



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Aslam

**First Respondent:** Tees, Esk and Wear Valleys NHS Foundation Trust

**Second Respondent:** Mary Ann Heads

**Heard at:** Middlesbrough

**On:** 30, 31 July and 1,2,3 and 20,21 and 22 August 2018

**Deliberations:** 23 August 2018 and 8 October 2018

**Before:** Employment Judge Shepherd

**Members:** Mrs D Winter  
Mr R Greig

***Appearances:***

**For the Claimant:** In person  
**For the Respondent:** Ms Millns

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim brought by the claimant of harassment relating to race in respect of an incident on or around 16-19 September 2017 is well-founded and succeeds.
2. The remainder of the claims brought by the claimant of disability discrimination, age discrimination and race discrimination are not well-founded and are dismissed.
3. With regard to the successful claim of harassment relating to race, the respondent is ordered to pay to the claimant the sum of £1,500.

## REASONS

1. The claimant represented herself and the respondent was represented by Ms Millns.

2. The Tribunal heard evidence from:

Hameeda Aslam, the claimant; ;  
Suzanne Bullock, friend of the claimant;  
Matthew Evans, Psychotherapist.  
Carol Redmond, Head of Service;  
Mary Ann Heads, the second respondent;  
Thomas Vickers, Human Resources Manager;  
Kathryn Stephenson, Clinician;  
Cheryl Ing, Employee Support Service Lead;  
Matthew Paylor, Community Nurse;  
Michelle Trainer, Team Manager;  
Gillian Caselaw, Clinical Team Manager.

Written statements were also provided by Ernestas Daygs, friend of the claimant and Mark McKeever, solicitor to the respondent. However, the statements were irrelevant to the issues identified to be determined by the Tribunal and were not admitted in evidence.

3. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 400. The claimant also provided, at the resumed hearing on 20 August 2018, a bundle of medical records numbered up to page 59. The Tribunal considered the documents to which it was referred by the parties.

4. The claims brought by the claimant were for direct disability discrimination, direct age discrimination, direct race discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment relating to race and age and victimisation. The claimant had been dismissed a week before this Tribunal hearing. The dismissal was not an issue that had been identified as one which the Tribunal was to determine. The claimant indicated that she wished everything to be dealt with. However, the respondent's representative, Ms Millns said that the bundle of documents would double in size and it would be necessary to call four or five additional witnesses and this would not be possible in the present hearing. Any consideration of an adjournment was resisted. It was pointed out that this case had taken a substantial amount of preparation and there were serious allegations of discrimination against individuals including the second respondent. The Tribunal decided that the hearing should proceed on the basis of the agreed identified issues.

5. The issues to be determined by the Tribunal had been identified in a lengthy Preliminary Hearing before Employment Judge Buchanan on 15 March 2018. These are set out in full as it has been necessary to return to these identified issues on a number of occasions during the hearing. The issues were identified as follows:

“3. The detailed claims advanced

3.1 It has taken some time to ascertain exactly the claims which the claimant seeks to advance to the Tribunal. As a result of previous hearings and orders, a document (“the Pleading”) has been produced by the claimant numbering 15 allegations which are numbered 10-24. The Pleading together with the claim form will stand as the definitive list of the claims advanced by the claimant and which are to be answered by the respondents. I set out below brief details of the 15 allegations in chronological order as they do not appear in that order in the Pleading. I set out next to each of the allegations the number of the allegation in the Pleading. I clarified with the claimant at the hearing how each of the claims is advanced as set out below.

3.1.1 On 10 November 2016 an allegation that the claimant was subjected to harassment related to age or in the alternative direct age discrimination by Mary Ann Heads at Acley Centre, Newton Aycliffe. As pleaded, this is an allegation of direct age discrimination but at this hearing it was agreed that this matter could be advanced as an allegation of harassment in the alternative. (Allegation 14)

3.1.2 On 25 November 2016 the claimant was subjected to harassment related to age or in the alternative direct age discrimination at Acley Centre, Newton Aycliffe by Mary Ann Heads. As pleaded, this is an allegation of direct age discrimination but at this hearing it was agreed the matter could be advanced as an allegation of harassment in the alternative. (Allegation 13).

3.1.3 On 25 November 2016 the claimant was subjected to harassment related to age by Mary Ann Heads and/or Matthew Paylor at Ackley Centre Newton Aycliffe. (Allegation 22).

3.1.4 On 29 December 2016 the claimant was subjected to direct age discrimination by Mary Ann Heads at Acley Centre, Newton Aycliffe. The claimant does not advance this matter as an allegation of harassment. (Allegation 12).

3.1.5 On 12 January 2017 the claimant was subjected to direct age discrimination and/or harassment related to age and/or harassment related to disability and victimisation by Mary Ann Heads at the Acley Centre. The protected act for the purposes of the victimisation claim is a grievance raised by the claimant on 6 January 2017. The comparator relied on for the direct age discrimination claim is Stephanie Morton. The alleged disability relied on is the hearing impairment. (Allegation 23).

3.1.6 On 13 February 2017 the claimant was subjected to direct race discrimination and/or harassment related to race by Michelle Trainer and/or Helen Cowper at Flatts Lane Centre, Middlesbrough. The allegation of direct race discrimination is not limited to a claim relying on section 13(5) of the 2010 Act. (Allegation 15).

3.1.7 On 13 February 2017 the claimant was subjected to harassment related to disability or direct disability discrimination and/or discrimination arising from disability by Mary Ann Heads at Flatts Lane Centre, Middlesbrough. The disability claims rely on both alleged impairments. (Allegation 21).

3.1.8 On 10 March 2017 and 16 March 2017 the claimant was subjected to direct race discrimination and/or victimisation. The claimant does not specifically plead victimisation but she does plead that that she was being treated "*worse than my colleagues because I have complained*". That is an allegation of victimisation. (Allegation 24).

3.1.9 On 2 May 2017 and 14 August 2017 the claimant was subjected to harassment related to race or direct race discrimination at Mulberry Centre, Darlington by Gillian Caselaw. The allegation of direct race discrimination is not limited to a claim relying on section 13(5) of the 2010 Act. (Allegation 17).

3.1.10 On 19 June 2017 the claimant was subjected to harassment related to race or in the alternative direct race discrimination by Gillian Caselaw at Mulberry Centre, Darlington. (Allegation 18).

3.1.11 On 5 September 2017 the claimant was subjected to direct disability discrimination and/or discrimination arising from disability and/or a failure to make reasonable adjustments at Flatts Lane Centre, Middlesbrough by Thomas Vickers and Carol Redman. The PCP engaged is said to the respondent's grievance procedure. The adjustments allegedly not provided were a recording of the meeting and/or a written record of the meeting. The adjustment claim is also advanced as a breach of section 20(5) of the 2010 Act and the auxiliary aid not provided is said to be audio equipment on which to have recorded the meeting. The alleged disability engaged in this claim is the dyslexia. (Allegation 10).

3.1.12 On 5 September 2017 the claimant was subjected to direct disability discrimination and/or discrimination arising from disability and/or a failure to make reasonable adjustments and/or harassment related to disability at Flatts Lane Centre, Middlesbrough by Cheryl Ing. The alleged disability engaged in this claim is dyslexia. (Allegation 11).

3.1.13 On 19 September 2017 the claimant was subjected to race related harassment by Gerry Doyle at Mulberry Centre, Darlington. (Allegation 16).

3.1.14 On 19 September 2017 at Mulberry Centre, Darlington the claimant was subjected to direct race discrimination or harassment related to race by Gillian Caselaw. The allegation of direct race discrimination is not limited to a claim relying on section 13(5) of the 2010 Act. (Allegation 19).

3.1.15 On 19 September 2017 at Mulberry Centre, Darlington, by Gillian Caselaw that the claimant was subjected to direct race discrimination or harassment related to race. The allegation of direct race discrimination is not limited to a claim relying on section 13(5) of the 2010 Act. (Allegation 20).

#### 4 The Legal Issues

The legal issues which will arise in relation to the various claims advanced by the claimant are as follows:-

##### Disability

4.1 Was the claimant a disabled person in accordance with section 6 of the 2010 Act at all relevant times because of the following conditions:

4.1.1 Dyslexia

4.1.2 Hearing impairment.

##### Time/Limitation issues

4.2 Were all of the claimant's complaints presented within the time limits set out in section 123(1)(a) and (b) of the 2010 Act? Dealing with this issue may involve consideration of subsidiary issues including – whether there was an act and/or conduct extending over a period and/or a series of similar acts or failures: whether time should be extended on a “just and equitable” basis: when the treatment complained about occurred.

##### Harassment

4.3 Did the respondent engage in unwanted conduct towards the claimant?

4.4 Was the conduct related to the claimant's protected characteristic of race or of age?

4.5 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.6 If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.7 In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect?

##### Direct Discrimination

4.8 Did the respondent subject the claimant to the less favourable treatment alleged?

4.9 If so, did the respondent treat the claimant less favourably than it treated or would have treated the comparator(s) relied on?

4.10 If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on namely age or race or disability?

4.11 If so, what is respondents' explanation? Does it prove a non discriminatory reason for any proven treatment?

4.12 In relation to any allegation of age discrimination, does the respondent show that the treatment of the claimant was a proportionate means of achieving a legitimate aim?

Discrimination arising from disability

4.13 Has the respondent shown that it did not know and could not reasonably have been expected to know that the claimant was a disabled person at the material time?

4.14 Did the respondent treat the claimant unfavourably?

4.15 If so, was it because of something arising in consequences of the claimants disability?

4.16 What was that something arising?

4.17 Does the claimant prove that the respondents' treatment of her was because of the something arising in consequence of her disability?

4.18 Does the respondent show that the treatment of the claimant was a proportionate means of achieving a legitimate aim?

Discrimination by failure to make reasonable adjustments:

4.19 Did the respondent apply a provision criterion and or practice ("PCP") to the claimant?

4.20 if so, did the application of any such PCP put the claimant at a substantial disadvantage in relation to relevant matter in comparison with persons who are not disabled?

4.21 If so, did the respondent take such steps that were reasonable to avoid the disadvantage? The burden of proof does not lie on the claimant however it is helpful to know the adjustment asserted as reasonably required and they are to be identified in the list of issues.

4.22 Did the respondent now know or could the respondent not be reasonably expected to know that the claimant had a disability or was likely to be placed at the disadvantage set out above?

Victimisation:

4.23 Has the claimant carried out a protected act?

4.24 If there was a protected act, has the respondent carried out any of the treatment alleged by the claimant to be detrimental treatment because the claimant had done the protected act?"

6. Employment Judge Buchanan also ordered that the respondents were to send to the claimant by a specified date, a draft list of issues specific to the factual allegations raised by the claimant following the legal issues identified as relevant in respect of each allegation and that the claimant was to reply with her agreement to list of issues or agree the list as far as possible by a date prior to the substantive hearing. The respondent had provided a draft list of issues to the claimant but she had not provided a reply. During the course of this hearing the claimant was allowed the opportunity to go through the list of issues together with a table provided by Ms Millns setting out the issues in respect of each allegation. The claimant went through these documents and provided some amendments which were, in essence, removing some of the identified claims of discrimination but retaining all the allegations. The respondent then prepared an amended list of issues which was agreed by the claimant and was as follows:

1. Disability (section 6 Equality Act 2010)

1.1. At the relevant time pertaining to each allegation of disability discrimination (set out individually below), did the Claimant have a physical or mental impairment? The impairments relied upon by the Claimant are two-fold; dyslexia and a hearing impairment.

1.2. If so, did the impairment(s) have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

1.3. If so, was that effect long term? In particular when did it start and:

1.3.1. Had it lasted for more than 12 months?

1.3.2. Was the impairment likely to last at least 12 months?

1.4. Were any measures being taken to treat or correct the impairment(s)? But for those measures would the impairment(s) be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

1.5. If so, did the Respondents know, or could the Respondents be reasonably expected to know, of the Claimant's disabilities during the material time?

