EMPLOYMENT TRIBUNALS

Claimant: Mr G Day-Davies

Respondent: United Learning Trust

HELD AT: Manchester **ON:** 30 October to 5 November 2018
17 December 2018 & 14 January 2019 (In Chambers)

BEFORE: Employment Judge Holmes
Mrs L Buxton
Ms E Cadbury

REPRESENTATION:

Claimant: In person
Respondent: Mr M Bloom, Solicitor

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1.The claims of victimisation, and nos. 6 and 8 of the claimant's list of claims of failure to make reasonable adjustments, are dismissed upon withdrawal by the claimant.

2.The claimant's claims of discrimination arising from disability, in the respondent continuing its suspension of the claimant from 5 September 2017 to 13 September 2017 succeed.

3.The claimant's claim of discrimination arising from disability in the respondent administering a first stage warning under the absence management procedure succeeds.

4.All other claims of disability discrimination are dismissed.

5.The claimant is entitled to compensation. The parties are to seek to agree remedy, and will have until **20 September 2019** to do so**. I**n the event that they are unable to do, either of them may, by that date, seek a remedy

hearing . Any such application shall state what the issues on remedy will be, provide an estimated length of hearing and dates to avoid.

REASONS

1.By a claim form presented to the Tribunal on 2018 the claimant brings claims of disability discrimination against a multi-academy trust , the United Learning Trust. The claimant suffers from Bipolar 1 Disorder Rapid Cycling, a mental impairment which substantially affects his day-to-day activities. In addition, the claimant suffers from ankylosing spondylitis, a degenerative form of rheumatoid arthritis which causes a substantial physical impairment. The respondent accepts that the claimant suffers from disability within the meaning of the Act in respect of both impairments.

2.At a preliminary hearing on 15 March 2018 the claimant confirmed that he was not seeking to rely upon direct discrimination under section 13, harassment under section 26 or indirect discrimination under section 19. The Tribunal allowed the claimant's application to amend dated 27 January 2018.

3.The claims were heard by the Tribunal on 30 October to 5 November 2018. The Tribunal could not conclude the case within that period, and the parties agreed to provide written submissions , which the Tribunal considered in chambers on 17 December 2018. Unfortunately the Tribunal could not conclude its deliberations that day, and notified the parties that it would re-convene in chambers on 14 January 2019, which it duly did. The parties were advised that due to the involvement of the Employment Judge in a 30 day hearing in January 2019, the judgment would be delayed somewhat. Unfortunately, thereafter, due to pressure of judicial business, other judicial responsibilities and some personal issues, the Employment Judge was unable to perfect the draft judgment within the time he hoped, and apologises to the parties for this delay. He thanks them for the considerable patience they have displayed.

4. The claimant gave evidence, and called no witnesses. The respondent called Heather Jane Prest, and Anne Lucas. There was an agreed bundle, running to some 1021 pages. Further additional documents were tabled during the hearing, a schedule of absences ,a floor plan, and 5 documents that the claimant wanted included in the bundle, but which he thought had not been (in fact some were). It is regrettable, though sadly rather commonplace these days, that the bundle contains much duplication, triplication, or worse, of documents passing between the parties, mainly in the form of emails. This practice leads to bundles being larger than they truly need to be, and delays the promulgation of judgments, as when drafting the judgment the Employment Judge has to ensure that he has the correct reference to a document in the bundle, a process that is hindered by the need constantly to check that documents which appear several times in the bundle are in fact one and the same. Practitioners responsible for preparation of bundles are urged to review and desist from this practice , unless there is some particular need for it in a given case. In particular , unravelling the precise sequence of the considerable volume of email traffic on 4, 5, 6 and 7 September 2017 has been made far more difficult than it need have been by the way in which these emails have been put in the bundle , with no attempt at a coherent and easy to follow sequence. This is rather compounded by the fact that Anne Lucas's witness statement contains virtually no references to these vital pages in the bundle. Having heard the evidence, read the documents in the bundle to which it was directed, or to which it been led in the evidence,

and considered the submissions of the parties, the Tribunal finds the following relevant facts

4.1 The claimant is a teacher, and was employed originally as an supply teacher on an agency basis from February 2015. The respondent is a multi – academy trust, which took over running the Academy at Moss Lane East, Moss Side Greater Manchester. The claimant was appointed as a Humanities Teacher in June 2015 (see pages 301 to 317 of the bundle).

4.2 The claimant has Bipolar 1 Disorder Rapid Cycling, a mental impairment which substantially affects his day-to-day activities. In particular he is affected by fluctuating mood episodes , mania and hypermania , sometimes during the course of one day. These can be accompanied by significant depressive episodes. He suffers insomnia , with slowing of speech. Further, one of the features of the claimant's condition is that he has a tendency to catastrophise events and occurrences, which can then trigger a manic episode with adverse effects upon his general health.

4.3 The claimant was off work for 12 days between 19 November 2015 and 6 December 2015, with stress. Whilst the claimant attempted a return to work on 7 December 2015, he was unable to manage, and had to take more time off sick.

4.4 As a result a referral to Occupational Health (IMASS was the respondent's service provider) was made in December 2015 , and a report from Dr Patricia Campbell dated 11 December 2015 (pages 318 to 320 of the bundle) was obtained. That identified issues he had raised about his workload. Recommendations were made for adjustments that could be made to assist him upon his return to work. A stress risk assessment was carried out (pages 322 to 324 of the bundle) . Dr Paul Yarnley prepared a report dated 24 December 2015 (pages 325 to 327 of the bundle) . This report refers to the claimant's other condition, ankylosing spondylitis , which is similar to inflammatory arthritis, and can lead to fatigue. The condition, however, was said to have a minimal effect upon his activities of daily living or his job.

4.5 A meeting was arranged for 20 January 2016. The notes of this meeting are at pages 428 to 429 of the bundle. His phased return to work was discussed, and further reduction in his timetable by one hour was agreed. His ankylosing spondylitis was also discussed. The claimant sought 7 free periods , but this was likely to be difficult to accommodate.

4.6 The claimant was ill again in February 2016, when he took an overdose, and was admitted to hospital. His next absence was for 21 days between 4 February 2016 and 4 March 2016 . Following his return to work discussions were held as to what reasonable adjustments should be made to accommodate the claimant's condition (pages 430 to 432 of the bundle) . The claimant suggested that he had 7 free periods per week. He went on to suggest that having made two proposals for reasonable adjustments he would now seek legal advice.

4.7 A meeting was then held of 4 March 2016 between the claimant, Gilly McMullen, the assistant principal, and Tyesha Okuboyejo, HR officer. In this meeting the claimant's future timetable was discussed, and options explored as to how the school could support the claimant further. The claimant stated that he would be contacting his union, and the HR officer indicated that there would be a further referral to occupational health.

4.8 Immediately following this meeting the claimant raised a grievance by email of 4 March 2016 (page 436 of the bundle) , in which he stated that he would be represented by Steve Davies of Unite, and that this was a stage 1 grievance. In this grievance he complained of his excessive workload, which had caused him panic attacks and anxiety, resulting in his admission to hospital with an overdose. He complained that the school's suggested reasonable adjustment was a reduction in timetable to .6 FTE with a 40% reduction in pay, but that no reasonable adjustments could be made to keep him in full-time work. He said that he had left the meeting feeling worthless, and that his condition had been exacerbated by it. He referred to the Equality Act.

