay issues</u>

89. During the Claimant's sickness absence a number of issues arose as to the level of sick pay to which she was entitled. The correspondence on this issue was mostly entirely separate from the correspondence about her health and ability to return to work, so we set it out separately here.

90. It is not in dispute that because the Claimant's absence was due to an injury at work she was entitled to six months' full pay followed by a further 100 working days' full pay and 100 working days' half pay.

91. On 3 December 2015 Ms Julia Wilson of NPW wrote to the Claimant to inform her that her full pay entitlement expired on 2 December 2015 and that her half pay entitlement would expire on 30 April 2016.

92. The Claimant responded on 5 January 2016 stating that she believed this was

incorrect and asking for the dates to be recalculated. She also complained about the lack of warning that her full pay was going to end, saying that this would be been helpful "as I am not feeling at all well and extremely anxious".

93. On 21 January 2016 Ms Howard wrote to the Claimant, saying that after "looking closely" at the Claimant's pay it appeared that she had been overpaid by £2,270.60 gross. Her full pay had in fact run out on 24 October, not 2 December 2015. Ms Howard apologised for any inconvenience and asked the Claimant to contact Julia Wilson to discuss recovery of the overpayment. Ms Howard accepted in her evidence that these calculations were incorrect, but said she sent the letter in good faith believing that the figure she had been given was correct. She explained that all the financial information was provided by Ms Wilson and she (Ms Howard) acted solely on instructions from Mr Alexander.

94. It appears that Mr Hale, the Claimant's union representative, spoke to Mr Alexander on 16 March about the issue and Mr Alexander agreed that the "Burgundy Book" (containing contractual provisions on sick pay applicable to the Claimant) had been misinterpreted.

95. Having received no further communication from NPW, the Claimant sent a formal grievance to Ms Louise Howard (Head of Schools HR at NPW and no relation of Ms Jane Howard) on 14 April 2016, claiming that she had by that date been underpaid by more than £5,500.

96. Mr Alexander wrote to the Claimant on 5 May 2016, responding to her grievance. He apologised for the error in the earlier letter regarding an overpayment and apologised for the tone of Ms Howard's letter. He suggested that the delay in rectifying the error after his conversation with Mr Hale was due to the Claimant having discussions with the School about a possible settlement agreement. He confirmed that the Claimant had been underpaid £5,351.35 and that this payment would be made in her May salary. He said that her full pay ended on 12 February 2016 and her half pay would end on 2 August 2016.

97. The Claimant wrote again on 21 May 2016, expressing disappointment that it took so long to resolve the matter and stating that the date of 2 August 2016 also appeared to be incorrect. She calculated the correct date as 7 September 2016.

98. There was subsequent correspondence between Ms Louise Howard and the Claimant because Mr Alexander was off sick until 16 June. The Claimant complained about how long it was taking for NPW to respond to her letter and said that it was causing her some distress.

99. Mr Alexander responded by letter dated 7 July 2016. He confirmed that her half sick pay entitled would end on 7 September 2016. He ended the letter saying "I would sincerely like to apologise for any inconvenience and upset this process has caused."

100. This concluded the issue about the Claimant's sick pay, but in the course of her application for ill-health retirement she discovered that an error had been made in recording her pensionable service and this resulted in further correspondence with NPW. The Claimant received an email from Mr Derek Stewart, Payroll Manager at NPW, on 24 January 2017 stating that the London Borough of Newham were responsible for this issue and he had asked them to contact Teachers' Pension to

correct her record. However subsequent correspondence between the Claimant and Teachers' Pension suggested that in fact NPW were responsible for providing information on pensionable service and they had done so in respect of the Claimant, providing the correct information, on 1 March 2017.