2. Allegation 14

2.1. On 10 November 2016 an allegation that the Claimant was subjected to harassment related to age or in the alternative direct age discrimination by Mary Ann Heads at Acley Centre, Newton Aycliffe. As pleaded, this is an allegation of direct age discrimination but it is agreed that this matter could be advanced as an allegation of harassment in the alternative.

Witness evidence:

2.2. It is accepted by the Claimant and the Second Respondent in their witness statements that the Second Respondent asked the Claimant her date of birth.

2.3. It is also accepted by the Claimant and the Second Respondent that the reason for the Second Respondent asking the Claimant's age was to complete an administrative task. Whilst the Second Respondent and the Claimant do not agree what the specific administrative task was they do agree that there was a work-related reason for the request.

2.4. In her list of allegations (FBPs) the Claimant alleges that this incident occurred on 10 November 2016. The Second Respondent denies that this event took place on 10 November 2016. In her witness statement the Claimant now alleges that the incident occurred at some point between 10 to 18 November 2016.

2.5. The Second Respondent denies that she shouted the question about the Claimant's date of birth.

2.6. The Second Respondent denies that she made any further comment about the Claimant's age after the Claimant disclosed her date of birth.

Issues:

Harassment:

2.7. Did the Respondents engage in unwanted conduct towards the Claimant:

2.7.1. Either in the Second Respondent asking the Claimant her date of birth; and/or

2.7.2. In the manner / tone in which the Second Respondent asked the Claimant for her date of birth?

2.7.3. In the way in which the Second Respondent reacted to being told of the Claimant's age (i.e. by allegedly making the comment "thought you were younger you are old as they come")?

2.7.3.1. Did the Second Respondent say what the Claimant alleges she said in response to being told the Claimant's date of birth?

2.8. Was the conduct related to the Claimant's protected characteristic of age?

2.8.1. Was there, as submitted by the Respondents and agreed by the Claimant, a genuine administrative reason for the Second Respondent asking for the Claimant's date of birth and therefore does the Tribunal accept that such a request was not linked to any protected characteristic?

2.8.2. Did the Second Respondent shout her request for the Claimant's date of birth? If so, was this conduct related to the Claimant's age?



2.8.3. Did the Second Respondent make the comment "thought you were younger you are old as they come" to the Claimant as alleged? If so, was this related to the Claimant's age?

2.9. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

2.9.1. Was there, as submitted by the Respondents and agreed by the Claimant, a genuine administrative reason for the Second Respondent asking for the Claimant's date of birth and therefore does the Tribunal accept that such a request was not linked to any protected characteristic and that the purpose of the conduct was not to violate the Claimant's dignity etc?

2.9.2. In the alternative, if the Employment Tribunal find that there was not a genuine administrative reason for the Second Respondent asking for the Claimant's date of birth, does the Tribunal find that the purpose for the conduct was to violate the Claimant's dignity etc?

2.9.3. If the Employment Tribunal find that the Second Respondent shouted the request for the Claimant's date of birth does the Tribunal find that the manner/tone in which the request was made had the purpose of violating the Claimant's dignity etc?

2.9.4. If the Employment Tribunal find that the comment "thought you were younger you are old as they come" was made by the Second Respondent, does the Tribunal find that the comment had the purpose of violating the Claimant's dignity etc?

2.10. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect?

2.10.1. Could the request of the Second Respondent for the Claimant's date of birth reasonably have the effect of violating the Claimant's dignity (whether or not the Employment Tribunal find that there was a genuine administrative reason for the request)?

2.10.2. If the Employment Tribunal find that the Second Respondent shouted her request for the Claimant's date of birth to the Claimant, does the Tribunal find that the manner/tone of the request had the effect of violating the Claimant's dignity?

2.10.3. If the Employment Tribunal find that the comment "thought you were younger you are old as they come" was made by the Second Respondent, does the Tribunal find that the comment had the effect of violating the Claimant's dignity etc?

2.10.4. In relation to 2.10.1, 2.10.2 and 2.10.3 was it reasonable to have that effect on the Claimant?

Direct Discrimination:

2.11. Did the Respondents subject the Claimant to the less favourable treatment alleged?

2.11.1. Did the request for the Claimant's date of birth subject the Claimant to less favourable treatment?

2.11.2. Did the manner/tone in which the Second Respondent made the request for the Claimant's date of birth subject the Claimant to less favourable treatment?

2.11.3. Did the Second Respondent say "thought you were younger you are old as they come" to the Claimant? If so, did the Second Respondent subject the Claimant to less favourable treatment?

2.12. If so, did the Respondents treat the Claimant less favourably than it treated or would have treated the comparator(s) relied on?

2.12.1. The comparator relied on by the Claimant appears to be Stephanie (Steph) Morton. Did the Respondents treat the Claimant less favourably than Stephanie Morton?

2.13. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely age?

2.14. If so, what is the Respondents' explanation? Does it prove a non-discriminatory reason for any proven treatment?

2.14.1. Does the Tribunal accept that there was a genuine administrative reason for the Second Respondent asking the Claimant her date of birth?

2.15. In relation to any allegation of age discrimination, do the Respondents show that the treatment of the Claimant was a proportionate means of achieving a legitimate aim?

2.15.1. Does the Tribunal accept that there was a genuine administrative reason for the Second Respondent asking the Claimant her date of birth?

Time / Limitation issues:

2.16. The Respondents submit that the Claimant's complaints in relation to allegation 14 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

3. Allegation 13 and Allegation 22

3.1. On 25 November 2016 the Claimant was subjected to harassment related to age or in the alternative direct age discrimination at the Acley Centre,

Newton Aycliffe by the Second Respondent (allegation 13). As pleaded this is an allegation of direct age discrimination but it is agreed the matter could be advanced as an allegation of harassment in the alternative.

3.2. On 25 November 2016 the Claimant was subjected to harassment related to age by the Second Respondent and/or Matthew Paylor at the Acley Centre, Newton Aycliffe (allegation 22).

Witness evidence:

3.3. There appears to be no agreed evidence between the Respondents' witnesses and the Claimant in relation to these allegations.

3.4. The Claimant has now made allegations in her witness statement in connection with allegation 22 that the Second Respondent discriminated against her on grounds of disability. The specific allegation as at page 192 and identified by Employment Judge Buchanan was an allegation of harassment related to age, not disability discrimination or harassment related to disability.

Issues:

Harassment:

3.5. Did the Second Respondent and/or Matthew Paylor engage in unwanted conduct towards the Claimant:

3.5.1. In the Second Respondent allegedly making comments such as "how the older one doesn't get it" and pointing to the Claimant and/or saying "it takes ages to train these older ones" and/or comparing the Claimant to Stephanie Morton? (Allegation 13)

3.5.1.1. Did the Second Respondent make any of the comments alleged?

3.5.2. In the Second Respondent and/or Matthew Paylor allegedly making comments such as "you always get one don't you" and/or "Mary Ann you have two students now not one" and/or saying "you are a failure"? (Allegation 22)

3.5.2.1. Did the Second Respondent or Matthew Paylor make any of the comments alleged?

3.6. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.7. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect?

Direct Discrimination:

3.8. Did the Respondents subject the Claimant to the less favourable treatment alleged?

3.8.1. Did the Second Respondent and/or Matthew Paylor make the alleged comments? If so, did the Respondents subject the Claimant to less favourable treatment?

3.9. If so, did the Respondents treat the Claimant less favourably than it treated or would have treated the comparator(s) relied on?

3.9.1. The comparator relied on by the Claimant appears to be Stephanie (Steph) Morton. Did the Respondents treat the Claimant less favourably than Stephanie Morton?

3.10. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely age?

3.11. If so, what is the Respondents' explanation? Does it prove a non-discriminatory reason for any proven treatment?

3.12. Do the Respondents show that the treatment of the Claimant was a proportionate means of achieving a legitimate aim?

Time / Limitation issues:

3.13. The Respondents submit that the Claimant's complaints in relation to allegations 13 and 22 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

4. Allegation 12

4.1. On 29 December 2016 the Claimant was subjected to direct age discrimination at the Acley Centre, Newton Aycliffe by the Second Respondent (allegation 12).

4.2. This allegation is advanced as direct age discrimination only, not harassment.

Witness evidence:

4.3. There appears to be no agreed evidence between the Respondents' witnesses and the Claimant in relation to this allegation.

4.4. The Second Respondent submits that Stephanie Morton (the Claimant's stated comparator) no longer worked in the CAMHS team on 29 December 2016, having left the team on 09 December 2016.

Issues:

Direct Discrimination:

4.5. Did the Respondents subject the Claimant to the less favourable treatment alleged?

4.5.1. Did the Second Respondent make the alleged comments? If so, did the Respondents subject the Claimant to less favourable treatment?

4.6. If so, did the Respondents treat the Claimant less favourably than it treated or would have treated the comparator(s) relied on?

4.6.1. The comparator relied on by the Claimant appears to be Stephanie (Steph) Morton. Did the Respondents treat the Claimant less favourably than Stephanie Morton?

4.7. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely age?

4.8. If so, what is the Respondents' explanation? Does it prove a non-discriminatory reason for any proven treatment?

4.9. Do the Respondents show that the treatment of the Claimant was a proportionate means of achieving a legitimate aim?

Time / Limitation issues:

4.10. The Respondents submit that the Claimant's complaints in relation to allegation 12 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

## 5. Allegation 23

5.1. On 12 January 2017 the Claimant was subjected to direct age discrimination and/or harassment related to age and/or harassment related to disability and victimisation by Mary Ann Heads at the Acley Centre. The protected act for the purposes of the victimisation claim is a grievance raised by the Claimant on 06 January 2017. The comparator relied on for the direct age discrimination claim is Stephanie Morton. The alleged disability relied on is the hearing impairment.

Witness evidence:

5.2. It is agreed between the Claimant and the Second Respondent that a probationary review meeting took place between them on 12 January 2017. Beyond agreeing the purpose and date of the meeting there appears to be no agreed evidence between the parties as to the discussions that occurred during the meeting.

5.3. The Second Respondent submits that Stephanie Morton (the Claimant's stated comparator) no longer worked in the CAMHS team on 12 January 2017, having left the team on 09 December 2016.

5.4. The Second Respondent submits that prior to the probationary review meeting on 12 January 2017 she was unaware of the formal grievance submitted by the Claimant on 06 January 2017.

Issues: Harassment:

5.5. Did the Second Respondent engage in unwanted conduct towards the Claimant:

5.5.1. Either in the words spoken to the Claimant during the probationary review meeting; and/or

5.5.2. In the manner / tone in which the Second Respondent behaved / spoke to the Claimant during the probationary review meeting?

5.6. Was the conduct related to the Claimant's protected characteristics of age and/or disability?

5.6.1. In relation to disability, determination of this allegation relies on affirmative determination of the Claimant's alleged status as a disabled person within the meaning of section 6 of the Equality Act 2010 set out at section 1 above in this list of issues on the basis of an alleged hearing impairment.

5.7. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5.8. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

Direct Discrimination:

5.9. Did the Respondents subject the Claimant to the less favourable treatment alleged?

5.9.1. Did the Second Respondent make the alleged comments? If so, did the Respondents subject the Claimant to less favourable treatment?

5.10. If so, did the Respondents treat the Claimant less favourably than it treated or would have treated the comparator relied on?

5.11. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely age?

5.12. If so, what is the Respondents' explanation? Do they prove a non-discriminatory reason for any proven treatment?

5.13. Do the Respondents show that the treatment of the Claimant was a proportionate means of achieving a legitimate aim?

Victimisation

5.14. Did the Claimant's grievance dated 06 January 2017 constitute a "protected act" within section 27(2) Equality Act 2010?

5.15. If so, did the Second Respondent subject the Claimant to a detriment in her words and/or actions during the probationary review meeting on 12 January 2017?

Time / Limitation issues:

5.16. The Respondents submit that the Claimant's complaints in relation to allegation 23 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

6. Allegation 15 6.1. On 13 February 2017 the Claimant was subjected to harassment related to race by Michelle Trainer and/or Helen Cowper at Flatts Lane Centre, Middlesbrough. (Allegation 15)

Witness evidence:

6.2. There appears to be no agreed evidence between the Respondents' witness and the Claimant in relation to this allegation.