4.9 By letter of 9 March 2016 (page 438 of the bundle) Tyesha Okuboyejo acknowledged the claimant's grievance and asked for the contact details of his union representative.

4.10 The claimant then on 9 March 2016 wrote to Andrew Griffin raising the impending return from maternity leave of a teacher whose role he had previously been covering. He asked whether he could be permitted to teach three days per week with cover on the remaining two days, which he proposed as a reasonable adjustment which would allow him to remain in full-time teaching.

4.11 The respondent obtained an occupational health report upon the claimant from Ms S Chantry dated 15 April 2016 (pages 328 to 329 of the bundle). The claimant had suggested that the respondent had not implemented arrangements that had been agreed to enable him to manage his workload. The report recommended that management should look at the possibility of the claimant reducing his face-to-face teaching periods, and have regular meetings with his line management.

4.12 In the meantime, arrangements were made to hear the claimant's grievance. Some improvements were made to the claimant's timetable, but by email of 26 April 2016 to Jenny Kennedy and HR Business Partner (pages 441 to 442 of the bundle) he said that he had not received any notification that the matter had been dealt with or resolved. He wished to ensure that all the outstanding matters were resolved before the start of the new term in September.

4.13 A grievance meeting was held on 3 May 2016, at which the claimant was represented by Steve Davies. The meeting was held by Jenny Kennedy, with Tyesha Okuboyejo of HR taking notes (see pages 443 to 444 of the bundle). In this meeting the claimant explained how he had been through a dark patch after Christmas due to his workload, divorce and looking for a new home, but was now enjoying coming to work. He asked that as a reasonable adjustment his teaching hours would be reduced by three periods a week. This would not reduce his time in school, but would increase the time available for planning preparation and assessment. Jenny Kennedy indicated that the suggestion would be taken to members of the senior leadership team.

4.14 Actions were agreed at the conclusion of this meeting, and by letter of 16 May 2016 (page 446 of the bundle) Andrew Griffin informed the claimant that his request for reduced teaching hours had been granted , and that from 1 September 2016 his contract would be changed on a temporary basis , until 31 July 2017, to provide that he worked reduced teaching hours 36/50 hours over a two-week timetable allowing six periods of non contact time.

4.15 On 27 May 2016 the claimant was off work due to neck and back problems from his ankylosing spondylitis, and on 14 June 2016 the claimant was off work again with a migraine as result of lack of sleep caused by his bipolar condition. This episode continued, and he informed the respondent that he was experiencing a manic episode which continued into 15 June 2016. He therefore remained off work. He kept the respondent informed of his situation (pages 451 to 455 of the bundle). By letter of 15 June 2016 Tyesha Okuboyejo wrote to the claimant (page 453 of the bundle) inviting him to attend a formal absence review meeting on 28 June 2016. This was due to his recent absence triggering the respondent's absence review process under the absence management policy, a copy of which was provided for the claimant.

4.16 The claimant responded by email of 17 June 2016, saying that he would be represented at this meeting by his union representative. He asked that his first two disability -related absences be discounted and removed from the process as a reasonable adjustment. He made reference to the EHRC Employment Code of Practice, and to section 20 of the Equality Act.

4.17 The claimant in fact was off work on sickness absence from 14 June 2016. He first notified the respondent of this by email of 14 June 2016 (page 451 of the bundle).

4.18 On 23 June 2016 the claimant sent an email informing the respondent that he was visiting his GP to confirm his fitness to return to work. Whilst he was not fully recovered he was looking forward to being back with friends and colleagues. His recent episode , which had been initially manic and then became depressive , had been related entirely to home circumstances , and was not work-related. He reported how his medication had stabilised, and how he had recently moved temporarily to a village outside the field where he could start the recovery process. He said this had been worst ever year for his illness, and he apologised for the inconvenience he had caused his colleagues. He looked forward to returning to work following Monday.

4.19 His email was acknowledged by Tyesha Okuboyejo by email on 28 June 2016 (page 482 of the bundle) , in which he asked the claimant be attending the meeting arranged for that day. The claimant subsequently confirmed that he would wish the meeting to be held when he returned to work. In the event the claimant's union representative also unable to attend, and a lay representative , Margaret Koller (or Keller) , attended in his place. Whilst the meeting did not take place Tyesha Okuboyejo and Gilly McMullen did have a discussion with her as to how the meeting would have proceeded, and the school's intentions moving forward. The claimant's return to work was awaited, but an alternative date and venue for this meeting was suggested. The claimant was informed of this by letter of 29 June 2016 (pages 485 and 486 of the bundle).

4.20 The claimant replied on 30 June 2016, and in his second email of that day (page 488 of the bundle) he informed the respondent of his further discussions with one of his doctors, and referred to the fact that he was seeing another physician following week. He sought Tyesha Okuboyejo's advice as to whether he would be allowed to return to work on the medication to is currently prescribed what implications this may have upon his fitness to teach. He also made reference to a "WRAP" , this being an acronym for well-being, recovery, action, and plan. He asked if this would be suitable for the school and sought her advice. The claimant provided photographs of his fit notes during this email exchange. Tyesha Okuboyejo replied to him that the question of whether he was fit to return to work was one which only his GP could answer sufficiently. She sought clarification of what the

WRAP involved. The claimant replied that he would look into this further, perhaps with occupational health, and would ask his psychiatrist about the medication and return upon this as soon as he could (page 487 of the bundle).

4.21 The claimant subsequently did provide WRAP template, and on 7 July 2016 further to the respondent to provide an update upon his meeting with Dr Chew (page 493 of the bundle). In this email the claimant made reference to his relatively poor attendance the year. He referred to the first two episodes being related to work-related stress, failure to make reasonable adjustments, and the difficult grievance that was required to resolve these issues which unfortunately took time. Referred to feeling isolated during this period, and went on to inform the respondent of his proposed monthly meetings with Dr Tasker, his lead GP, which were due to start on 21 July 2016. He was to begin CAT therapy following week. He therefore was submitting a final fit note which would take him to the end of term, noting that there was a meeting on 14 July 2016. He expressed his disappointment at not turning before the end of term, but this was required. He went on to say that he realised that his recent absence constitute a long-term absence and will be dealt with as such, noting the agreed reasonable adjustments that would commence in September. He would ask that the first two episodes be discounted as these were a direct consequence of work-related stress and the school's failure to make reasonable adjustments, such as varying the trigger points for disability -related absences when applying the absence management policy.