101. The Claimant claims that Mr Stewart lied in his email, falsely claiming that NPW were not responsible for pension records, and that NPW's failure to rectify the error when it could easily have done so constituted harassment related to her disability. She also claims that NPW's actions in wrongly calculating her sick pay entitlement, claiming that there had been an overpayment and then taking a long time to correct an underpayment, were further acts of harassment related to her disability. We do not accept that any of the errors, all of which have been admitted by NPW (and the Respondent on its behalf), or the failure to correct them sooner, were related to the Claimant's disability or motivated by it. We accept that the errors caused additional stress to the Claimant and the NPW were aware of her fragile mental health, but we accept Ms Howard's evidence that NPW is separate from the School and they would have no reason to harass the Claimant. The initial mistake as to the Claimant's sick pay entitlement was made by Julia Wilson, who had had no prior involvement with the Claimant. The fact that that mistake was made illustrates that the system was fallible and that there was some confusion about how the sick pay entitlement should be applied to the Claimant. The later mistakes are consistent with that and there is nothing to indicate that they were done deliberately or with reckless disregard for the impact on the Claimant.

Disclosure

102. The final matter that we should address in our factual findings is an issue that arose during the course of the hearing as to the adequacy of the Respondent's disclosure. It became clear during Ms Shirley's oral evidence that there were handwritten notes of some of the SAP meetings that had not been disclosed to the Claimant. Ms Shirley said she did not know she needed to provide them. It also materialised that a search of Ms Hewison's emails for documents concerning the Claimant had been unsuccessful in that there was a technical problem in retrieving them from the server. No further efforts were made to obtain the documents and the Claimant was not informed of the problem. As for other emails, it appeared that the search process had been inadequate because it did not even turn up emails that had the Claimant's name as the title.

103. During the course of the hearing the Respondent produced Ms Shirley's and Ms Howard's handwritten notes of SAP meetings they had attended and one internal email concerning the decision to move to Stage Three. Clearly the Respondent should have disclosed these documents sooner, but they did not contain anything of particular significance and the Claimant did not suggest that she was prejudiced by their late inclusion. We consider it very likely that there are further documents, indeed Ms Hewison confirmed that there would definitely have been emails that she sent and received, which are relevant to the issues in these proceedings and have not been disclosed. Unfortunately just before the moment in the hearing when this issue arose Mr Moher, the Respondent's solicitor, left the hearing and he did not return on that day or on the last day. Mr Harding passed on Mr Moher's instructions that Ms Howard's notes and the email that was disclosed during the hearing had been provided to him but he inadvertently forgot to send them to the Claimant. He did not know about Ms Shirley's notes. It appears to us that Mr Moher did not properly advise the Respondent

on its disclosure obligations. We do not believe that the Respondent has deliberately concealed damaging evidence. As it happens, there were no factual disputes that were affected by the lack of proper disclosure and the documents that were disclosed late in the day did not contain anything revelatory. The Claimant did not make an application for specific disclosure or to adjourn the hearing and we felt that we were able to determine the issues on the basis of the evidence that we had. We simply record that there was serious failings in the Respondent's disclosure and no adequate explanation was given.

CONCLUSIONS

Jurisdiction

104. No jurisdictional issues were included in the agreed list of issues, but the Respondent had argued in its response that some of the complaints were out of time and Mr Harding maintained that position in his written submissions, which simply state: "Many of the allegations are out of time. Different people are involved and there is no chain of events. Virtually all of the reasonable adjustments claims are out of time." He did not expand on those submissions in the hearing and Mr Lockley on behalf of the Claimant did not address the issue.

105. We have no hesitation in finding that the Tribunal has jurisdiction to hear the Claimant's complaints. The Claimant commenced early conciliation on 31 August 2016 and the certificate was issued on 1 October 2016. The ET1 was presented on 31 October. We therefore calculate that the claim is brought within the primary time limit under s.121 EqA/s.48 ERA in respect of any act done on or after 29 June 2016. That includes the victimisation and protected disclosure complaints and the "threat of dismissal" reasonable adjustment complaint. The other reasonable adjustment complaints are all aspects of the Respondent's handling of the Claimant's sickness absence and we find that they either constitute "conduct extending over a period", which continues to date because the Claimant remains employed, or it is just and equitable to extend the time limit in respect of those complaints. In particular, although the decision not to fund EMDR was made on 15 April 2016, it was not communicated to the Claimant until she received the Stage Three pack on 30 June 2016 and therefore it is clearly just and equitable to extend the time limit in respect of that complaint. The alleged failure to offer outreach work is an ongoing matter because the Claimant says that she still wants to return to work and that this would be a reasonable adjustment to enable her to do so.