6.3. The Respondents' witness (Michelle Trainer) states that a discussion took place during the stage 1 grievance hearing in relation to redeployment at the Claimant's request. Ms Trainer indicates that the comment attributed to her ("I wouldn't fit in") arose in the context of the discussion about the Claimant's limited redeployment opportunities in the Trust's wider nursing services (outside LD CAMHS).

Issues:

Harassment:

6.4. Did the First Respondent's grievance officer engage in unwanted conduct towards the Claimant by telling her that she "would not fit in" if she was relocated elsewhere in the Trust?

6.5. Was the conduct related to the Claimant's protected characteristic of race (British Asian Indian)?

6.6. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

6.7. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that

effect the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

Time / Limitation issues:

6.8. The Respondents submit that the Claimant's complaints in relation to allegation 15 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

7. Allegation 21

7.1. On 13 February 2017 the Claimant was subjected to harassment related to disability or direct disability discrimination and/or discrimination arising from disability by Mary Ann Heads at Flatts Lane Centre, Middlesbrough. The alleged disability engaged in this claim is the hearing impairment. (Allegation 21)

7.2. Determination of allegation 21 relies on affirmative determination of the Claimant's alleged status as a disabled person within the meaning of section 6 of the Equality Act 2010 set out at section 1 above in this list of issues.

Witness evidence:

7.3. There appears to be no agreed evidence between the Respondents' witnesses (Mary Ann Heads and Michelle Trainer) and the Claimant in relation to this allegation.

Issues:

Harassment:

7.4. Did the Second Respondent engage in unwanted conduct towards the Claimant:

7.4.1. Either in the words spoken to the Claimant during the stage 1 grievance hearing; and/or

7.4.2. In the manner / tone in which the Second Respondent behaved / spoke during the stage 1 grievance hearing (i.e. by "abusing her power" and "picking on" the Claimant)?

7.5. Was the conduct related to the Claimant's protected characteristic of disability?

7.6. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

7.7. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that



effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

Direct Discrimination:

7.8. Did the Respondents subject the Claimant to the less favourable treatment alleged?

7.8.1. Did the Second Respondent make the alleged comments? If so, did the Respondents subject the Claimant to less favourable treatment?

7.9. If so, did the Respondents treat the Claimant less favourably than it treated or would have treated the comparator relied on?

7.9.1. The comparator relied on by the Claimant has not been identified. The Respondents submit that a hypothetical comparator would be a person in the Claimant's circumstances at a stage 1 grievance hearing who does not satisfy the section 6 test for disability within the Equality Act 2010.

7.10. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely disability?

7.11. If so, what is the Respondents' explanation? Do they prove a non-discriminatory reason for any proven treatment?

Discrimination arising from disability

7.12. Did the Respondents treat the Claimant unfavourably because of something arising in consequence of her alleged disabilities:

7.12.1. Either in the words spoken to the Claimant during the stage 1 grievance hearing; and/or

7.12.2. In the manner / tone in which the Second Respondent behaved / spoke during the stage 1 grievance hearing (i.e. by "abusing her power" and "picking on" the Claimant)?

7.13. Was the Respondents' conduct justified as a proportionate means of achieving a legitimate aim?

Time / Limitation issues:

7.14. The Respondents submit that the Claimant's complaints in relation to allegation 21 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

8. Allegation 24

8.1. On 10 March 2017 and 16 March 2017 the Claimant was subjected to victimisation. The Claimant does not specifically plead victimisation but she

does plead that she is being treated "worse than my colleagues because I have complained."

Witness evidence:

8.2. There appears to be no agreed evidence between the Respondents' witnesses (Mary Ann Heads and Kathryn Stephenson) and the Claimant in relation to this allegation.

Issues:

Victimisation

8.3. Did the Claimant's grievance dated 06 January 2017 constitute a "protected act" within section 27(2) Equality Act 2010?

8.4. If so did the Second Respondent inform Kathryn Stephenson of the Claimant's grievance as alleged?

8.5. If so, did Kathryn Stephenson then share that information with colleagues with the result that the treatment complained of arose (i.e. being ignored by the SPA team, being labelled a trouble maker and not being taken to appointments)?

8.6. If so, did the Respondents subject the Claimant to a detriment by their alleged conduct identified at sections 8.1 and 8.2 above in this list of issues?

Time / Limitation issues:

8.7. The Respondents submit that the Claimant's complaints in relation to allegation 24 were presented outside of the time limits set out in section 123(1)(a) and (b) of the Equality Act 2010 and that it would not be just and equitable for time to be extended.

9. Allegation 17

9.1. On 02 May 2017 and 14 August 2017 the Claimant was subjected to harassment related to race at Mulberry Centre, Darlington by Gillian Caselaw.

Witness evidence:

9.2. There appears to be no agreed evidence between the Respondents' witness (Gillian Caselaw) and the Claimant in relation to this allegation.

Issues:

Harassment:

9.3. Did the Respondents engage in unwanted conduct towards the Claimant by allegedly forcing the Claimant to move desks on 02 May 2017 and 14 August 2017?

9.4. Was the conduct related to the Claimant's protected characteristic of race?

9.5. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

9.6. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

#### 10. Allegation 18

10.1. On 19 June 2017 the Claimant was subjected to harassment related to race by Gillian Caselaw at Mulberry Centre, Darlington.

Witness evidence:

10.2. The Respondents' witness (Gillian Caselaw) and the Claimant agree that a conversation took place between them on this date in relation to the Second Respondent's arrival for work at the Mulberry Centre.

10.3. However, there is no agreement between the witnesses as to the comments made during the conversation.

Issues:

Harassment:

10.4. Did the First Respondent's employee (Gillian Caselaw) engage in unwanted conduct towards the Claimant:

10.4.1. Either in comments made to her during their conversation(s) on 19 June 2017 regarding the Second Respondent's scheduled SPA rota day by saying "Maryann is here to work and will be staying, she has a real job you don't"; and/or

10.4.2. By sending the Claimant home?

10.5. Was the conduct related to the Claimant's protected characteristic of race?

10.6. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

10.7. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

## 11. Allegation 10

11.1. On 05 September 2017 the Claimant was subjected to direct disability discrimination and/or discrimination arising from disability and/or a failure to make reasonable adjustments at Flatts Lane Centre, Middlesbrough by Thomas Vickers and Carol Redmond. The PCP engaged is said to be the Respondent's grievance procedure. The adjustments allegedly not provided were a recording of the meeting and/or a written record of the meeting. The adjustment claim is also advanced as a breach of section 20(5) of the 2010 Act and the auxiliary aid not provided is said to be audio equipment on which to have recorded the meeting. The alleged disability engaged in this claim is the dyslexia.

11.2. Determination of this allegation 10 relies on affirmative determination of the Claimant's alleged status as a disabled person within the meaning of section 6 of the Equality Act 2010 set out at section 1 above in this list of issues.

Witness evidence:

11.3. The Respondents' witnesses (Thomas Vickers and Carol Redmond) and the Claimant agree that the meeting was not recorded as the Claimant had been allocated an Employee Support Officer (Tracy Marston) to take notes for her as a reasonable adjustment.

11.4. However, the Respondents' witnesses state that no objection was made by the Claimant to the Employee Support Officer taking notes, whilst the Claimant states that she refused to accept this.

11.5. Another of the Respondent's witnesses (Cheryl Ing) states that it was explained to the Claimant before the meeting began that Tracy Marston would take notes for her to which the Claimant made no objection.

Issues:

Direct Discrimination:

11.6. Did the First Respondent subject the Claimant to less favourable treatment by not recording the stage 2 grievance hearing?

11.7. If so, did the First Respondent treat the Claimant less favourably than it treated or would have treated the comparator relied on?

11.7.1. The comparator relied on by the Claimant has not been identified. The Respondents submit that a hypothetical comparator would be a person without dyslexia who had requested a note-taker or the use of audio recording equipment and been provided with a note-taker.

11.8. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely disability (dyslexia)?

11.9. If so, what is the Respondents' explanation? Do they prove a non-discriminatory reason for any proven treatment?

Discrimination arising from disability

11.10. Did the First Respondent treat the Claimant unfavourably because of something arising in consequence of her alleged disability (dyslexia) by not recording the stage 2 grievance hearing?

11.11. Was the First Respondent's conduct justified as a proportionate means of achieving a legitimate aim?

Failure to make reasonable adjustments

11.12. Did the First Respondent's application of its grievance procedure to the Claimant's stage 2 grievance hearing amount to a provision, criteria or practice?

11.13. If so, did the application of the provision, criteria or practice put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

11.14. Did the First Respondent take such steps as were reasonable to avoid the disadvantage?

11.15. Did the First Respondent fail to make the following adjustments in respect of the PCP:

11.15.1. Recording the stage 2 grievance hearing; and/or

11.15.2. Providing audio recording equipment to the Claimant?

11.16. If so, would making those adjustments have avoided the Claimant being placed at a substantial disadvantage?

12. Allegation 11

12.1. On 05 September 2017 the Claimant was subjected to direct disability discrimination and/or discrimination arising from disability and/or a failure to make reasonable adjustments and/or harassment related to disability at Flatts Lane Centre, Middlesbrough by Cheryl Ing. The alleged disability engaged in this claim is dyslexia.

12.2. Determination of this allegation relies on affirmative determination of the Claimant's alleged status as a disabled person within the meaning of section 6 of the Equality Act 2010 set out at section 1 above in this list of issues.

Witness evidence:

12.3. The Respondent's witness (Cheryl Ing) and the Claimant agree that their meeting involved discussion of and questioning about the Claimant's dyslexia.

12.4. The Claimant states that the questioning was humiliating but Cheryl Ing states that it was done with the Claimant's agreement, participation and understanding that it was part of the Employee Support Officer role.

Issues:

Direct Discrimination:

12.5. Did the First Respondent subject the Claimant to less favourable treatment by Cheryl Ing questioning her about her dyslexia in the manner described by the Claimant?

12.6. If so, did the First Respondent treat the Claimant less favourably than it treated or would have treated the comparator relied on?

12.6.1. The comparator relied on by the Claimant has not been identified. The Respondents submit that a hypothetical comparator would be a person without dyslexia who was questioned about her health reasons for requesting a note-taker or the use of audio recording equipment for use in a grievance hearing.

12.7. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic relied on, namely disability (dyslexia)?

12.8. If so, what is the Respondents' explanation? Do they prove a non-discriminatory reason for any proven treatment?

Discrimination arising from disability

12.9. Did the First Respondent treat the Claimant unfavourably because of something arising in consequence of her alleged disability (dyslexia) by Cheryl Ing questioning her about her dyslexia in the manner described by the Claimant?

12.10. Was the First Respondent's conduct justified as a proportionate means of achieving a legitimate aim?

Failure to make reasonable adjustments

12.11. Did the questioning about the Claimant's dyslexia amount to a provision, criteria or practice?

12.12. If so, did the application of the provision, criteria or practice put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

12.13. Did the First Respondent take such steps as were reasonable to avoid the disadvantage?

12.14. Did the First Respondent fail to make necessary adjustments in respect of the PCP (the Claimant has not identified any reasonable adjustments that she claims ought to have been made)?

12.15. If so, would making those adjustments have avoided the Claimant being placed at a substantial disadvantage?

Harassment:

12.16. Did the First Respondent's employee (Cheryl Ing) engage in unwanted conduct towards the Claimant: by questioning her about her dyslexia in the manner described by the Claimant?

12.17. Was the conduct related to the Claimant's protected characteristic of disability (dyslexia)?

12.18. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

12.19. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

13. Allegation 16

13.1. On 19 September 2017 the Claimant was subjected to race related harassment by Gerry Doyle at Mulberry Centre, Darlington.

Issues:

Harassment

13.2. Did the First Respondent's employee (Gerry Doyle) engage in unwanted conduct towards the Claimant: by making the comment described by the Claimant?

13.3. Was the conduct related to the Claimant's protected characteristic of race (British Asian Indian)?

13.4. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

13.5. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

14. Allegation 19

14.1. On 19 September 2017 at Mulberry Centre, Darlington, the Claimant was subjected to harassment related to race by Gillian Caselaw.