4.22 The formal absence review meeting was held on 14 July 2016. to conducted the meeting with Louisa Taylor the CAL (Curriculum Area Lead) for Humanities also present for the respondent. The claimant was accompanied by Margaret Keller, a union lay representative. No notes of this meeting have been produced, but following it a letter dated 19 July 2016 sent to the claimant (pages 494 and 495 of the bundle) in which what was discussed was summarised. In the meeting the claimant had stated that he would return to work on 1 September 2016 , and was putting together a crisis plan with his psychologist. His most recent absence was not work-related. He had agreed that the current timetable in place was a reasonable adjustment, as it was a reduction in his planning and marking. The claimant had also said upon his return to work you would like to meet with Louisa Taylor on a weekly basis, and he planned to come into work August 2016 to prepare for his return in September. During the meeting Lisa Taylor showed him his proposed timetable the 2016/2017 academic year which showed that he had 32/42 hours teaching over a two-week period when compared timetable of a main scale teacher. The claimant was pleased with this , and was aware that this could increase to 36 hours maximum. His timetable allowed flexibility, and he would not be teaching year 10 or year 11 classes history. His timetable focused on his specialism of History. His absence trigger had been extended to 7 occasions of absence due to sickness over a 12 month rolling period , which was an allowance of two further occasions of absence due to sickness. The claimant's request that two periods of absence in late 2015 and early 2016 be discounted had been allowed but there still remained nine occasions of absence . The next steps, and targets for improvement, were identified as being a return to work on 1 September 2016 and no more than one occasion sickness absence of one working week between 1 September 2016 and 31 December 2016.

4.23 It was also agreed the claimant crisis plan be discussed with the rest of Humanities team during a meeting on the INSET day on 1 September 2016. There was discussion of the claimant's most recent fit note and the need for it to be extended as it expired on 8 July 2016. He was also requested to ensure that he was signed fit for work before coming

to work in August 2016 for planning and preparation. It was considered that a referral to occupational health was not necessary at this stage is reasonable adjustment had been put in place to accommodate his return to work, and as the cause of his most recent absence was domestic, which was now managed, the claimant was able to return to work with reduced timetable in place as a reasonable adjustment. The claimant was invited to raise any questions with this summary of the meeting, and told of his right to appeal against any of the issues raised in the meeting. The claimant did not raise any queries, or appeal and did not respond further to this letter.

4.24 The claimant remained off work until the end of the summer term, and duly returned to work in September 2016. By email of 2 September 2016 (page 496 of the bundle) the claimant thanked Andrew Griffin for his welcome upon his return to work, and stated that it was good to be back with his colleagues, in particular his line manager, and he would endeavour to ensure that he rewarded the faith that had been shown in him. The claimant was allocated classroom B9 on the first floor for this academic year. He was not consulted about this.

4.25 By email of 5 September 2016 the claimant made a request flexible working on the basis of his need to care for a dependent child (see pages 498 to 500 rather unhelpfully split across two bundles). In addition the claimant raised as secondary grounds for this request issues relating to his disability as set out in his email of 12 September 2016 (page 497 of the bundle). As part of this request the claimant sought a start time of 6:45 a.m. Tyesha Okuboyejo held a meeting with the claimant on 22 September 2016 along with Louisa Taylor . His request was denied as the respondent could not accommodate his start time given that teaching did not begin until 8:55 a.m , and was no requirement to be in work prior to 8.00 a.m. it was noted however that the claimant could leave earlier agreed with his manager. It was further agreed that claimant's weekly meetings with Louisa Taylor was on Friday mornings. The claimant was given the right appeal against this decision, but not do so.

4.26 The claimant was off work for two days on 26 and 27 September 2016 with a viral infection (see page 504 of the bundle).

4.27 The claimant's employment appeared to go reasonably well in the autumn term of 2016, the claimant expressing in an email of 18 November 2016 (page 507 of the bundle) his gratitude to Andrew Griffin and Gilly McMullen their assistance in what he termed his "transformation" during that year. Around this time the claimant was confronted by an aggressive pupil, and called for help, but none came. He made no complaint about this incident, or his room allocation that year.

4.28 The claimant did raise in an email of 25 November 2016 the issue of his ankylosing spondylitis and its effects upon his ability particularly in relation to marking (pages 508 to 509 of the bundle).

4.29 Towards the end of 2016 the claimant underwent a PDR (“personal development review) , and was not awarded a pay rise. This led to email communication between him and Andrew Griffin (pages 510 to 511 of the bundle) in which the claimant questioned whether his failure to achieve a pay rise upon his PDR was not influenced by matters relating to his disability so as to amount to a breach of section 15 of the Equality Act. Andrew Griffin responded explaining the basis for the claimant's rating, and indicating that

he would seek further advice upon whether the PDR process was in any way discriminatory.

4.30 On 18 January 2017 a meeting was held between the claimant Louisa Taylor and Tyesha Okuboyejo in order to review his reasonable adjustments. The claimant reported that his adjusting teaching hours were manageable and that he was not experiencing any work related stress at that time. He was on top of his marking and his worklife balance was working. He updated the position in relation to his medical treatment and advice and was upbeat and positive in this meeting. He went on to explain his physical issues in relation to his hand, and how he was coping with that in terms of his work. He sought no further adjustments in this meeting, and a further meeting was scheduled later in the academic year to review the situation further. The notes of this meeting are at page 512 of the bundle.

4.31 On 1 March 2017 the claimant wrote to his line manager Louisa Taylor, Andrew Griffin and others, updating them on his medical conditions (page 516 of the bundle). In relation to his bipolar condition he reported that he was continuing to attend his psychologist every Monday that his therapy was going well. He anticipated working on the WRAP plan and putting together a crisis action plan which would be made available to relevant parties at the school. He reported on his medication and have a reasonable adjustment in terms of a two period teaching reduction per week had helped hugely as had the other reasonable adjustments. He said he continued to manage his workload and time effectively to minimise stress which accounts for the most significant trigger for any episode.

4.32 In relation to his ankylosing spondylitis he continued to manage this disability with bi-weekly self-administered injection. The condition had stabilised. It made daily tasks painful but not impossible. He wore a splint at periods during the day and was being fitted for a removable cast to be worn at night to stabilise the joint. His next appointment was in six months and he was attending his GP every three months to monitor progress. Other than to update his employer, the claimant was not seeking any further reasonable adjustments in this email.

4.32 The claimant was then off work ill from 1 March 2017 with a manic episode which he described in an email 5 March 2017 (page 517 of the bundle) as being brought on by external factors which created a stress trigger. He hoped that was his last day of absence and by email of 6 March 2017 (page 518 of the bundle) he informed the respondent that he would be back in work the following day. In this email is stated that his absence was entirely related to personal circumstances and that he had fallen little behind with his marking but would endeavour to catch up that week. He went on to say that he had suffered no stressors from work that year at all, and indeed went on to say that not a single part of his job had caused him any worry and that this had been very positive.

4.31 Around this time Heather Prest , a new HR partner, became involved and wished to meet the claimant, with a view to discussing his current state of health for a potential referral back to occupational health. This would be an informal meeting at which Luisa Taylor would also be present (see page 519 of the bundle).

4.32 The claimant sent an email to Tyesha Okuboyejo on 7 March 2017 setting out more details about his bipolar condition to assist her and others in understanding it. She received that , and also obtained a copy of a document entitled "employers guide to

bipolar" (which is probably the same document as later appears in the bundle at pages 715 to 726) which she sent to Tom Critchley for inclusion on the claimant's file for the benefit of Heather Prest (see pages 522 and 523 of the bundle).