106. As for the harassment complaints, these are in two categories: those relating to the Claimant's sick pay and those relating to the SAP. The issues with the Claimant's sick pay continued until 7 July 2016[1] and we find that the complaints amount to conduct extending over a period ending on 7 July, or alternatively it is just and equitable to extend the time limit in respect of them. The SAP is, in theory at least, still being applied to the Claimant, albeit that Stage Three has been put on hold. Her complaints in respect of it amount to conduct extending over a period which has not yet ended or alternatively it is just and equitable to extend the time limit in respect of them.

[1] We were made aware that the Claimant had raised a further issue relating to her pay with the Respondent just before the start of the hearing and that the Respondent confirmed later that day that the disputed amount would be paid. As this did not form part of the proceedings we have not taken it into account.

107. Looking at the chronology of the Claimant's complaints on a global basis, she has been seeking to return to work throughout the period of her absence and it was reasonable for her to delay bringing proceedings until it became clear that the Respondent was proposing to dismiss her. The Respondent has not claimed that the cogency of its evidence has been affected by the fact that proceedings were not brought sooner. In all the circumstances we find, insofar as it is necessary for us to do so, that it is just and equitable to extend the time limit in order that all of the Claimant's complaints may be heard.

Knowledge

108. The Respondent has accepted throughout that the Claimant is disabled within the meaning of s.6 EqA and although Mr Harding at one stage appeared to resile from that concession by suggesting that she did not meet the definition until the end of October 2015 or even later, he eventually accepted that the concession applied "at all material times". There was a dispute, however, as to when the Respondent knew or ought to have known that the Claimant was disabled, which is potentially relevant to some of the reasonable adjustment complaints.

109. The only part of the definition that the Respondent claims not to have known until late October 2015 is the long-term nature of the Claimant's mental impairment. It clearly knew from the end of the previous term at the latest that she was suffering from a mental impairment that had a substantial adverse impact on her ability to carry out normal day to day activities. In terms of the likely duration of the impairment, we consider that the key date is the date on which the Claimant provided a GP certificate stating that she was unfit to work from May to September 2015 due to "post traumatic stress disorder". That was on or around 18 September 2015. Whatever the Respondent's knowledge before that date, and we note that the referral to OH in July said that the Claimant had experienced "post event anxiety which has impacted on her confidence at work and emotional well being", as at that date the School management knew (or ought to have known) the following:

109.1 That the Claimant had been diagnosed with post traumatic stress disorder and that she had been suffering from the condition since 22 May 2015 at the latest.

109.2 That the Claimant's condition was related to the original assault in January 2015, following which she was off sick for "stress related to assault".

109.3 That the Claimant had received counselling through the NHS from May 2015 and that this was continuing as of 10 September 2015.

109.4 That in July 2015 the Claimant was taking medication for her condition.

110. Although the OH nurse had said in July 2015 that she did not believe the Claimant would fall under the Equality Act 2010, this was based on her assessment that the Claimant would be able to return to work at the start of term in September 2015. The fact that the Claimant was still signed off by that time and there was no sign of any improvement in her condition meant that the Respondent could not reasonably rely on that comment in the OH report. Disregarding the effects of the treatment, as

required by Schedule 1 EqA, the Respondent knew or ought to have known from 18 September 2015 at the latest that the Claimant was suffering from a mental impairment that had a significant adverse impact on her ability to carry out normal day to day activities and was likely to last at least 12 months.

The reasonable adjustment complaints

Outreach

111. The PCP set out in the agreed list of issues is "requiring the Claimant to carry out her specific role, in which there is a genuine risk of assault". We find the second part of that formulation to be unnecessary. We accept that the Respondent applied a PCP of requiring the Claimant to carry out her specific role; indeed it only came up with one alternative role and told the Claimant that she would need to resign her current post in order to take it up. Mr Harding sought to suggest that a requirement to do your job cannot be a PCP, but we do not accept that. We note that this was in essence the PCP that was found in Croft Vets v Butcher and upheld by the EAT (see paragraph 27).

112. We also accept that the PCP put the Claimant at a substantial disadvantage compared to non-disabled persons. Whatever the objective risks of classroom teaching at Tunmarsh, the Claimant had been subjected to a serious assault by one student and subsequently threatened by another. This, combined with her disability, caused her to lose confidence in carrying out her job and to be in fear of further attack. Those constitute substantial disadvantages.