Issues:

Harassment:

14.2. Did the First Respondent's employee (Gillian Caselaw) engage in unwanted conduct towards the Claimant: by questioning her about her whereabouts during lunch and instructing her to use the First Respondent's sign in / out whereabouts book?

14.3. Was the conduct related to the Claimant's protected characteristic of race (British Asian Indian)?

14.4. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

14.5. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.

15. Allegation 20

15.1. On 19 September 2017 at Mulberry Centre, Darlington, the Claimant was subjected to harassment related to race by Gillian Caselaw.

Issues:

Harassment:

15.2. Did the First Respondent's employee (Gillian Caselaw) engage in unwanted conduct towards the Claimant: by creating a scenario in which the Claimant was requested to accompany another clinician (Dr Priya Hodgins) to a home visit?

15.3. Was the conduct related to the Claimant's protected characteristic of race (British Asian Indian)?

15.4. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

15.5. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether, if it did, it is reasonable for the conduct to have that effect.



## **Findings of fact**

7. Having heard all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings the Tribunal made from which it drew its conclusions:

7.1. The claimant was employed by the first respondent as a Band 5 Nurse in its Child and Adolescent Mental Health Service (CAMHS) from 31 October 2016.

7.2. The second respondent is employed by the first respondent and was the Clinical Nurse Specialist within the Learning Disability Child and Adolescent Mental Health Service (LD CAMHS) at the Acley Centre in Newton Aycliffe, and was the claimant's line manager, during the time the claimant worked at that centre.

7.3. The first incident within the allegations made by the claimant was said to have taken place on 10 November 2016. In her written witness statement the claimant said this incident occurred between 10 November 2016 and 18 November 2016. The claimant said that the second respondent had said that she needed the claimant's date of birth in order to access a hard drive. The second respondent agreed that she needed the claimant's date of birth for an administrative task. The claimant said that Mary Ann Heads had shouted over to the claimant "what's your date of birth?". The claimant said she walked over to where the second respondent was sitting and whispered her date of birth into the second respondent's ear. The claimant alleged that the second respondent then said "thought you were younger, you're as old as they come" and started to laugh at the claimant. Mary Ann Heads said that she simply asked the question in her normal tone at normal volume. She agreed that the claimant walked round the table and whispered her date of birth into her ear. She stated that she was surprised at the claimant's reaction but took it as a clear message that she was not comfortable about broadcasting her age. The second respondent denies mocking claimant in respect of her age and laughing at her. Matthew Paylor was not in attendance that day and said that he had not heard any such remark at any time.

7.4. The claimant raised an informal grievance with Mark Porter, Acting Team Manager, with regard to a number of issues. The claimant provided an incident log which she said was submitted to Mark Porter. The first incident referred to in the log is one of 16 November 2016 with regard to the claimant's computer being disconnected together with other incidents with regard to what was referred to as 'juvenile behaviour' on the part of other members of staff. This is not one of the allegations of discrimination before the Tribunal.

7.5. There were two incidents on 25 November 2016 which are allegations relied on by the claimant. The first of these was an allegation that the second respondent said to the claimant "it takes ages to treat these older ones....Look at you Steph you just get on with it and still a student". It is also alleged that the

second respondent then said “you always get one don’t you” and that this was repeated throughout a two-hour period.

7.6. The second incident that the claimant alleges took place on 25 November 2016 is that the second respondent said “how the older one doesn’t get it”. There is once again reference to the second respondent repeatedly saying to the claimant “You always get one don’t you” throughout a 2- 2 ½ hour duration. It is then alleged that the second respondent said to the claimant “You are a failure” it is also alleged that Matthew Paylor kept on calling the claimant a “student nurse” and said “Mary Ann you have two students now not one”. It had been agreed that these were allegations of direct age discrimination and harassment relating to age. In her witness statement to the Tribunal the claimant also referred to this incident as being a big joke about her dyslexia disability.

7.7. On 5 December 2016 Mark Porter informed the second respondent that the claimant had told him that the second respondent had upset the claimant with regard to her on-line dual diagnosis training. There was a text exchange that evening. At 19:20 the second respondent sent a text message to the claimant which stated:

“Hi Hameeda Mark has seen me today and I can only apologise for causing upset to you. I am really sorry and hope this does not effect our working relationship.”

The claimant replied:

“Thank you Mary Ann. I was upset on that Friday and did not have the best of weekend’s. I made Mark aware because tewv is the only trust I only wanted to work for. I will require mentorship until I find my feet. I am willing to learn if you are willing to teach me.”

The second respondent replied:

“I have no issues re teaching you and do want to support you in your role and do not want to feel I am bullying you at all. Take care and see you tomorrow.”

7.8. On 6 December 2016 the second respondent met with the claimant and said that she was sorry that the claimant had been upset about anything but that had not been her intention.

7.9. On 8 December 2016 a Probationary period assessment form was completed by the claimant and the second respondent. In that form it is noted that the claimant had a

“Slight hearing problem unable to complete manual blood pressures due to this.”

The adjustment implemented was noted to be

“Use a quieter room in the building as necessary.”

7.10. On 16 December 2016 Mark Porter, Acting Team Manager at South Durham CAMHS provided the results of an informal internal investigation into concerns raised by the claimant. It records that Mark Porter had met with eight individuals named in direct relation to the claimant’s concerns and provided outcomes in respect of seven issues. In the outcome it was stated:

“At this stage I am satisfied that all the issues have been resolved and where individuals have felt it appropriate they have offered apologies to Hameeda. I have followed this up in writing to Hameeda.

I have met with Hameeda following meeting with all of the staff and she has reported significant improvements in relation to this situation. I am satisfied that there are no outstanding actions in relation to this incident and that all issues have been resolved.”

7.11. On 29 December 2016 the claimant had a meeting with the second respondent. This was a preceptorship meeting. The claimant alleged that the second respondent said “why are you here... Why don’t you go back to children’s nursing... You don’t get Paris... You keep asking too many questions... You should know what you are doing by now maybe it’s your age”..

7.12. On 6 January 2017 the claimant raised a formal grievance. In the grievance form it was indicated that issues raised previously had been informally addressed and were initially believed to have been resolved however further incidents had occurred. The claimant attached a log of incidents to her grievance. Receipt of the claimant’s grievance was acknowledged on 6 January 2017. The claimant was asked to confirm that the staff about whom she wished to raise concerns were six named individuals and it was stated that the individuals named would be provided with details of the claimant’s grievance pertaining to them to enable them to respond to the specific concerns raised.

7.13. On 12 January 2017 the claimant and Mary Ann Heads had a 10 week probation meeting. The date of this meeting had been put back because of holidays. The second respondent was not aware that the claimant had submitted a formal grievance. She was aware that the claimant had concerns and that there had been an informal grievance outcome. They started working through the probationary period assessment form and when they reached the section headed “Values and Behaviours” it is indicated on the form, in response to the question “Does the employee live the Trust’s values and behaviours?” “Yes – towards families” where it is asked “what improvements are required, if any”, it is stated “communication with line manager”. At that stage the claimant informed the second respondent that she had put a grievance in about her. The second respondent said that they needed to end the meeting there and said that the claimant made no objection. The claimant alleges that the second respondent made remarks about her age “you look young Hameeda but you still don’t get it do you” and makes comments about the claimant’s hearing “You can’t even do manual blood pressures, can you? You’re deaf”. The claimant said that the second respondent then indicated that she knew about the

claimant's grievance that had been submitted on 6 January 2017 and waved the documentation in her face and became aggressive and angry. The claimant said that her fists were clenched and she was threatening towards the claimant.

7.14. On 16 January 2017 the claimant was invited to a stage I grievance hearing which was to be chaired by Michelle Trainer who was to be accompanied by Helen Cowper, HR Manager. It was indicated that the following individuals would be called to the hearing as respondents to the grievance:

Alex Johnson  
Matthew Paylor  
Mary Ann Heads  
Sian Myers

The claimant was informed that the hearing would not be taped and the HR Manager would only be taking brief management notes and that the claimant would therefore need to make her own notes of the discussions should she wish to do so.

7.15. On 16 January 2017 Mark Porter wrote to the claimant indicating the claimant had agreed that she was temporarily relocated to Middlesbrough CAMHS while there was an ongoing investigation.

7.14. On 13 February 2017 the claimant attended a stage 1 grievance hearing. This was before Michelle Trainer, Team Manager. In that hearing the claimant set out her complaints. Witnesses attended and were questioned by the claimant. Michelle Trainer said that the claimant was quite calm, did not ask for the hearing to be recorded and the interviews with the other three witnesses were straightforward with no particular tension or increased emotions. However, when Mary Ann Heads was questioned by the claimant, the claimant, didn't lose her temper but, on several occasions she became angry and confrontational. At one point the claimant stated that the second respondent was becoming aggressive. It did not appear to Michelle Trainer that Mary Ann Heads was being aggressive although she was anxious and nervous. The second respondent repeatedly said that she was very sorry that she had ever upset the claimant and Michelle Trainer said she found the second respondent to be compassionate, empathetic and reflective. The claimant called the second respondent a liar on a number of occasions. The claimant alleged that the second respondent referred to her and said to the panel "She can't hear anything can you". The claimant also said that the second respondent accused the claimant of refusing to carry out work duties.

7.15. Michelle Trainer said that she stopped the questions at one point to explain to the claimant that she seemed to be getting increasingly cross and angry with the second respondent but the claimant strongly objected. Michelle Trainer said that it struck her that the claimant was seeing things from a very different perspective from how she was seeing the same events.

7.16. On 21 February 2017 the claimant was relocated to the Mulberry Centre, Darlington. This was a temporary relocation to enable investigating managers to determine an appropriate outcome in relation to the concerns the claimant

had raised during her period of working in the South Durham CAHMS service. Gillian Caselaw was to be the claimant's Team Manager. The claimant's probationary period would be extended by the number of weeks as she was not working within a substantive post. Her period of preceptorship was also suspended.

7.17. The claimant was on annual leave from 24 February 2017 to 3 March 2017. The claimant said that on her return she was being ignored by the Single Point of Access(SOP) team in which she was working at the Mulberry Centre. She said that on 10 March 2017 Kathryn Stephenson, Band 6 Clinician, informed her that the second respondent had informed Kathryn Stephenson that the claimant had raised a formal grievance against her and three of her colleagues. The claimant said in her allegation that she was being labelled a troublemaker for raising a formal grievance and was being treated worse than her colleagues because she had complained.

7.18. Kathryn Stephenson said that she was unaware of these accusations and that the first she knew of them was when she was contacted to be a witness before this Tribunal. She said she had never had any conversations with the second respondent or anyone else and never discussed any of the allegations with her colleagues in the SOP team.

7.19. The claimant was on annual leave from 14 April 2017 to 1 May 2017. On 2 May 2017 the claimant said she arrived back at work and found another clinician sitting at her computer desk and he informed her that Gillian Caselaw had allocated the claimant's desktop computer to him while she was on annual leave. The claimant said that Gillian Caselaw then told her to find another desktop computer. Gillian Caselaw's evidence to the Tribunal was that that within the Mulberry Centre the vast majority of staff "hot desk" and nobody has a particular desk allocated to them. She had specifically explained this arrangement to the claimant when she joined them at the Mulberry Centre. Gillian Caselaw was unaware of the allegation in respect of 2 May 2017 and had no recollection of any discussion with the claimant about her moving desks.