4.33 A welfare meeting was held with the claimant on 15 March 2017, by Heather Prest. No notes of the meeting were taken, but a discussion about the claimant's medical history and the adjustments that had been put in place. There was a discussion about a further referral to occupational health, and possibility of approaching Access to Work was canvassed. The claimant followed up this meeting by an email to Heather Prest on 19 March 2017 (page 526 of the bundle) in which he made contentions that the school had not in fact carried out sufficient reasonable adjustments, but stating that he had no intention of pursuing these matters further unless school changed its current commitments to him. The claimant sent a further email later the same day to Heather Prest (page 527 of the bundle) in which he set out some further background of his employment history which he considered she may find useful.

4.34 Heather Prest replied by email of 20 March 2017 (page 528 of the bundle) confirming her proposal to make a further occupational health referral, and explaining the main purpose for doing so.

4.35 On 27 March 2017 the claimant sent a further email addressed to Andrew Griffin and Heather Prest, entitled "Letter of Concern", in which he made reference to having passed a file to Michael Lewis solicitors, who had advised him that the school's actions may amount to a consequential personal injury claim in respect of stress and psychiatric injury. He had however notified the solicitors that the claim should be put on hold until he had met with representatives of the school. He made a number of contentions that the school had failed to make reasonable adjustments, and again made reference to provisions in the Equality Act. In this 2 1/2 page letter claimant suggested a meeting , but went on to state expressly that his email did not constitute a letter before action.

4.36 Heather Prest replied by email 6 April 2017 (page 539 of the bundle) suggesting that the concerns the claimant had raised be discussed in the meeting after receipt of the occupational health report and the approach to Access to Work.

4.37 The referral to occupational health was made by Heather Prest on 21 March 2017. The referral document is at pages 334 to 337 of the bundle. In it Heather Prest set out on the second page the six adjustments that had already been made to the claimant's working arrangements. On the third page of this document she set out the reason for the further referral is being to seek an update on the claimant's condition and how it affected him in the workplace she made reference to the absence management policy, and the triggers that were part of its operation. She sought full and comprehensive advice on the current adjustments offered to the claimant and whether they were still relevant. In particular she asked about the current reduction in the claimant's teaching timetable and whether that needed to be maintained and monitored, or whether there was scope to gradually increase this over a designated period of time .

4.38 On 3 May 2017 the claimant withdrew from school, and was then absent for a total of 28 days. This followed a performance improvement programme, also referred to as a Support Plan, discussed in meetings with the claimant by Liam Horrigan during April 2017. This arose from a lesson observation, and led to the preparation of a Support Programme

(pages 355 to 356 of the bundle).The claimant informed Heather Prest of this absence by email that day (page 592 of the bundle).

4.39 After some administrative difficulties in arranging the claimant's attendance, the occupational health assessment took place on 15 May 2017. The claimant in subsequent emails to Heather Prest described the meeting as having gone well.

4.40 The resultant report dated 24 May 2017 is at pages 352 to354 of the bundle. This report records the claimant experiencing a "wobble" which arose in connection with the performance improvement and support plan discussions that took place with Liam Horrigan in April 2017. This had been a source of stress for the claimant and had triggered his recent exacerbation. The hope was expressed that he could meet with management to discuss and resolve these issues, and the prognosis was that it was likely that as the perceived stress resolved his psychological symptoms would improve and his health stabilise so as to enable him to return to work within six weeks. The report records the current adjustments in place, which the claimant had stated were working well. He did consider that management had a lack of awareness of mental health and Equality Act issues, and how his performance should be judged in terms of the natural cycle of low and high periods in relation to his condition.

4.41 The occupational health report is based upon a more detailed report from Dr Rachael Hanlon (pages 357 to 359 of the bundle), in which she makes reference to an attempted overdose that the claimant made in April 2016, of which the respondent had been unaware. Her report as well records that the claimant considered that the modifications put in place by the respondent were working well, though he had reservations about management's level of awareness. She did not consider that the claimant required an adjusted role, and that he could return to his usual role, in a period of between one to 3 months, or more likely 4 to 6 weeks, and should discuss his concerns with management.

4.42 The claimant agreed to the release of the occupational health report, and arrangements were made for a meeting to be held to discuss it. By email of 26 May 2017 (page 610 of the bundle) the claimant offered to assist in delivering equality training, as was mentioned in the occupational health report.

4.43 The meeting to discuss the occupational health report was held on 6 June 2017 with Andrew Griffin and Heather Prest in attendance along with Anne Lucas HR adviser. The claimant did not require any union representation or other accompaniment. Notes of this meeting are at pages 612 to 618 of the bundle. During this meeting the claimant confirmed that he did not require any further adjustments prior to his returning to work, which he proposed to do on 12 June 2017, without a phased return. The absence management policy was discussed, as was the claimant's proposal to deliver quality and diversity training to all staff and in particular the senior leadership team. In particular the claimant was concerned about lesson observations, and the need for the respondent's staff to be aware of mental health issues, and how they may affect performance in the classroom.

4.44 The outcome of this meeting was summarised in a letter to the claimant of 8 June 2017 from Andrew Griffin (pages 619 to 621 of a bundle). In this document Andrew Griffin summarised the eight topics that have been discussed in the meeting, and set out nine action points that had been agreed. He also confirmed the claimant's proposed return to work on 12 June 2017. Andrew Griffin noted again the claimant's acknowledgement that the reduction in his timetable and other adjustments working well, and was no further

support that he required at that time. There was reference to other topics covered in the discussion, and Andrew Griffin thanked the claimant for his positive input into the discussion, and how this would help to drive improvements in working practices that would benefit all staff, including those with a disability covered by the Equality Act 2010.

4.45 The claimant by email of 14 June 2017 made reference to the need grievances dealt with before proceeding with the action plan discussed with the Liam Horrigan (page 624 of the bundle). By letter of 29 June 2017 Steve Davies of his union also wrote to Andrew Griffin referring to a grievance hearing which took place on 6 June 2017. He made reference to the early conciliation provisions for a disability discrimination claim in the Employment Tribunal.

4.46 The same day (29 June 2017) the claimant was at work and attended a feedback session after observation of one of his lessons. He had an emotional outburst to this feedback, and sent an email to Andrew Griffin at 16.52 (page 630 of the bundle) , in which he reported this incident, and referred to this being the straw that broke the camel's back, following what he described as the failure to adequately investigate two grievances and the unlawful debacle over the timetable. He said he would remain absent until the following Tuesday would then decide in conversation with his psychologist whether he should return to work that academic year.

4.47 On 30 June 2017 the claimant sent an email (page 630 of the bundle) to Louisa Taylor , explaining why he had withdrawn himself from school, and expressing his upset at the way in which he was now being regarded as a failing teacher. He copied this email to Heather Prest, who replied later that day offering him support, for which the claimant thanked her in his reply later that day (page 632 of the bundle).