113. As to whether there were steps the Respondent should have taken to avoid that disadvantage, we have focused on whether the School should have offered the Claimant one-to-one teaching on a temporary basis. The agreed list of issues refers to failures to "search for" or "identify" lower-risk positions, but these are not steps that could have avoided the disadvantage in themselves. The issue is whether the School should have found a way of enabling the Claimant to do such work and offered it to her.

114. The Respondent did not expressly dispute it, but for the avoidance of doubt we find that it is very likely that offering the Claimant one-to-one teaching on a temporary basis would have enabled her to regain her confidence and return to her ordinary role without undue fear of a further attack. The areas of dispute were whether such work was available and whether the School could reasonably be expected to offer it.

115. We have already found that it would have been possible for the School to find one-to-one teaching work for the Claimant. Further, we have found that the Respondent had knowledge of the Claimant's disability from at least 18 September 2015, so the question is whether offering her such work after that date would have been a reasonable step for the Respondent to take. We find that it was, for the following reasons:

115.1 The reason for the Claimant's absence and the cause of her loss of confidence was an assault at work.

115.2 OH had recommended one-to-one teaching for "a period of time".

115.3 The Claimant had specifically requested a temporary outreach post in the meeting on 10 September.

115.4 As noted above, it was likely to assist the Claimant to regain her confidence with teaching.

115.5 The School was aware that fear of a future attack and general loss of confidence were the main obstacles to the Claimant returning to work, but did little, if anything, to address those issues. The offer to resign and take up a post at Coborn was not in accordance with the OH recommendations and did not address the Claimant's concerns.

115.6 As to Ms Hewison's concerns about "setting a precedent", we find that she was unduly focused on this throughout the Claimant's sickness absence, failing to recognise (a) the fact that the Claimant was disabled and therefore reasonable adjustments may be required and (b) the fact that the Claimant's absence was due to an assault at work and she had reasonable concerns about a future assault. Given that the overall requirements for outreach teaching are variable by nature, we do not accept that finding one-to-one teaching for the Claimant to do on a temporary basis, even if this required reallocation of some teaching duties from permanent outreach staff, would have caused any problems for the School.

116. For the reasons given above this part of the Claimant's claim succeeds.

Failure to fund additional sessions with the Claimant's treating psychologist

117. The definition of the PCP in the agreed list of issues, "offering only a fixed range, number or value of therapy sessions to an employee injured while at work", is not strictly apt for this complaint because the issue here is about the funding of treatment outside the EAP/Medigold system, nor the number or value of sessions that may be funded. We find that the Respondent applied a PCP of offering therapy only via the EAP or a referral from OH to a therapist provided by Medigold.

118. We accept that this put the Claimant at a substantial disadvantage compared to others who did not share her disability because she had a clinical need, identified by OH, for further sessions with the psychologist with whom she already had an established relationship. Mr Harding submitted that the correct comparator was a non-disabled person who required counselling (of the same type), but this falls into the error identified in Griffiths. The correct comparison is with a person who does not share the Claimant's disability and therefore does not need the recommended treatment. Plainly the Claimant is substantially disadvantaged compared with such a person. Mr Harding made a similar submission in relation to some of the other of the proposed reasonable adjustments and we reject it for the same reasons.

119. The only real dispute between the parties on this issue was whether the Claimant made a request for this type of treatment to be funded. We have found that she did, in the meeting on 3 December 2015. We also found that this is what Dr Ashby recommended in his report of 27 October 2015, contrary to Respondent's arguments. The Respondent has conceded that if a request had been made this treatment would have been funded. In those circumstances we find that it would have been a

reasonable step for the Respondent to take. According to Dr Ashby this type of treatment would have made "the most valuable contribution" to the Claimant's recovery. We infer from that statement that there was a reasonable chance she would be able to return to work after the treatment. There was no evidence as to the cost of such further treatment, but it can fairly be assumed that it would have been similar to the cost of the private Medigold treatment that was authorised in March 2016. In view of the Respondent's concession that it would have funded the treatment if asked, it would have been a reasonable step for the Respondent to take.