7.20. The claimant included within her allegation that there were two incidents of race discrimination and harassment in respect of the desk top computers. These were the allegation in respect of 2 May 2017 and also 14 May 2017 in which the claimant alleged that she returned to work after four weeks sick leave and found that a clinician new to the team was sitting at her desktop computer and Gillian Caselaw told her to move. Gillian Caselaw said that that there had been a new recruit who had no software systems set up for her and she didn't have a laptop. Gillian Caselaw told the new clinician to pick somewhere to sit. She thought no more of it until the claimant returned from sick leave in mid-August 2017. She explained to the claimant that the clinician was new to the Trust and already working on that desk. She asked the claimant to use another desk for the day. The claimant was very angry about the conversation and said that it was her desk and nobody should have been using it while she was on sick leave. Gillian Caselaw explained to the claimant that it wasn't her desk and that nobody in the room had a desk of their own. There was another desktop computer in the same room just a metre or so away. Gillian Caselaw said that

the claimant was very rigid in that conversation and clearly thought the desk and computer belong to her and that nobody else should be allowed to use them. The "hot desking" policy was Trust wide, it had been introduced a few years before. The claimant said that she was treated differently from the rest colleagues. This had never happened before because of the "hot desking" policy. Gillian Caselaw found it deeply offensive that the claimant had labelled this as race discrimination and harassment. The claimant and the new clinician were upset and the same comments had been made to both of them.

7.21. The reconvened stage I grievance hearing took place on 5 May 2017 and on 17 May 2017 Michelle Trainer wrote to the claimant setting out the outcome. With the exception of a "silly prank" by Matthew Paylor, in relation to water being squirted at the claimant, Michelle Trainer did not see any of the complaints in the same way as the claimant and had not found any evidence that the claimant was being bullied. Matthew Paylor was instructed to get rid of his plastic water lighter and requested that he reflect on his behaviour. Michelle Trainer said that this was ultimately a case of juvenile behaviour. One of the outcomes from the grievance was that the claimant wanted to be redeployed to a different team.

7.22. On 26 May 2017 the claimant appealed against the stage I grievance decision.

7.23. On 19 June 2017 Mary Ann Heads visited the Mulberry Centre. Prior to this she had been on holiday. She had been informed that the claimant's grievance had finished. Mary Ann Heads attendance had been arranged by the Single Point of access (SPA) team and when she arrived she was met by Gillian Caselaw. She was told that the claimant had seen that Mary Ann Heads was at the Mulberry Centre and was really upset. Gillian Caselaw told Mary Ann Heads that the claimant had appealed against the grievance outcome. The claimant alleged that Gillian Caselaw had said to her that "Mary Ann is here to work and will be staying, she has a real job you don't." and that the claimant was sent home. Gillian Caselaw said that the claimant was very angry and upset. Nobody had told Gillian Caselaw that Mary Ann Heads was coming that day. She knew that the claimant's grievance had recently been completed and she was waiting to receive confirmation that the claimant would be returning to the Acley Centre. The claimant said that the second respondent should be sent home because the claimant could not be in the same building as her. It was explained that they would not have to work with each other and did not need to be in the same room and that they could work at opposite ends of the building. Gillian Caselaw said that she did not say that Mary Ann Heads would be staying because she had a real job and the claimant did not. She had said that they both had a job to do and needed to be professional about it. The claimant said that she could not stay in the building if the second respondent was going to be there and she said that she would have to leave. The claimant was not forced to leave and it was her decision because she refused to be in the same building as the second respondent.

7.24. On 8 June 2017 the claimant sent an email to members of the Board of Directors of the respondent Trust raising concerns in respect of the grievance procedure.

7.25. On 9 June 2017 David Levy sent an email to the claimant thanking her for bringing her concerns to their attention and indicating that it was understood that the claimant had a meeting arranged for 22 June 2017 to discuss her concerns.

7.26. On 10 July 2017 the claimant sent an email to Lesley Hemingway, HR Officer indicating that her stage 2 hearing was arranged for 14 July 2017 and asking if recording equipment could be provided. The claimant was informed that hearings were not recorded and that the panel would make summary notes and the claimant and/or her companion could make notes to refer to. The claimant then indicated in an email that she would like reasonable adjustments as she had dyslexia and, under the Equality Act 2010, she would like a reasonable adjustment of recording equipment being provided at the stage 2 hearing.

7.27. There was an exchange of email correspondence between the claimant and Gillian Rafferty with regard to recording of the stage 2 grievance hearing. On 12 July 2017 Gillian Rafferty indicated to the claimant that the claimant's request for the hearing to be recorded could be accommodated as a reasonable adjustment but they would not be able to type a transcript from the recording as the recording devices they used required a particular software. There were two computers in the HR Department upon which the claimant could listen to the recordings. The claimant did not respond to this proposal.

7.28. On 5 September 2017 the stage 2 grievance hearing took place. Upon arrival at the Flatts Lane Centre where the hearing was to take place the claimant met with two Employee Support Officers, Cheryl Ing and Tracey Marsden. A room had been set aside for them to discuss matters. Cheryl Ing said that she asked the claimant if she was happy to discuss her dyslexia and consider any possible adjustments that could be made and the claimant had agreed. Cheryl Ing said that she asked the claimant some basic questions about her diagnosis such as whether she had ever received a formal diagnosis or had any adjustments put in place during school or during her nurse training. The claimant explained that she hadn't had any formal diagnosis and had never needed any adjustments during school, university or now in work

7.29. The claimant alleged that Cheryl Ing questioned her about her dyslexia asking her "who said I had dyslexia? How long have I had it? Why did I want the stage 2 recorded?" The claimant said that she was made to feel inadequate and uncomfortable by the questioning and referred to being targeted on the day by Cheryl Ing. Cheryl Ing said that the purpose of her job is to help employees and questioning her about the details of her dyslexia was a normal conversation in her role. She said that the claimant's allegations made it sound like an interrogation but it was not. She said that the claimant spoke openly and freely and was not upset or angry. The claimant was informed that Tracey Marston would take notes for the claimant at the meeting and the claimant agreed that would be helpful. If the claimant had indicated that she did not want Tracey Marston to take notes for her and would only go ahead with the meeting if the

hearing was recorded then Cheryl Ing would have gone to the determining manager and HR on her behalf in order to say that.

7.30. The stage 2 hearing was to be before Carol Redmond, Head of Service accompanied by Thomas Vickers, Human Resources Manager. The claimant said that the meeting did not go ahead as she asked for it to be recorded.

7.31. The notes of the meeting show that Carol Redmond commenced the meeting by asking the claimant what outcome she was looking for. The claimant indicated that she wanted relocation and the meeting was then ended. The notes prepared by Tracey Marston, on behalf of the claimant, show that there was some discussion with regard to relocation and the meeting ended on the basis that the respondent was looking for suitable alternative employment and that there may have needed to be a further meeting to discuss the way forward.

7.32. On 7 September 2017 the claimant presented a claim to the Employment Tribunal. She indicated claims of age and disability discrimination.

7.33. On 11 September 2017 Carol Redmond wrote to the claimant in respect of the stage 2 grievance appeal hearing. In that letter Carol Redmond referred to the claimant requesting a move to another team and that the claimant had said that a move would resolve her issues and conclude the appeals process. It was stated that if a suitable alternative post could not be found they would need to meet again to discuss other options.

7.34. On or around 19 September 2017 the claimant said that, at around 12:30pm, a psychiatrist, Dr Gerry Doyle had made a remark to the whole team about a young man he'd seen in his clinic. The allegation was that Dr Doyle stated, "I've just seen this boy; he should join ISIS that'll sort him out" and went on to comment on how hyper the boy was because of his ADHD.

7.35. The claimant alleged that this was an offensive remark. She was the only Asian member of staff and there had been several recent terrorist bomb attacks in Manchester and London. She said that it was very insensitive and she was very disturbed by the comment. The claimant had said, in her list of allegations, that this occurred on 19 September 2017. In her witness statement she said that she could not remember the exact date and that it occurred sometime between 7 to 19 September 2017.

7.36. Matthew Evans, Child and Adolescent Psychotherapist, said he was not at work on 19 September 2017 but he did remember Dr Doyle making such a remark and that it could well have been a different day in September 2017. He knew it was on a Monday. He agreed that Dr Doyle had made a comment like the one referred to by the claimant. He said his impression at the time was the comment was a badly judged attempt at dark humour and that the team collectively pulled Dr Doyle up on the remark. It was an inappropriate comment to make about a service user. It was a throwaway comment in bad taste about a patient and later that afternoon Dr Doyle had spoken to Matthew Evans and indicated that he regretted making the comment. He said that it was not a



comment about the claimant's race and, in fact, Dr Doyle did not even mention the race of the patient to whom he was referring.

7.37. On 19 September 2017 Gillian Caselaw received a request from Dr Priya Hodgins for the claimant to attend an urgent home visit with her as a learning opportunity. The claimant could not be located in the building and she had not signed out. Gillian Caselaw called the claimant on her mobile phone but there was no reply. She sent an email to the claimant asking her where she was at 1.30 as Dr Hodgins was looking for the claimant to help at the visit and the claimant has not signed out and there was nothing in her diary. The claimant replied that there was nothing in her diary with Dr Hodgins and she was not aware of any visit with her. The claimant met with Gillian Caselaw and indicated that she was not happy about the incident. Gillian Caselaw said that the claimant had said things such as that she was trying to set the claimant up and that Dr Hodgins was trying to catch her out.

7.38. Gillian Caselaw met with Dr Hodgins to discuss the claimant's concerns and sent an email to the claimant on 21 September 2017 in which she stated that she had met with Dr Hodgins and the case had been a home visit for medication which the family had rung up to request urgently. It happened that the family then rang to cancel the home visit. Dr Hodgins had been looking for the claimant and had made other arrangements prior to the visit being cancelled. The claimant sent an email to an administrative assistant enquiring about the appointment with Dr Hodgins at 3pm on 19 September 2017. A reply was sent indicating that it was someone else who was due to accompany Dr Hodgins on that day. Gillian Caselaw said that there had been a scheduled appointment at the Mulberry Centre at 3pm. This was not the appointment Dr Hodgins was looking for the claimant to accompany her on at a home visit. They were two different appointments.

7.39. On 5 October 2017 Gillian Caselaw met with the claimant and Bernadette Wallace, Teesside University Nursing Course Lecturer. At that meeting the claimant mentioned her dyslexia and a hearing impairment. Gillian Caselaw said that Bernadette Wallace was surprised and asked the claimant why she had not disclosed it during her three-year training course at university and the claimant told Bernadette Wallace that it was not a problem then and she did not need anything. Gillian Caselaw told the claimant that if it was a problem they could arrange for a dyslexia assessment. The claimant said that she did want an assessment and it was then arranged.

7.40. The respondent's Human Resources team were unable to identify any suitable redeployment options for the claimant and she was invited to attend a reconvened stage 2 meeting. The claimant sent an email to Carol Redmond on 6 October 2017 providing documentation referring to bullying, harassment, victimisation and discrimination. The claimant said that she had been dissuaded by employee support from submitting that documentation on 5 September 2017.

7.41. On 11 October 2017 Carol Redmond wrote to the claimant indicating that the claimant's letter appeared to indicate that she did not wish to participate in the meeting. It was stated that it was the claimant's right not to attend should she prefer not to do so and that the Trust would respect that decision. However, it was indicated that it would be in the best interests of all concerned from the claimant to attend. The reconvened stage 2 meeting went ahead in the claimant's absence. In attendance at that meeting were Carol Redmond, Thomas Vickers and Helen Cowper. Mary Ann heads was called as a witness and, following the meeting, Thomas Vickers interviewed for further members of staff whom the claimant had indicated she wanted to call as witnesses.

7.42. On 27 November 2017 Carol Redmond wrote to the claimant providing the appeal hearing outcome. This letter set out the investigations and interviews that had been carried out. The outcome was to uphold the outcome of the stage 1 hearing. It was indicated that the Trust had been unable to identify any suitable alternative employment. It was indicated that the claimant was expected to return to her substantive post at the Acley Centre. If the claimant refused to return to that post the other option would be to register with the Trust's redeployment process on a formal basis and, if no suitable posts were found within a four week period, then an end of employment meeting would take place at which the claimant's employment could be terminated. It was indicated in the letter that Carol Redmond had seen no evidence that Mary Ann Heads had bullied the claimant and it appeared that the claimant's grievances arose from a personality clash between herself and Mary Ann Heads and Carl Redmond encouraged the claimant to take up the offer of mediation.

7.43. An Educational Psychologist *more?* provided an assessment to Gillian Caselaw dated 22 December 2017. This concluded that the claimant presented a dyslexia profile.