4.48 By email of 2 July 2017 (page 637 of the bundle), the claimant informed Andrew Griffin and Heather Prest that he was receiving antipsychotic medication which may take 3 to 4 days to embed. Whilst suggesting how future observations should avoid criticism of style, he fully accepted his part in the manner of his reaction to the feedback and said he would gladly submit to any disciplinary investigation deemed appropriate. By email of 4 July 2017 (page 638 of the bundle) to Louisa Taylor, copied to amongst others, Andrew Griffin, the claimant stated that, whilst he was still incredibly disappointed at the manner of the observation and the feedback, he did not intend to pursue the matter any further. He did, however, make some suggestions for how the process could be improved.

4.49 The claimant remained off work and did not return for the rest of the summer term 2017.

4.50 By letter of 6 July 2017 Andrew Griffin replied to Steve Davies (page 641 of the bundle) informing him that the meeting held on 6 June 2017 was not held as a specific grievance meeting all hearing was in response to concerns raised by the claimant. He pointed out how the outcome of this meeting was communicated in writing to the claimant on 8 June 2017. Unsure what outcome Steve Davies had been referring to, and would be grateful for further clarification.

4.51 On 17 July 2017 (page 642 of the bundle) the claimant sent an email replying to this, telling her that Andrew Griffin would be receiving a phone call over the coming days regarding ACAS early conciliation. On 26 July 2017 Michael Lewin solicitors wrote to the respondent to requesting insurance information and the claimant's personal and

occupational health records having been instructed to pursue a claim against the respondent for personal injury (page 644 of the bundle). The same day the claimant sent an email to Anne Lucas (page 728 of the bundle) asking if the school would fund private medical care at the Priory , at a cost of £125 per session, as he felt he was not getting continuity of care under the NHS. Anne Lucas consulted with Andrew Griffin, and replied later that morning (same page) that the school could not provide that funding, as it had recently undergone a re-structuring, which resulted in redundancies and cutbacks. She expressed understanding that the claimant would find this disappointing.

4.52 On 26 July 2017 Anne Lucas sent the claimant an HSE stress indicator tool, which she thought it would be a good idea to complete, as his recent work absence was noted as work-related stress (page 649 of the bundle). The claimant replied (same page) saying that he would complete it, and identifying what the primary stressors were, but workload per se was not.

4.53 On 14 July 2017 a meeting was held between the claimant Andrew Griffin and Anne Lucas. Its purpose was to discuss the new timetable arrangements for the next academic year and to ensure that the adjustments to the claimant's role were still appropriate and it purpose. The matters agreed in the meeting are set out in a letter from Andrew Griffin to the claimant dated 31 July 2017 (pages 651 and 652 of the bundle). Whilst the claimant had sought to avoid being placed on cover during his teaching lessons Andrew Griffin had not been able to achieve this, but none of his teaching hours would be allocated for cover. His working pattern remained the same and the potential benefits of an occupational health consultation also discussed. It was not felt that it was necessary for a further consultation as the claimant had a comprehensive report from a recent referral. He confirmed in this meeting that he was content with the current adjustments to his role and the proposed new timetable.

4.54 On or about 2 August 2017 ACAS sent an early conciliation certificate and covering letter of that date to Andrew Griffin of the respondent (pages 653 to 655 of the bundle).

4.55 On 16 August 2007, during the summer holiday, the claimant approached Anne Lucas and asked to speak with her in her office. In this conversation he informed her how he had been feeling unwell over the last couple of weeks, and had suffered a depressive episode, such that the mental health crisis team had kept him on suicide watch. He discussed issues relating to family that had upset him, and how he was under the care of a psychiatrist review him every three months. He was concerned that there was no continuity in treatment on the NHS, and he had recently asked school to pay for private sessions, which it had been unable to do. Anne Lucas asked anything she'll do to help, but he replied that he was all right just felt drained and exhausted, on some days just felt numb. He probably felt worse by not being in school and was looking forward to being back in September. Anne Lucas asked him to let her know how he was feeling nearer the time, and he said he would definitely be back in school on 4 September 2017 for induction and preparation days prior to the start the new academic year. The notes of this conversation are at page 657 the bundle.

4.56 On 30 August 2017 the claimant sent an email to Louisa Taylor and Anne Lucas, copied also to others (page 658 of the bundle) informing the recipients that on the Monday of that week his health deteriorated the extent that he was admitted to Salford Royal Hospital following an overdose. He had been discharged that morning. He said that he felt

fine ,and would be attending work the following day 31 August 2017, to plan. He expected some vulnerabilities to remain and would be discussing these with his psychologist. He ended by saying he was looking forward to returning to work.

4.57 The claimant sent a further email two minutes later that day (page 659 of the bundle) in which he said this:

"Following on from my previous email and noting my vulnerability, it may be worth considering that those managing me have received both adequate Equality training and also adequate training in lesson obs and feedback which created such issues at the end of last term."

4.58 Whilst Heather Prest in para. 111 of her witness statement suggests that this was the claimant accepting that those responsible for his management had received adequate equality training, the Tribunal does not so read this email. The claimant on occasion has been inaccurate in expressions used in emails, and the Tribunal does not consider this to be an acknowledgement that adequate training had been given, but rather the claimant raising the issue of whether adequate training had been given.

4.59 Later that day the claimant sent a further email to Andrew Griffin and Anne Lucas (page 660 of the bundle) asking for the opportunity to design and then deliver equalities training for the school. The claimant sent a further email on 1 September 2017 (pages 661 and 662 of the bundle) to Andrew Griffin referring again to his overdose . He has to be allowed to speak to the SLT team about his condition and how it was triggered. He suggested that being able to develop equality and diversity training at all levels would go a very long way to improving his very low feelings of self worth.

4.60 Andrew Griffin replied by email on 1 September 2017 (page 661 of the bundle) expressing his apologies for not replying sooner, is upset at the claimant's recent ill-health, and saying that he thought it would be beneficial for the claimant and his colleagues for him to provide this training.

4.61 There was further email traffic about the claimant's proposal to deliver this training on 30 August 2017, and the resources that the claimant would put together for this purpose.

4.62 On the morning of 1 September 2017 Heather Prest spoke with Andrew Griffin, and as a result sent the claimant an email at 09:18 that morning (page 668 of the bundle). In it she suggested that the claimant have a telephone consultation with occupational health as this would benefit Andrew Griffin and Anne Lucas, as would any advice from the claimant's GP or consultant about the most appropriate way of supporting him back to work. She did not have the claimant's telephone number but needed his consent to talk to occupational health about his sickness absence and recent events. The claimant replied that 09:25 (pages 667 to 668 of the bundle) asking Heather Prest to accept this email as confirmation of his permission to approach occupational health on his behalf. He went on to recommend the school obtained by occupational health report from his treating psychologist. He went on to refer his proposed conversation with the SLT team would further alleviate some of the issues. She replied by email of 09:53 to inform the claimant that a telephone appointment was available at 1.00 that afternoon to which he replied at 10:08,saying that he is set for this appointment . He also said his condition not mean that he was a threat to anyone bar himself. His psychologist would tell her that he was good at

managing his condition provided able to understand fully the trigger points and how he managed them.