120. For those reasons this aspect of the Claimant's complaint also succeeds.

Failure to offer managed counselling referral/ timeous referral for specialist support

121. Again, the way in which this complaint is put in the agreed list of issues does not fully reflect the issue in dispute. The Claimant accepts that the Respondent did authorise six counselling sessions via Medigold in March 2016 (although she did not know that at the time). The assessment that took place on 21 March 2016 was the first step in that process, but once EMDR had been recommended and funding for that was refused, the Claimant's case was closed. Her real complaint is about the failure to fund EMDR (see below).

122. The only separate issue under this heading amounts to a complaint that there was a delay of approximately six weeks between the OH report of 28 January 2016 recommending specialist support and the referral to Medigold on 11 March 2016. That does not fit within the complaints set out in the agreed list of issues and nor do we consider that a complaint about delay is properly framed as a failure to make a reasonable adjustment. The Respondent did authorise the sessions and there is no evidence that the delay in making the decision was pursuant to any PCP; it simply took a few weeks for Ms Shirley to look at the matter and send the relevant form to Medigold.

123. This aspect of the claim fails.

Failure to offer a later time for the meeting on 14 July 2016

124. In light of Ms Hewison's email refusing the Claimant's request that the meeting be held at a later time, we accept that the Respondent applied a PCP of requiring the Claimant to attend sickness absence meetings on school premises during school hours. We reject the Respondent's argument that this was a one-off decision and it was only a suggestion. All of the meetings under the SAP were scheduled to take place on school premises during school hours. Although the 13 January meeting ultimately took place at NPW's offices, this was an exception and does not affect the PCP. Ms Hewison was dismissive of the Claimant's request for a later time and although her email was phrased "can I suggest we stay with a 2pm meeting", it was in reality a rejection of the Claimant's request and the only outstanding issue was whether the Claimant's representative could attend.

125. We also accept that the PCP put the Claimant at a substantial disadvantage compared to others who did not share her disability. One of the effects of her disability was fear of and/or loss of confidence in dealing with the students. The Claimant had not attended the meeting on 13 January 2016 because she believed it would be held on school premises and no-one had told her otherwise. The School knew about this

and Dr Ashby then advised in his report of 28 January 2016 that at that stage the Claimant was "too anxious" to meet with the school. The School does not appear to have given any thought to this issue. The proposed meeting of 14 July 2016 was due to take place at RIET, which shares a site with New Directions, the school to which Student A was moved after the attack on the Claimant. There was no way that the Claimant could have known that he had left the school at the end of June 2016, so her fear of attending that site during school hours, when there must have been a real possibility of seeing Student A on her way to or from the meeting, was understandable.

126. Given that background, and in the absence of any explanation from the Respondent as to why a later time would have caused difficulties, we find that moving the time of the meeting to after school hours would have been a reasonable step for the Respondent to take. We do not consider it relevant that the meeting ultimately did not take place for unrelated reasons.

127. This aspect of the Claimant's claim therefore succeeds.

Failure to offer neutral venue for the meeting on 13 January 2016

128. The same PCP applies to this complaint. The Respondent applied a PCP of requiring the Claimant to attend sickness absence meetings on school premises during school hours.

129. For the reasons given above, the PCP put the Claimant at a substantial disadvantage because of her disability. The issue relating to Student A did not apply to this meeting, but the Claimant was clearly anxious about attending school premises and this was related to her disability.

130. The Respondent argues that this complaint is misconceived because the venue of the meeting was ultimately changed, but we do not accept that that is a complete answer. Given that the venue was changed without any apparent difficulty and the School were aware of the Claimant's anxious state of mind, it was reasonable to expect the Respondent to take that step. Doing so must include notifying the Claimant in advance, otherwise it is of no effect in avoiding the disadvantage.

131. This aspect of the claim therefore succeeds.

Failure to offer EMDR

132. We have found this the most difficult issue in the case.

133. The evidence as to the reasons for refusing funding for EMDR was not wholly consistent, but we accept that the Respondent applied a PCP of offering only a fixed range, number or value of therapy sessions to an employee injured while at work. Although Ms Hewison at one stage suggested that the School does not, as a matter of principle, pay for private medical treatment, that cannot be right because funding for six counselling sessions for the Claimant had been approved and it is also admitted that the School would have paid for sessions with the Claimant's treating psychologist if a request had been made. It is clear, however, that both Ms Hewison and Ms Shirley considered that the cost of EMDR was simply too high. Although it is not clear where the cut-off was, we are satisfied that the PCP enabled the School to fund treatment costing £656 but precluded treatment costing £2,548.