7.44. Following a management meeting on 6 July 2018 Donna Sweet, Head of Service wrote to the claimant indicating that the meeting had proceeded in the claimant absence. It was indicated that, in the light of the claimant's refusal to return to her substantive post or to engage in the Trust's redeployment process it was not appropriate to continue to employ the claimant in circumstances where she refused to return to work or consider alternative employment. There was also reference to a statement the claimant had made to an Employment Tribunal Judge at a Preliminary Hearing and it was concluded that the claimant only intended to remain in employment until such time that she could resign and claim unfair dismissal. The claimant was dismissed and provided with one week's notice pay.

### **The Law**

#### **8. Disability**

Section 6 of the Equality Act 2010 states:

- (1) A person (P) has a disability if—
  - (a) P has a physical or mental impairment, and
  - (b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Schedule 1 provides :

Long-term effects

- 2 (1) The effect of an impairment is long-term if—
  - (a) It has lasted for at least 12 months,
  - (b) It is likely to last for at least 12 months, or
  - (c) it is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

Section 212 provides that substantial" means more than minor or trivial.

## 9. **Direct discrimination**

Section 13 of the Equality Act 2010 states:

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
- (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
- (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.
- (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

## 10. **Discrimination arising from Disability**

Section 15 of the Equality Act 2010 states:

Section 15

- “(1) A person (A) discriminates against a disabled person (B) if –
- (a) A treats B unfavourably because of something arises in consequences of B’s disability, and
  - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Sub-Section (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
11. Under section 15 there is no requirement for a claimant to identify a comparator. The question is whether there has been unfavourable treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams UKEAT/0415/14 at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.
- 12 The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the matter complained of was motivated by a consequence of the Claimant’s disability; see IPC Media Ltd v Millar [2013] IRLR 707: was it because of such a consequence?
- 13 The statute provides that there will be no discrimination where a respondent shows the treatment in question is a proportionate means of achieving a legitimate aim or that it did not know or could not reasonably have known the Claimant had that disability.
- 14 **Duty to Make Reasonable Adjustments**

Section 20 of the Equality Act 2010 states:

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

(2) The duty comprises the following three requirements,

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where the disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid”.

15 Under sections 20 and 21, discrimination by reason of a failure to comply with an obligation to make reasonable adjustments, the approach to be adopted by the Tribunal was as set out in *Environment Agency v Rowan* [2008] ICR 218, where it was indicated that an Employment Tribunal must identify the provision, criterion or practice (“PCP”) applied by or on behalf of the respondent and also the non-disabled comparator/s where appropriate, and must then go on to identify the nature and extent of the substantial disadvantage suffered by the claimant. Only then would it be in a position to know if any proposed adjustment would be reasonable.

## 16 **Burden of Proof**

Section 136 of the Equality Act 2010 states:

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

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

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

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

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

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

(a) An Employment Tribunal.”

17 Guidance has been given to Tribunals in a number of cases. In *Igen v Wong* [2005] IRLR 258 ( a sex discrimination case decided under the old law but which will apply to the Equality Act) and approved again in *Madarassy v Normura International plc* [2007] EWCA 33.

18 To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a

prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of Madarassy the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

- 19 In Project Management Institute v Latif (2007) IRLR 579 The EAT gave guidance as to how Tribunal's should approach the burden of proof in failure to make reasonable adjustments claims. The burden of proof only shifts once the claimant has established not only that the duty to make reasonable adjustments has arisen, but also that there are facts from which it could reasonably be inferred, in the absence of an explanation, that it has been breached. It was noted that the respondent is in the best position to say whether any apparently reasonable amendment is in fact reasonable given its own particular circumstances. Therefore the burden is reversed only once potential reasonable adjustment has been identified. It not be in every case that the claimant would have to provide the detailed adjustment that would have to be made before the burden shifted, but "it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not". The proposed adjustment might well not be identified until after the alleged failure to implement it, and in exceptional cases, not even until the Tribunal hearing.

## 20. Harassment

Section 26 of the Equality Act provides

- (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.

## 21. **Victimisation**

Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

- (a) Bringing proceedings under this Act;
- (b) Giving evidence or information in connection with proceedings under this Act;
- (c) Doing any other thing for the purposes of or in connection with this Act;
- (d) Making an allegation (whether or not express) that A or another person has contravened this Act.

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

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

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

## 22. **Time limits**

Section 123 of the Equality Act 2010 states:

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

...

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

- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
  - (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

23. The Court of Appeal made clear in *Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686*, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an "ongoing situation or continuing state of affairs" as oppose to "a succession of unconnected or isolated specific acts". It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.
24. In the case of *Humphries v Chevler Packaging Ltd EAT 0224/06* the Employment Appeal Tribunal confirmed that a failure to act is an omission and that time begins to run when an employer decides not to make reasonable adjustment. In the case of *Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170* the Court of Appeal held that where an employer was not deliberately failing to comply with the duty and the omission was due to lack of diligence or competence, or any reason other than conscious refusal, it is to be treated as having decided upon the omission when the person does an act inconsistent with doing the omitted act or when, if the employer had been acting reasonably, it would have made the adjustments. In the recently reported Court of Appeal



case of [Abertawe Bro Morgannwg University v Morgan](#) [2018] WLR197 it was stated:

“In the case of omissions, the approach taken is to establish a default rule that time begins to run at the end of the period in which the respondent might reasonably have been expected to comply with the relevant duty. Ascertaining when the respondent might reasonably have been expected to comply with its duty is not the same as ascertaining when the failure to comply with the duty began. Pursuant to section 20 (3) of the Equality Act, the duty to comply with the requirement relevant in this case begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage. It can readily be seen, however, that if time began to run on that date, a claimant might be unfairly prejudiced. In particular, the claimant might reasonably believe that the employer was taking steps to seek to redress the relevant disadvantage, when in fact the employer was doing nothing at all. If this situation continued for more than three months, by the time it became a should have become apparent to the claimant that the employer was in fact sitting on its hands, the primary time limit for bringing proceedings would already have expired.”

25. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the Tribunal that it should do so, and *'the exercise of discretion is the exception rather than the rule'* ([Robertson v Bexley Community Centre](#) [2003] EWCA Civ 576 per Auld LJ at para 25).
26. The Tribunal's discretion to extend time under the 'just and equitable' formula is similar to that given to the civil courts by section 33 of the Limitation Act 1980 for extending time in personal injury cases ([British Coal Corp v Keeble](#), [1997] IRLR 336). Under section 33, a court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular:
  1. The length of and reasons for the delay;
  2. The extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time; the conduct of the respondent after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant;
  3. The duration of any disability of the claimant arising after the date of the accrual of the cause of action;

4. The extent to which the claimant acted promptly and reasonably once he knew of his potential cause of action. Using internal proceedings is not in itself an excuse for not issuing within time see Robinson v The Post Office but is a relevant factor.
  5. The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.
27. Time limits are short for a good purpose- to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant The Tribunal can make a constructive recommendation. Left unresolved, even minor omissions by employers often have devastating consequences which it is too late to remedy in that way.

## **Conclusions**

### 28. **Disability**

The claimant relies on two medical conditions to establish her protected characteristic of disability, dyslexia and a hearing impairment. Each of these individual medical conditions are relevant to different allegations of discrimination and it is necessary to consider whether each of them is a disability within the meaning of section 6 of the Equality Act 2010.

29. With regard to dyslexia, the Educational Psychologist's report, dated 22 December 2017, states that the claimant presented a dyslexia profile. It refers to specific cognitive difficulties in processing speed and that these affect her reading, spelling and written language. It states:

“Hameeda’s processing speed is significantly weak compared to other aspects of her underlying ability. Her difficulties in literacy are likely to be caused by weaknesses in speed of mental operation, memory, encoding, cognitive flexibility, concentration, attention and visual – motor coordination; this is likely to make it difficult for her to concentrate and organise her workload times. This is typical of an individual where dyslexia has been identified. How media will need access to additional support at work and if studying, especially in time pressured situations, her reading and writing are likely to deteriorate under the pressure of a high volume of content and the time restrictions of deadlines/examinations.”

30. There is reference within the Educational Psychologist's report to the claimant and her manager deciding to have an assessment to update her earlier diagnosis of dyslexia at the age of 12 years. In the section relating to educational history, there is no indication that the claimant had been provided with adjustments during her access course or her degree in Nursing. There was no other written evidence of dyslexia. It

was not mentioned in the claimant's medical records. In her application for the post with the respondent the claimant indicated that she did not consider herself to have a disability.

31. The claimant told the Tribunal that she did not reveal her dyslexia as it was not an issue and she only informed the respondent of her dyslexia when it became an issue. This was at a meeting in February 2017 when the claimant joined the Darlington CAMHS team at the Mulberry Centre. The claimant told Gillian Caselaw that she had some minor issues with dyslexia but that it wasn't a problem for her. The claimant indicated that she had not had a formal assessment as it had not been an issue and she did not need any support. Gillian Caselaw suggested that a work station assessment could be done and the claimant could be referred for a dyslexia assessment. The claimant had said that she did not need any of this. She did not need any equipment and was happy to continue without needing any assistance.

32. The Tribunal is satisfied, on balance, that the claimant had a disability. It did have a substantial effect on her normal day-to-day activities in respect of her cognitive abilities and in respect of the effect on her reading, spelling and written language. However, the Tribunal was not satisfied that the respondent had knowledge of the claimant's dyslexia prior to February 2017. The claimant's evidence in this regard was inconsistent and confusing. She did not give evidence with regard to raising it as an issue prior to the discussions with Gillian Caselaw 2017 when the claimant joined the team at the Mulberry Centre. It was only in her submissions to the Tribunal, that she referred to having had discussions about her dyslexia, at the commencement of her employment with the respondent, with Mark Porter, Acting Head of the Acley Centre. This had not been mentioned in the written or oral evidence provided by the claimant to the Tribunal. Mark Porter was not a witness at the hearing and the Tribunal finds that the respondent did not have knowledge and could not be reasonably expected to have knowledge of the claimant's dyslexia prior to February 2017.

33. With regard to the claimant's hearing loss, the Tribunal is satisfied that the respondent had knowledge of the claimant's hearing loss. It was not referred to on her application for the post. However, in the claimant's probationary period assessment form dated 31 October 2016 it is stated:

"Slight hearing problem unable to complete manual blood pressures due to this"

and with regard to adjustments implemented it says:

"Use a quieter room in the building as necessary"

34. The claimant was provided with the use of automatic blood pressure monitors as were a number of other members of staff.

35. The claimant obtained an audiology report from Boots Hearingcare on 2 February 2018 which provided an audiogram. It was stated in that report that the claimant had said that condition had previously been medically investigated. The claimant said that she had previously had a hearing test and had been provided with a hearing aid which she had worn for a few months but she had ceased wearing it as she did not like its appearance.

36. On 19 February 2018 a report was provided to the claimant's GP by a senior audiologist at James Cook University Hospital in which the results of an audiogram were similar to the results on the audiogram that had been provided by Boots. The audiologist stated that:

"The above findings do not meet the audiological criteria for referral to ENT. As per local guidelines, an ENT referral will not automatically be generated as a result of the information in this report. If you feel that an ENT opinion is required, please make a referral from primary care."

No such referral was made.

37. There was no earlier reference to hearing loss in the claimant's medical records.

38. The Tribunal is not satisfied that the claimant has established that her hearing loss had a substantial effect on her day-to-day activities and it was not shown to be a disability within the meaning of section 6 of the Equality Act 2010.

39. Had it been established the claimant's hearing loss was a disability, then the Tribunal is satisfied that the respondent did not know, or could not reasonably be expected to know, that the claimant had a disability at any time during her employment.

40. The allegations made by the claimant have been considered chronologically, the first of these being allegation 14 in respect of 10 November 2016. This claim was significantly out of time, as were all the claims in respect in which allegations were made against Mary Ann Heads. The claimant sought to argue that there was a continuing act. However, the claimant has brought a number of claims involving allegations of discrimination on grounds of age, disability and race. The claims are differing in nature and alleged against different named individuals and the Tribunal is not satisfied that there was a continuing act. The Tribunal was provided with no evidence or submissions with regard to extending time on just and equitable grounds. The Tribunal has no jurisdiction to hear the claims which are out of time. However, it has gone on to consider each of the allegations as if it had jurisdiction.