4.63 The claimant had the telephone consultation with an occupational health physician, a Dr Cooper, on 1 September 2017 as arranged . This was not a successful consultation. There was no reference to the claimant's medical notes or his file no reference to any expert medical opinion of the claimant's GP or other treating practitioners. The opinion was expressed to the claimant that he was unfit for work, and the occupational health physician did not believe it to be beneficial for those with bipolar to remain in work on a permanent basis. He would recommend the claimant be deemed unfit to return to work. The claimant was distraught and upset about this and phoned Heather Prest later that afternoon to tell her what had been said.

4.64 The claimant attended school on the morning of the INSET training on 4 September 2017. No pupils were in school that day, which was a training day there were a number of new staff starting with the school that day who were present for this induction day. There were two such days, with the pupils not due in school until Wednesday 6 September 2017. The claimant was at school early that day and saw Andrew Griffin and Anne Lucas. His behaviour was such that Andrew Griffin and Anne Lucas were of the view that he was unfit to remain at work. Other colleagues who had observed him that morning had also expressed concern at his behaviour.

4.65 In the meeting that the claimant had with Andrew Griffin and Anne Lucas he told them about the telephone consultation he had had the previous Friday with Dr Cooper . He told them how he had recommended ill-health retirement and that Dr Cooper had expressed the view that the claimant was unfit for work . He explained how he disagreed with this opinion , and how he did not consider that the doctor was familiar with his condition. He went on to say how he had discussed this with Heather Prest, and he refused permission for this occupational health report to be released to the respondent, as he did not agree with it.

4.66 In the light of this information , and the claimant's behaviour that morning, at some point that morning, clearly before 11.45 a.m., Andrew Griffin told the claimant that whilst he could stay in school for that day and the next, he could not attend on Wednesday , when pupils would be in school. The claimant did not agree with this request, and considered that the school could not make such a decision without expert medical opinion.

4.67 A note of the events of that morning, and the following day is at pages 687 to 688 of the bundle.

4.68 The claimant at 11.45 that morning sent an email to Heather Prest , who was on leave, informing her of his meeting with Andrew Griffin and Anne Lucas, and how he had not been allowed to remain in work when there would be pupils on the premises. He explained how he had told Andrew Griffin that without expert medical opinion the school could not suspend him. He went on to say how the school would not allow him to return without a report from his psychologist , and GP which he had suggested. He said, however, that on the advice of his union , in the absence of a medical expert opinion to the contrary he would attend his workplace each day as normal. He went on to say that the actions of the school had reinforced the negative actions of occupational health, although he appreciated that that would not have been the school's intention. He said that there existed no reasonable grounds for the school to take such further action and they should

have sought to keep him in school. He expressed his disappointment that , having been genuinely excited at the prospect of the start of the new term , this had now happened.

4.69 The claimant also at 11:58 that morning sent an email (page 670 of the bundle) to Lisa Cole, who was the Head of HR North, Central and HR central Services, based at the respondent's office in Peterborough. In this email he referred to being a workplace representative with Unite , and that he had taken further advice from the union which suggested that the proposed action by the school may be unlawful. He went on to say that he intended therefore to attend work on Wednesday in the absence of any expert medical opinion to the contrary, and he did not intend to certify himself as unfit for work.

4.70 Later that day Anne Lucas and Andrew Griffin, with the claimant's consent, contacted Crompton House by telephone , where the claimant was a patient in an attempt to obtain more medical opinion on his condition and his fitness to return to work. No definite opinion could be provided at that stage, the view being expressed that the claimant's fitness for work was a matter for his GP to comment upon. The claimant left that day, having given his permission for the school or IMASS to contact his GP and treating physician.

4.70 Lisa Cole consulted with Andrew Griffin and Anne Lucas during the day, and wrote to the claimant an email at 16:03 (page 669 of the bundle) saying that she was in full support of the opinion of Andrew Griffin and "Sue" (possibly an erroneous reference to Anne Lucas, or possibly to someone else in HR) that it was not in the claimant's or the school's best interest to return to work to teach on Wednesday. She said the school had a duty of care to ensure that he and the children were safe, and if they believed that either may be at risk than they were able to ask him not to attend. He said that she would update Heather Prest upon her return, who would work with the claimant and the school to receive the further medical import that was required to facilitate a return to work.

4.71 Sometime during that day the claimant provided a form of authority, which he signed on 4 September 2017, for Dr Tasker to release a medical report upon the effects of this bipolar condition and whether this should preclude him from the workplace on a permanent basis. This report would also be used to confirm his further suitability to return to work. It is unclear when and how that authority was forwarded to the school or to Dr Tasker, but the claimant clearly provided that day.

4.72 The claimant also that day saw Dr Sandra Neil, Clinical Psychologist, of Cromwell House CMHT, where he had a routine appointment. She provided a report dated 4 September 2017 (pages 677 and 678 of the bundle) in which she reviewed his recent medical history including his recent attempt at an overdose on 29 August 2017 . Having reviewed the claimant in her outpatient clinic that day she had no concerns based upon her assessment about risks either to himself or to anyone else. His mental state appeared normal.

4.73 In her concluding paragraph she said this:

"In my opinion having a diagnosis of a mental health condition does not and should not preclude a person from being able to do their job (especially if a person is given the right support and treatment). However, I am unable to comment on the specifics of Mr Day - Davies's role. I believe that any assessment of Mr Day - Davies's ability to return to work as a teacher is a question that would go beyond my remit and is something that would require an independent assessment."

4.74 That evening the claimant composed a grievance which he sent to Andrew Griffin, copied to other relevant parties, in which he complained about his suspension. He stated that no medical evidence had been provided to support the school's decision, and made reference to the Equality Act 2010 (pages 674 to 675 of the bundle). He went on to say that the decision to suspend him was itself a detrimental in isolating him from his colleagues , and the therapeutic effects of work for someone with his condition. He said that the school's stance that his condition amounted to a safeguarding issue for pupils and that he was a present danger to his colleagues would amount to an unacceptably stereotypical view of his disability based on wrong assumptions. This detriment could exacerbate his bipolar condition.

4.75 In addition to copying Anne Lucas into this grievance email, he sent a separate email to her shortly afterwards (page 673 of the bundle) in which he again stated that the decision to suspend him was made without any medical advice and on a whim. He repeated the impact that this had had on him after the events of the previous week, and how there had been no consideration of his health or his wishes in the heavy handed actions of the school.

4.76 The claimant went to the school again the following day. He met with Andrew Griffin and Anne Lucas again. Andrew Griffin handed him a prepared letter , dated 5 September 2017 (pages 689 and 670 of the bundle). In it he formally suspended the claimant on medical grounds with immediate effect. He said his decision was based primarily on medical advice of the occupational health advisor whose opinion was that he was not fit for work. Whilst the claimant's view that he was fit to work had been taken into consideration, the decision had been based on the latest medical evidence received. Reference was made to the discussions previous day where the claimant was given an opportunity for a second opinion but that the medical advice been that this was a matter for the claimant's GP to declare that he was ready to return after his suicide attempt. This medical opinion had not been received. Once a second opinion had been obtained the suspension would be reviewed and a decision made about the claimant's return Andrew Griffin said that he was acting from a duty of care and following occupational advice. The claimant was accordingly suspended until such time as the respondent could get a second medical opinion which he had agreed to the previous day. The claimant was asked , whilst suspended , not to come onto the school premises or to contact colleagues or managers to discuss the reasons for his suspension , or to undertake any other work within the school.