134. We find that the PCP put the Claimant at a substantial disadvantage compared to persons who do not share her disability. Pursuant to the Respondent's own OH service, a clinical recommendation had been made for EMDR and this was likely to give the Claimant the best chance of recovering and returning to work. Refusing to fund such treatment put her at a substantial disadvantage.

135. Mr Harding argued that the concept of an employer being expected to pay for private medical treatment is "exotic", noting that there is no mention of anything like it in the examples of reasonable adjustments listed in the EHRC Code of Practice. He submitted that the decision in Croft v Butcher is an outlier and in any event distinguishable. He also argued that there were strong policy reasons not to find it a reasonable adjustment, particularly for a large public employer, suggesting that to find otherwise would open the floodgates and impose an extraordinary financial burden on taxpayers. He also relied on the difficulty in "drawing the line"; if the treatment was unsuccessful would the employer be required to fund more sessions? Finally, he argued that the Claimant could be expected to pay for the treatment herself.

136. As to the Code of Practice, it is true that paying for medical treatment is not listed as an example of a reasonable adjustment, but those examples are not intended to be exhaustive. Both the EqA and the Code envisage that an adjustment may be reasonable even if it involves cost to the employer. In Croft, the EAT treated the counselling in that case as akin to the example in the Code of "giving, or arranging for, training or mentoring" because it was "a specific form of support to enable the Claimant to return to work and cope with the difficulties she had been experiencing at work" (paragraph 40). The same analysis applies here.

137. Clearly Croft is not authority for the proposition that it will always be reasonable to expect an employer to pay for recommended medical treatment that is likely to assist the employee to return to work. Nor even that it was a reasonable adjustment in that case; it was simply a permissible finding. Mr Lockley did not dispute that it is the only appellate case in which paying for private medical treatment has been found to be a reasonable adjustment, but none of the more recent authorities cast doubt on the EAT's conclusions and nor are we aware of any case which has reached the opposite conclusion.

138. We do not accept there is anything in the public/private distinction that Mr Harding seeks to draw. It is true that any additional cost to a public employer is a cost to the taxpayer, but that does not seem to us a principled reason for distinguishing between public and private employers in their obligations under the EqA. It would be odd, to say the least, if more stringent equality duties applied in the private sector. Further, it could equally be said that a public employer of the size of the Respondent has a greater need to retain skilled employees such as the Claimant and better resources to offer treatment, compared to an average private employer.

139. We have proceeded, therefore, on the basis that there is nothing in principle that precludes a finding that funding medical treatment would be a reasonable adjustment. The ordinary factors in assessing reasonableness apply.

140. Comparison with the facts of Croft is of limited value, but we acknowledge that the cost of the treatment in issue in that case was £750, considerably less than the £2,548 in issue in the present case. Apart from that, however, we consider that the case for funding EMDR for the Claimant is no less strong than in Croft. In that case the

claimant's chances of being able to return to work (after a period of between three months and two years undergoing treatment) were medically assessed as "no greater than 50/50" (paragraph 16). Here, as we have found above, there were sufficient grounds to conclude that there was a reasonable chance of EMDR being successful and enabling the Claimant to return to work. In Croft the sickness absence was due to work-related stress. In the present case, it was due to an assault at work resulting in loss of confidence and fear of a repeat attack. Those are no less "work-related" issues than the pressures of work in issue in Croft.

141. We reject the suggestion that the Claimant could (or should) have paid for the treatment herself. The Claimant's husband gave evidence, which we accept, that he was made redundant from his employment with another local authority in July 2015. At the time the recommendation for EMDR was made he was unemployed and the Claimant was receiving half sick pay, then still in dispute. Given the family's very limited income at the time we do not consider the Claimant could reasonably be expected to have paid for the treatment herself in order to facilitate a return to work. We heard from the Claimant that her GP has been very supportive throughout and we assume that if EMDR were available for her on the NHS a referral would have been made.