41. With regard to the first allegation taken chronologically, allegation 14, 10 November 2016, this is a claim of direct age discrimination. The Tribunal is satisfied that Mary Ann Heads asked the claimant for her date of birth. The Tribunal is not satisfied that Mary Ann Heads said to the claimant "thought you were younger - you are as old as they come". The claimant did not record this incident in her incident log, within her appeal documentation, or in her claim form to the Tribunal. It was first raised in the claimant's list of allegations dated 16 February 2018 following a number of Case Management Orders. The claimant alleged that Mary Ann Heads and Matthew Paylor were present. Matthew Paylor said that he was not present on the date specified and that he could not recall any such remarks being made at any time. Mary Ann Heads strongly denied that she made such a comment. Their evidence was clear and consistent whereas the claimant's evidence was vague and inconsistent.

42. The claimant has not established facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent had discriminated against her. The Tribunal is not satisfied that the claimant has provided a prima facie case of less favourable treatment.

43. In respect of allegations 13 and 22, these relate to things allegedly said to the claimant on 25 November 2016 and were agreed to be claims of harassment related to the claimant's age and direct discrimination by the second respondent. However, in the claimant's witness statement she referred to the incident as being a big joke about her dyslexia disability.

44. The claimant's evidence was confused and contradictory. The central allegation that the second respondent had said to her "you are a failure" was not mentioned in the claimant's incident log, it was not raised in the claimant's grievance and the Tribunal is not satisfied that it was said. Matthew Paylor gave clear evidence that there was a jovial atmosphere and jokes were made at his expense.

45. The evidence of the second respondent was consistent and credible. She was clear that she would never say that anybody was a failure and she knew that she had not said that to the claimant. The Tribunal is not satisfied that the claimant has established facts from which could be concluded, in the absence of an adequate explanation, that the respondent had discriminated against the claimant. There were no facts established that showed that there had been unwanted conduct relating to age or disability and the Tribunal is not satisfied that the claimant has established a prima facie case of direct discrimination or harassment. The respondent had no knowledge of the claimant's disability at the material time.

46. The allegation in respect of 29 December 2016, allegation 12, is an allegation of direct age discrimination. This allegation was not mentioned in the claimant's incident log. The claimant said that the second respondent had compared her to Stephanie Morton. However, the second respondent provided clear evidence that Stephanie Morton had left the team at that date. The claimant relied on a schedule setting out student placements and moves. This provided for two weeks negotiated study and the Tribunal accepts the respondent's evidence that Stephanie Morton was no longer working in the relevant department at the material time. She had taken the study leave. Once again, the claimant has not established a prima facie case of less favourable treatment on grounds of age.

47. Allegation 23 – 12 January 2017. This is a claim of direct age discrimination and harassment relating to disability and victimisation. It was submitted by Ms Millns that it was astonishing that the claimant did not, during cross-examination, put to the second respondent that anything said by the second respondent at the relevant meeting was because of the claimant's age or that her intention was to violate the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

48. The second respondent was aware that complaints had been made by the claimant but she did not know that a formal grievance had been submitted. When the claimant told her that she had raised such a formal grievance then the meeting was, quite rightly, brought to a halt. The claimant alleged that the probationary period assessment form had been fraudulently created. The Tribunal is not satisfied that there was any such

fraud. The Tribunal heard no credible evidence that document was not completed at the time. The Tribunal is not satisfied that the claimant has established any facts which could amount to unfavourable treatment on grounds of age, harassment related to disability or victimisation.

49. Allegation 15 – 13 February 2017. This is an allegation in respect of Michelle Trainer in which the claimant alleges that she was told that she would not fit in if she was reallocated within the Trust and that she was told that there were no jobs for her and that she should leave. Michelle Trainer gave clear and credible evidence to the Tribunal. She said that she had tried to explain to the claimant during the grievance meeting that, because of the claimant's training in children's nursing, the Trust was limited in its ability to redeploy the claimant. The only aspect of the Trusts nursing service that would employ nurses that are trained in children's nursing was the Child and Adolescent Mental Health Service/Learning Disability (CAMHS/LD) which was where the claimant had been working with the second respondent. In the outcome letter from the stage 1 grievance hearing dated 17 May 2017 Michelle Trainer stated:

“we explained that regarding moving teams, we had been unable to find any suitable vacancy. It was explained that successful redeployment with the formal Trust Redeployment Procedure was entirely dependent on vacancies. Registration with the scheme would be through occupational health recommendation and carries the risk that should no suitable alternative employment be found your employment may be terminated.”

50. The Tribunal is not satisfied that the claimant was informed that she would not fit in and it appears that the claimant may have misunderstood what was said. It is notable that the difficulty was with regard to the claimant's qualifications as a children's nurse. When she was first offered employment by the first respondent following a jobs fair, the Trust was still awaiting funding for the post to which the claimant was to be appointed. This funding had not been forthcoming which led to the claimant being employed on the CAMHS/LD team.

51. Allegation 21 – 13 February 2017. This is an allegation against the second respondent. It is an allegation of direct disability discrimination in respect of the alleged disability of the claimant's hearing impairment. The Tribunal has found that the claimant has not established this disability. Also, this claim is out of time. However, the Tribunal has gone on to consider the factual allegation. The evidence of Michelle Trainer was clear and credible. She said that the claimant had alleged that the second respondent had been aggressive in the meeting but Michelle Trainer did not understand what the claimant was referring to. She had observed the exchange and the second respondent had not been aggressive at all. Michelle Trainer said that the claimant had become confrontational when the second respondent came to give her evidence at the stage 1 hearing on 13 February 2017. She had called the second respondent a liar on more than one occasion.

52. It was submitted by Ms Millns, on behalf of the respondents, that the claimant had failed to put to the second respondent, in cross examination, that any of the comments allegedly made were because of the claimant's hearing disability or that her intention had been to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive atmosphere for the claimant. The Tribunal accepts this submission and finds that the claimant has not established that the alleged comments

were made or, if they had been, that they could be related to the alleged disability or any other protected characteristic.

53. Allegation 24 – 10 and 16 March 2017. This is an allegation of victimisation in which the claimant alleges that the second respondent informed Kathryn Stephenson that she had raised a formal grievance against the second respondent and that she had accused three of her colleagues of bullying and harassment. The claimant alleged that the Single Point of Access(SPA) team started to ignore her and that she was labelled a troublemaker for raising a formal grievance. Kathryn Stephenson gave clear and credible evidence that the claimant's grievance had not been discussed, she was not aware of the allegation until she was contacted to be a witness in this Tribunal case. The claimant has not established that there was any treatment of her because of a protected act.

54. Allegation 17 – 2 May 2017 and 14 August 2017. This is an allegation of harassment related to the claimant's race. It was added to the claimant's claim on 5 January 2018, five months after the claims were presented to the Tribunal. These allegations were with regard to the desk at which the claimant wished to sit upon her return to work on two occasions when other employees had been sitting there. The allegation with respect to 2 May 2017 is out of time but that in respect of 14 August 2017 is in time.

55. It submitted by Ms Millns that it had not been put to Gillian Caselaw by the claimant that anything within these discussions was related to the claimant's race and the respondent's case was that the allegation smacked of the claimant simply placing a label of harassment relating to race on an anodyne discussion about a desk.

56. The evidence of Gillian Caselaw was clear and straightforward. She said that nobody had any particular desk allocated to them and the majority of staff "hot desk". The claimant had become very fixated on having a particular desk. However, she could not recall any discussion with the claimant in May 2017 with regard to desks and, in August 2017, the claimant had returned to work following a period of sickness absence and a new recruit had been allocated a desktop computer. The claimant had been asked to use another desk and she did become angry. The Tribunal finds that the claimant has not established that any conversations in respect of desks was an act of harassment related to the claimant's race. There was no credible evidence that any request to move desks was related to a protected characteristic of the claimant.

57. Allegation 18-19 June 2017. This is an allegation against Gillian Caselaw in which it is it is alleged that she said that the second respondent was there to work and would be staying and that she had a real job whereas the claimant did not. The claimant was sent home and the second respondent was allowed to stay at the Mulberry Centre. The allegation is one of harassment on grounds of the protected characteristic of race.

58. This allegation is within time. It was submitted by Ms Millns, on behalf of the respondent, that the claimant had placed an unpleasant, offensive spin on what occurred and attempted to mould it into a harassment claim. Even if the comments had been made they could, in no sense, be said to be related to race. The allegation does not make sense and Gillian Caselaw was not questioned by the claimant on the basis that these alleged comments were related to race.

59. The evidence of Gillian Caselaw was that the second respondent was on the rota to come to the Mulberry Centre on that day. The claimant was unhappy that she was

there and told Gillian Caselaw that she should not have let her come. Gillian Caselaw was unaware that the second respondent was due to attend on that day. She knew that the claimant's grievance had recently been completed and was awaiting confirmation that the claimant would be returning to the CAMHS/LD team at the Acley Centre. She had been told that, once the grievance was finished, normal arrangements would resume. She realised that the claimant and the second respondent could not work with each other but they did not have to be in the same room and could be accommodated at opposite ends of the building. The claimant told Gillian Caselaw that she could not stay in the building if the second respondent was going to be there. Gillian Caselaw said that she did not force the claimant to leave, it was the claimant's decision to do so because she refused to be in the same building as the second respondent. She did not tell the claimant that she did not have a real job.

60. The evidence of Gillian Caselaw was credible and straightforward. The claimant's evidence was vague. The Tribunal does not find that the claimant has established that she was subject to any action that could amount to harassment and there was nothing to show that any of the factual allegations, if proven, were on grounds of, or related to, the claimant's race. The claimant has not established a prima facie case of harassment by reason of her race.

61. Allegation 10-5 September 2017. This is an allegation with regard to the actions of Thomas Vickers and Carol Redmond at the stage 2 grievance hearing. This is a claim of direct disability discrimination, discrimination arising from disability and failure to make reasonable adjustments.

62. The claimant alleged that the meeting did not go ahead as she had asked for it to be recorded. It had been agreed in correspondence with Gillian Rafferty that the request for recording had been agreed although it was stated that the recording devices the respondent used required a particular software. If the claimant wished to listen to the recording that could be facilitated in the HR Department. Thomas Vickers said that he had a recording device with him prior to the stage 2 hearing. It had been arranged for Tracy Marston to take notes of the hearing for the claimant and the claimant did not ask for the hearing to be recorded at the time.

63. Cheryl Ing said that, before the meeting, the claimant had informed her that she had made a request for the hearing to be recorded because of her dyslexia but, as far as she was aware, the request had been declined. Cheryl Ing explained to the claimant that it was not customary for grievance hearings to be recorded but a reasonable adjustment that had been adopted in the past was for the Employee Support Officer to take notes on behalf of the employee so that the employee in question could just concentrate on what they were saying. Cheryl Ing said that, if the claimant had said that she didn't want Tracy Marston to take notes on her behalf and would only be happy to go ahead if the hearing was to be recorded then she would have gone to the determining manager and HR on the claimant's behalf to say that. Cheryl Ing said that the claimant did not object to Tracy Marston taking the notes and specifically agreed to that and said that it would be helpful.

64. Cheryl Ing's evidence was clear and credible. She had been a Trade Union Representative for a number of years following which she had been a Human Resources officer. She was the first respondent's Employee Support Service Lead and gave evidence that it was her aim to ensure that employees were given the opportunity



to raise issues regarding their health and well-being. The Tribunal accepts her evidence as being honest and straightforward.

65. The notes of the hearing from both Tracy Marston and Thomas Vickers show that a discussion took place with regard to what the claimant was looking for and there was discussion with regard to redeployment. The meeting was then adjourned on the basis that further enquiries would be made in respect of any possible relocation.

66. The Tribunal is not satisfied that the respondent refused to record the meeting as alleged by the claimant. There was clear evidence that the reason the meeting was postponed was in order to look into redeployment of the claimant and not because of a refusal to record the hearing. The claimant has not established a prima facie case of direct discrimination. She has not established unfavourable treatment by reason of something arising in consequence of her disability.