4.77 During that meeting, the claimant was told that a second medical opinion was required. It is unclear if he was actually told at that time that a psychologist's report would not be considered a medical report.

4.78 The claimant did not accept his suspension well , and was escorted out of school around 10:40 that morning by Andrew Griffin. Precisely what occurred is unclear and the Tribunal does not have any first hand account from Andrew Griffin upon which to make any findings. Anne Lucas's account clearly has the day wrong, but the claimant agrees that he was escorted off the premises, and that this was in front of other members of staff.

4.79 Whilst their witness statements are, as the oral evidence was also, unclear from both parties as to precisely when, and how, Dr Neil's report of 4 September 2017 came into the hands of the respondent, a review of the bundle reveals that the claimant sent it at 13:53 on 5 September 2017 (page 681 of the bundle) to Anne Lucas, his union

representative and Heather Prest (who was , of course, on leave) . He informed her that he was seeing his GP at 4.00 p.m, and asked if the school would confirm by that time if it would accept the advice in Dr Neil's report. After a further email chasing up an reply, Anne Lucas replied at 13:57 that day that she had received and seen it, but was going to Stockport that afternoon. She had sent the report to Andrew Griffin.

4.80 The claimant sent an email at 15:55 (page 695, among others, of the bundle) to Anne Lucas and Andrew Griffin in which he reported on his appointment with his GP. The GP would only issue a fit note if he was actually ill, which he was not. The GP would write a report on request from occupational health, upon request, and refer directly to the letter from the psychologist. He ended by saying that accordingly he remained fit and available for work. Andrew Griffin replied at 18:47 that day (same page of the bundle) saying that this was excellent news thanking the claimant and telling him that he would ask HR to pursue that immediately.

4.81 At 18:56 that day the claimant sent a further email to Andrew Griffin copied in to his union representative Steve Davies (page 685 of the bundle) in which he asked "Magnificent Mr Griffin" to take this email as confirmation of withdrawal of disability grievance that he had raised the previous day.

4.82 On 6 September 2017 by email at 08:13 (page 691 of the bundle) to Anne Lucas and Heather Prest copied to his union representative, the claimant raised a further formal grievance in relation to the actions and advices by the respondent in the manner and treatment of his medical suspension without grounds, which was an action he said was supported by group HR and this was why he was including the respondent company in his grievance. He went on to refer to his previous grievance and how he wished the points therein to be included, and to psychological injury, a breach of the implied term of trust and confidence, harassment and direct discrimination under the Equality Act 2010. He referred to his suspension which he considered was no longer a neutral activity if it resulted in reputational damage , as was the case , and the possibility of personal injury arising out of this treatment. He said that the grievance was not in response to an individual act, but was a legitimate concern regarding the respondent's policy and practice, a legal breach , and breach of health and safety regulations. He expressed gratitude to Heather Prest for her continued support, and noted that it was unfortunate that this unlawful action has been taken during her absence without the benefit of expert medical opinion is required under the Fitness to Teach Regulations.

4.83 On 6 September 2017 and Lucas was in contact with Jacqui Craddock of IMASS in order to arrange for a face-to-face consultation for the claimant. Jacqui Craddock emailed her to obtain authority for the fee that would be incurred (page 696 of the bundle).

4.84 At 09:41 on 7 September 2017 the claimant sent an email to Anne Lucas (page 702 of the bundle) informing out that he had made an official complaint regarding the IMASS practitioner whom he had dealt with on 1 September 2017, alleging professional negligence. He told her that he had given permission for IMASS to approach his GP for a report which would be based on the advice from his psychologist. He asked who would deal with his grievance as it related to both the school and United Learning.

4.85 Anne Lucas replied to him by email at 10:07 that day (unfortunately across pages 700 and 702 in the bundle) telling him that Lisa Cole had acknowledged his grievances, and that Heather Prest would be back from leave on 11 September 2017. She recorded

that ,as the claimant had given his consent to his GP to be contacted and that IMASS would now make contact with his GP.

4.86 At 12:44 on 7 September 2017 the claimant sent a further email to Anne Lucas copied to his union representative and Heather Prest (page 700 of the bundle). In it he said he required from the school a written letter confirming that the school had acknowledged receipt of the psychologist's letter , had agreed its contents , as such agreed to reinstate him forthwith. In the absence of a date for reinstatement the school was required to confirm the reasons for his continued absence, noting that medical suspension was no longer applicable and the specific policy and policy wording that the school believed applied to his current absence, noting the absence of a fit note to the contrary. He said he would require this letter for his records and presentation of his forthcoming grievance. He went on to say that he was deeply disappointed at the slur placed upon his professional incorrect integrity, and expressed deep feelings of worthlessness with the suggestion that he was deemed unsafe to be around pupils , which he said was an assumption from a knee-jerk reaction.

4.87 At 14:38 that day the claimant sent an email to Louisa Taylor (page 705 of the bundle) in which he informed he was waiting to confirm a meeting with Heather Prest for his return to work, and asking who was taking his classes at the moment. He said he was missing being at school with her and "the scooby gang". Louisa Taylor sent an email to Anne Lucas at 14:59 that day checking if she was allowed to reply to staff on suspension.

4.88 At 16:01 that day and Lucas replied to the claimant by email (page 706 of the bundle). In that email she confirmed she would ask Andrew Griffin to confirm receipt of the psychologist's report, but she had confirmed this on the day it was received. She went on to say this:

"We advised you on Tuesday morning that we needed a second medical opinion (psychologist report is not a medical report) prior to allowing you back in to work as you were unhappy with your occupational health report and refused sight of the report by the school. At no stage did we say that we considered you to be a physical risk to children, but we needed to know for your own wellbeing that you are fit to be back in work at the school following the recent attempt to take your own life.

During the same meeting, you agreed that you would give consent for IMASS to gain a report from your GP as a second medical opinion and you requested a face-to-face consultation with a doctor arranged by IMASS. I have been advised by IMASS today that you have since refused to attend a face-to-face consultation and this will remain your position until you receive a satisfactory outcome to the complaint you have raised against IMASS and their doctor.

I understand that IMASS have prepared the necessary documents for your GP to release information to them, and that they have passed your complaint on to be investigated. The position of the school and United Learning remains that you will remain a medical suspension on full pay until we are in receipt of a medical report stating that you are well enough to return to work."

4.89 At 16:30 that day the claimant sent a further email to Anne Lucas (page 695 of the bundle) in which he pointed out that he was asked to submit a letter from his treating psychologist by Mr Griffin as a way of resolving the impasse and allowing him to return to

work. He had done this, but the school had now stated that a psychologist is not a medical expert. Actually a psychologist was and a GP was not. The school had therefore contradicted itself. He referred to the reputational damage this was doing to him , and advised the School of his continuing absence and its impact upon his disability and health, thereby breaching its duty of care in terms of the tort of negligence.