142. Ms Hewison placed great weight on the "precedent" argument, but her evidence on this was somewhat thin. She was not able to say how many other employees had mental health problems, how many, if any, of those were disabled within the meaning of EqA and how many, if any, had had recommendations for treatment. We do not accept that funding the treatment for the Claimant would have caused any particular difficulty for the School. They had already agreed to fund an alternative type of treatment for the Claimant and in any event each case would depend on its facts. We consider it unlikely that there were other cases as strong as the Claimant's, but even if there were, that does not mean it would not be reasonable to fund the treatment in the Claimant's case.

143. The Claimant is a senior member of staff and an extremely experienced teacher. Her disability was directly linked to a serious assault to which she had been subjected in the ordinary course of her work for the Respondent. She had attempted to return to work for a time and had undergone all the treatment that was available on the NHS. Further, she demonstrated a real desire to return to work from September 2015 onwards and explored every avenue that was available to help her do so. The fact that she had not returned by April 2016 was in part due to the Respondent's failure to offer her suitable temporary work to enable her to regain her confidence, or to fund further sessions with her treating psychologist. The OH reports show that the Claimant's attitude towards returning to work worsened the longer she was off sick. According to the OH provider, her PTSD prevented her from returning to work because she felt "she would not be able to assess the situation as she once did very effectively" and the EMDR treatment would "enable [the Claimant] to be able to work through and process the trauma".

144. In those circumstances, the only hesitation we have in finding that paying for the EMDR was a reasonable adjustment is the cost. The cost of the treatment is significantly higher than for the counselling sessions that had originally been recommended by OH. On any view, a charge of more than £300 per session is expensive. However, we consider that it is just within the range of what might be considered a reasonable expense for medical treatment in order to assist a return to

work. We note that it is less than the Claimant's monthly salary and that she was still receiving sick pay by this time. The Respondent relies on the fact that it was paying the Claimant's sick pay as well as paying for agency staff to cover her role as a reason why the treatment was unaffordable, but if it was likely to assist her return to work, as we have found, then it would constitute a saving in the longer term.

145. In summary, therefore, we acknowledge that this is a borderline case, but we consider that there are compelling factors in the Claimant's case that made it reasonable for the Respondent to pay for the EMDR treatment that had been recommended. This aspect of the claim succeeds.

Threat of dismissal

146. In light of our conclusions above it is unnecessary to address this complaint. Had the Respondent complied with its s.20 EqA duties and offered the Claimant suitable alternative work and/or paid for treatment, it may well have not reached Stage Three of the SAP. It is artificial to consider what steps the Respondent should have taken to amend the SAP against a background in which its failure to make reasonable adjustments contributed to the Claimant's inability to return to work.

147. In any event this complaint is not comfortably framed as a failure to make a reasonable adjustment. Noting the dicta of Elias LJ in Griffiths (paragraphs 79-80), we consider it would have been better pleaded as a s.15 EqA complaint. The Claimant has legitimate complaints about the Respondent's decision to move to Stage Three without adequate warning and while she was still waiting to hear whether they were going to fund the EMDR, but there has been no s.15 complaint and we consider these issues to be peripheral to those addressed above.

Harassment

148. The harassment complaints at paragraphs 4.3.1, 4.3.2, 4.3.3, 4.3.6 and 4.3.7 above all relate to the handling of the Claimant's sick pay and pension by NPW. We have found above that none of these errors was related to the Claimant's disability or motivated by it.

149. The other complaints relate to the Respondent's application of the SAP and similarly we have found that any failings were not related to the Claimant's disability, let alone motivated by it. At worst they were the result of carelessness, but that is not sufficient to establish harassment within the meaning of s.26 EqA.

150. The harassment complaint therefore fails.

Victimisation

151. We have accepted the Respondent's account that the failure to deal with the Claimant's grievance was due to the summer break, Ms Hewison's retirement and the handover to a new Head Teacher. It was not because the Claimant had submitted the grievance or because of the contents of the grievance.

152. The victimisation complaint must therefore be dismissed.

Detriment because of making a of protected disclosure

153. For the same reason, the complaint of detriment on grounds of making a protected disclosure must be dismissed.

Employment Judge Ferguson

27 June 2017