67. With regard to the claim of failure to make reasonable adjustments. The Tribunal is not satisfied that there was a provision criterion or practice to refuse the recording of hearings. It had previously been agreed that the hearing could be recorded and Thomas Vickers had a recorder with him. The claimant referred to an email from Cheryl Ing in respect of support at the meeting in which it is stated that the Employee Support Service would only be able to provide emotional support throughout the process. The claimant said that the notes of Tracy Marston were only created for the purposes of the Tribunal. The Tribunal is not satisfied that this was the case. The claimant agreed that Tracy Marston could take notes to assist the claimant. The respondent did not fail to provide reasonable adjustments for the claimant.

68. Allegation 11 – 5 September 2017. This allegation was against Cheryl Ing and is an allegation of direct discrimination, discrimination arising from disability and harassment. The claimant alleged that she was questioned by Cheryl Ing about her dyslexia and was made to feel inadequate and uncomfortable by this questioning. The Tribunal is satisfied that Cheryl Ing asked the claimant fair and reasonable questions and that questioning her about the details of her dyslexia is a normal conversation in Cheryl Ing's role. She asked the claimant if she was happy to discuss her dyslexia in order to consider any possible adjustments that could be made and the claimant said that she was. She asked the claimant basic questions about her dyslexia. This was entirely appropriate and designed to be helpful to the claimant in the circumstances. It was not established that Cheryl Ing had treated the claimant less favourably because of her dyslexia or unfavourably because of something arising in consequence of her dyslexia.

69. It was submitted by Ms Millns that the claimant did not cross-examine Cheryl Ing as to the reason for any comments alleged to have been made and that, the clear evidence of Cheryl Ing was that she was supporting the claimant and she was absolutely astonished that it was alleged that this meeting played out in the way suggested by the claimant. The claimant had twisted and misconstrued the events. The claimant was supported comprehensively on the day by Cheryl Ing and Tracy Marston. The claimant was trying to craft a claim of discrimination when none exists.

70. The Tribunal is not satisfied that the claimant had shown a prima facie case that Cheryl Ing engaged in unwanted conduct relating to a protected characteristic which have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

71. Allegation 16-19 September 2017. This is an allegation of harassment related to race in respect of the comments made by Dr Gerry Doyle. The allegation was that Dr Doyle stated:

“I’ve just seen this boy; he should join ISIS that’ll sort him out”

and went on to comment on how hyper the boy was because of his ADHD. It was accepted that this remark had been made and that Dr Doyle had indicated that he appreciated that it was inappropriate.

72. The first respondent did not raise the statutory defence, pursuant to section 109 (4), that it had taken all reasonable steps to prevent the employee from committing a particular discriminatory act. The onus rests on the employer to establish a defence and it was not contended that Dr Doyle was acting outside his employment. The respondent will be vicariously liable under section 109 (1). If it was an act of harassment it was carried out in the course of employment.

73. This is a claim of harassment related to the claimant’s race. The Tribunal has considered whether the first respondent engaged in unwanted conduct towards the claimant and, if so whether that conduct related to the claimant’s protected characteristic of race and did it have the purpose of violating claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. If not did it have the effect of violating claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

74. The case of *Moonsar v Five ways Express Transport Limited 2005 IRLR 9* was a case relating to staff downloading pornographic images in a room in which they were working alongside the female claimant. They were not circulated to her but she was in close proximity and was aware of what was happening. Viewed objectively, the behaviour complained of had the potential to cause affront to female employees.

75. The Tribunal has also considered the case of *Grant v HM Land Registry [2011] IRLR 748* in which the Court of Appeal said that

“Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

76. The comments or conduct does not have to be directed specifically at the claimant for it to be unwanted conduct. The EHRC employment code gives an example of paragraph 7.10 which is that, during a training session attended by both male and female colleagues, a male trainer directs a number of remarks of a sexual nature to the group as a whole. A female worker finds the comments offensive and humiliating to her as a woman. It is stated in the code that she would be able to make a claim for harassment even though the remarks were not specifically directed at her. Also , the case of *Morgan v Halls of Gloucester limited Kapiti case number 140 0498/09* in which a black employee overheard a colleague use the term “gollywog” to describe a black colleague and succeeded in a Tribunal claim for racial harassment.

77. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. The Tribunal has to look at the claimant's personal perception and consider whether it was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

78. In the case of *Heathfield v Times Newspapers Limited UKEAT/0179/13* the EAT upheld the Tribunal's decision that offence caused by reference to "the fucking Pope" did not amount to harassment because, to the extent the claimant felt his dignity had been violated or a hostile environment created, that was not a reasonable reaction in the context of the facts in that case.

79. In the case of *Taj v GBM Services Ltd ET case number 3301281/07*, a religious harassment, claim the Tribunal found that there was a culture of banter including inappropriate banter and that the claimant was a willing participant. Jokes about Ramadan were found to violate his dignity and create an offensive environment.

80. The Tribunal has to consider whether it was reasonable for a person of South Asian Indian origin, as the claimant was, in her particular circumstances, to have such a reaction. Did the claimant have such a reaction and whether it was reasonable for the conduct to have the effect on this particular claimant. The claimant made no complaint at the time of the incident.

81. The Tribunal has taken into account that it must be considered whether a remark such as the one made was, or could reasonably be considered to be, hostile or offensive to someone of claimant's race. The claimant has not brought a claim of discrimination or harassment by reason of religion or belief.

82. This claim was brought within time. It was submitted by Ms Millns that the words were offensive, distasteful, wholly unprofessional and should not been said. The claimant did not raise any complaint at the time. They cannot, in any sense, be said to be related to race. It was submitted that ISIS refers to the Islamic State of Iraq and Syria, a Salafi jihadist unrecognised proto-state and militant group which follows a fundamentalist doctrine of Sunni Islam. It is not a racial group but a political military organisation with extremist views which claim to follow the Muslim faith. Even if it was, or is, associated with one or another racial group, ISIS is not associated in any sense whatsoever, geographically with the claimant's race of South Indian Asian origin.

83. The Tribunal does not accept the submission that the reference to ISIS is related to middle eastern states. It is a terrorist organisation with international links and influence. The Tribunal has to consider whether it would be reasonable for the conduct to have the effect on the claimant of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

84. The claimant was the only Asian employee within the team and the Tribunal accepts that she found the remark degrading and offensive. The remark was not aimed specifically at the claimant. The Tribunal is unaware of the race of the boy to whom it referred. However, it is satisfied that it was reasonable for the remark to have that effect on the claimant. The Tribunal appreciates that this is not a claim of religious discrimination. However, the Tribunal finds that perception of ISIS in the minds of a significant proportion of the general public is that it is an international organisation connected with Asian people, in particular, those in such areas as Pakistan, Afghanistan and Iran.

85. The claimant was the only Asian member of staff. There had been recent well publicised terrorist attacks in Manchester and London and the Tribunal accepts that it was an insensitive remark and the claimant was disturbed by it. This is a claim which is isolated from the other claims brought by the claimant which are in respect of the claimant's allegations of bullying and harassment by other members of staff towards her.

86. The claims other than this are in respect of alleged facts which the claimant has claimed are discrimination whereas they may well be incidents in which the claimant has perceived bullying and harassment and has later claimed the actions were discriminatory. This allegation of harassment is entirely separate from the other allegations. There was no question that the remark was made and that it was inappropriate and unprofessional.

87. The Tribunal has given careful consideration to this allegation and is satisfied that the claimant has established that it was a comment that had the effect of creating a hostile and offensive environment for the claimant and that, taking into account the perception of the claimant and the other circumstances of the case it was reasonable for the conduct to have that effect. The claimant was the only Asian member of staff and it was reasonable for her to be offended by the comment.

88. Allegations 19 and 20. - 9 September 2017. These allegations are in respect of events which occurred on the same day and they both are allegations of harassment involving Gillian Caselaw.

89. Ms Millns submitted that the claimant did not relate the alleged conduct to race. It was said that the claimant's allegations were twisted and had skewed an innocent suggestion from Dr Hodgins that the claimant might like to improve her learning by attending a home visit into a conspiracy that either Dr Hodgins and/or Gillian Caselaw worked against the claimant to get her into trouble when neither had any axe to grind. The claimant's interpretation of these events was bizarre and unsupported by the straightforward evidence of Gillian Caselaw.

90. The Tribunal does not find that the claimant has shown a prima facie case. She has not established facts from which the Tribunal could, in the absence of an adequate explanation, conclude that there were acts of harassment on grounds of race. Gillian Caselaw was seeking to locate the claimant at lunchtime in order to assist Dr Hodgins. This was entirely reasonable and the claimant has interpreted it as an act of harassment. Gillian Caselaw gave clear and straightforward evidence that she was looking for the claimant to accompany Dr Hodgins. This was not established to be related to the claimant's race and the Tribunal is satisfied that this was in no way shown to be an act or acts of harassment related to the claimant's race.

91. It was simply not credible that the claimant said that she did not raise issues of discrimination at the grievance and stage 2 hearing on the basis that she claimed. This was that an unnamed manager had said it would not go well for her. This contention also became confused with regard to the request for the stage 2 hearing to be recorded which the claimant said was the issue that she had been told would not go well for her. The claimant was willing to make very serious allegations in respect of the respondent and its witnesses fraudulently creating or altering documents and these allegations were not credible.

92. This was a case in which the claimant perceived actions by her colleagues and managers as bullying and harassment. It is not clear that they were bullying and harassment and they may have been incidents involving personality clashes and difficulties encountered during the normal vicissitudes of working life with which the claimant was unable to cope. It is notable that the claimant's medical records referred to fibromyalgia, possible mental health issues and difficulties with regard to the claimant's disabled son and his second diagnosis of cancer. There was nothing within the medical notes relating to mental issues as a result of incidents at work.

93. The claimant had set out a claim for a large figure in respect of injury to feelings. This was generic and related to all the allegations, the vast majority of which are unfounded.

94. The finding with regard to the act of harassment in respect of the ISIS comment It is wholly separate from the other allegations and there was no evidence of any severe distress as a result of this comment. From the medical records it appeared that there were a lot of other reasons within the claimant's life which were likely to have caused distress for her.

95. With regard to the injury to feelings resulting from this discreet act of harassment, the injury to feelings was stated in the claimant's witness statement as:

"This was an offensive remark by Gerry. I'm the only Asian member of staff. My colleagues were all white. There had been several recent bomb attacks in Manchester and London, it was very insensitive. I was very disturbed by Gerry's comment."

96. Taking into account the guidelines in respect of compensation awards for injury to feelings as set out in the cases of *Vento v Chief Constable of West Yorkshire Police (2003) ICR 102*, *De Souza v Vinci Construction (UK) Ltd [2017] IRLR 844* and the Presidential Guidance updating the bands for awards for injury to feelings. In respect of claims presented on or after 6 April 2018, the Vento bands are as follows: a lower band of £900 to £8,600, for less serious cases; a middle band of £8,600 to £25,700, for cases that do not merit an award in the upper band; and an upper band of £25,700 to £42,900, for the most serious cases.

97. The Tribunal is satisfied that this case falls firmly within the lower band. This was a one-off incident which was not specifically aimed at the claimant and about which the claimant had not formally or informally complained. The Tribunal finds it just and equitable to make an award of £2,000.

98. Pursuant to Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 an Employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

99. The claimant failed to raise any grievance or even alert the respondent to the allegation of harassment in respect of this remark and the Tribunal considers it just and equitable to reduce the amount of compensation for injury to feelings by 25% as a result of the claimant failing to follow the ACAS code of practice by not raising a grievance. This provides a figure of £1,500 which the first respondent is ordered to pay to the claimant.

100. The Tribunal has considered the question of interest and is satisfied that it is not appropriate to award interest on the sum. The award for injury to feelings is based on the Tribunal's consideration of the appropriate current value for the claim taking into account inflation.

101. For the reasons set out above, the remainder of the claims brought by the claimant are not well-founded and are dismissed.

**Employment Judge Shepherd  
18 October 2018  
Sent to the parties on:**