4.90 At 16:32 Anne Lucas replied to Louisa Taylor (page 704 of the bundle) saying that the claimant had been emailing various people which is suspension letter had stated he should not be doing. She therefore had sent the email on to Andrew Griffin as the suspension came from him and also to Lisa Cole. Andrew Griffin replied to and Lucas by email of 16:59 (page 704 of the bundle) , asking whether she thought they could not proceed on the grounds of gross misconduct, not abiding by the terms of his medical suspension? This email was copied into Lisa Cole amongst others, who replied at 17:02 that she would take some advice. She also asked if anyone had told the claimant he could not be represented by his Unite union representative as he had recently emailed her about this. She said her view was that she would let him bring a representative to any meetings. Andrew Griffin replied at 17:16 (same page) that he was happy to meet any union representative or supporter but not a lawyer which was in any event the policy.

4.91 At 20:09 that evening the claimant further email Anne Lucas, informing her that he had spoken to Dr Tasker and asked him to expedite report as soon as possible and that he had liaised with IMASS so that the letter of instruction was forwarded to himself. He went on to ask, in order to keep himself active, whether the school would allow him to work on the dignity and disability training that had been agreed with Heather Prest and Andrew Griffin, so that it would give him a focus did not remain isolated in his apartment.

4.92 There was no further email communication on 8 September 2017, but on 9 September 2017 at 07:06 (page 706 of the bundle) the claimant sent a further email to Anne Lucas in relation to her comments that a psychologist was not a medical expert. He had discussed this with “Tiffany” at IMASS (he said on Friday 5th, but this seems unlikely, but whenever) and she had confirmed that a letter from the treating psychologist would be regarded as expert medical opinion. She had therefore requested that the letter be sent so that the next occupational health physician could have the benefit of the same expert advice. The claimant accordingly asked why IMASS would accept (correcting the claimant’s typo) the letter as expert opinion, as would his GP, but the school would not. He asked her to provide substantive reasons why.

4.93 There was no reply to the points that the claimant had raised about the psychologist’s report. By email to Heather Prest on 11 September 2017 (page 710 the bundle) the claimant suggested a face-to-face meeting. Probably as a result of this , a meeting was held with the claimant on 13 September 2017 by Andrew Griffin. No notes of this meeting are available, but the outcome of it was that the claimant’s medical suspension was lifted. The claimant received a letter dated 19 September 2017 (pages 711 to 712 of the bundle) which summarised what was discussed in the meeting, and formally lifted his suspension. Whilst it had been agreed that he would return on 14 September 2017, the claimant required further time to meet with his psychotherapist for consultation and assessment, and consequently his return to work was agreed for 18 September 2017. He had accordingly been of work from 5 September to 18 September 2017, a total of eight working days.

4.94 By the time this meeting was held at the school had received no further occupational health advice, and no further medical information upon the claimant's condition. Rather, it had accepted the views expressed in the letter from the claimant's psychologist Dr Neil, which had been provided by the claimant to the school on 5 September 2017. It is unclear precisely who decided upon this change of view, but it may well have been Lisa Cole, who had previously advised Anne Lucas that this report was not acceptable. In his letter of 19 September 2017, however, Andrew Griffin expressly states that the decision to review the suspension was based on the advice received from the consultant psychologist.

4.95 The letter went on to deal with the previous referral to occupational health, and the claimant's consent to the obtaining of a further report upon the claimant's condition upon which to base any future conversations. It was noted that the claimant was now accessing a psychiatrist on a private basis, and that he was happy to fund this himself. Reference was also made to the grievance that the claimant had raised and how the issue of medical suspension and the absence management policy would be discussed with the head of HR, Lisa Cole. Andrew Griffin explained that he understood that it been a difficult and challenging time for the claimant and was pleased to welcome him back to the school. Whilst a phased return had been discussed, the claimant felt that he was happy with his timetable and the other reasonable adjustments that had been made, and was keen to get back to the classroom and his students as soon as possible.

4.96 After the claimant's return to work there were further discussions and arrangements made to obtain further medical evidence. Whilst it was originally intended that IMASS would provide a further occupational health report, the preference was for a report from an independent psychiatrist.

4.97 The claimant returned to work on 18 September 2017. He had been allocated room C21 on the second floor for this academic year. He had been off work when this room allocation will have been made in the summer term 2017. He was not consulted about this move. This room is not near the rest of the faculty, but there are teachers in adjoining rooms. He made no comment about this room to management or HR from the start of this term until he brought this claim. In an email of 28 September 2017 (page 732 of the bundle) the claimant mentioned the disability forum which he wished to progress.

4.98 The claimant needed time off work on 3 October 2017, due to the need to look after his daughter having also needed to be absent for periods 5 and 6 (see page 731 of the bundle) the previous day. He sent Parbinder Dhillon an email at 07:43 on 3 October 2017 (page 734 of the bundle) informing her that he was going to have to look after his daughter that day. He only had a single class , which year it was he could not remember. This led to Parbinder Dhillon needing to find cover for the claimant which she found difficult. She sent him an email at 14:59 that day (page 733 of the bundle) in which she said this:

"Gary I have set your cover today with great difficulty . I appreciate that you have to look after your daughter today, however you had two lessons and I had 4 and a form group. Also I wasn't yesterday myself so you can appreciate the difficult situation you put me in. Also when I go to staff shared resources there is not a great deal in your folders . Please put your resources in that area so that I can follow on from where you have been teaching and in future send me the classes and where they are up to. I do not think the email you sent me was reasonable or at all helpful."

4.99 Parbinder Dhillon's email was copied to Louisa Taylor and Liam Horrigan. The claimant replied to her at 06:58 on 4 October 2007 (pages 737 to 738 of the bundle). In his email he complained that her language was inappropriate, and had caused him distress. He noted that she had copied her email to Louisa Taylor and Liam Horrigan. He made reference to his stress risk assessment, and trigger points for his condition which had been previously identified as including unreasonable behaviour in the workplace. He made reference to the previous issues that had arisen prior to his absence at the end of the last academic year which had been raised with Andrew Griffin, as work related stress. He had not pursued those matters at the time, but considering her actions on the previous day these matters would now be resurrected.

4.100 As the claimant's reply to Parbinder Dhillon's email was copied to Anne Lucas, she emailed him on 4 October 2017 to ask if he was actually raising a grievance (page 737 of the bundle).

4.101 The claimant then prepared a document dated 4 October 2017 (pages 735 to 736) which he sent by email (page 739 of the bundle) to Lisa Taylor and Liam Horrigan entitling it "Formal letter of concern" and "Grievance". The claimant refers to his previous absence from work. He referred to the stress risk assessment which would show that management practices acts or omissions were a primary trigger related stress. He went on to refer to the email he received on 3 October 2017 and to answer the criticisms that he considered been made of him in it. Considers that he had been singled out for direct criticism and that Ms Dhillon herself being unprofessional and had not adequately planned the resources needed in her department. He went on to refer to the previous issues that had been raised with Andrew Griffin in relation to lesson observation, and unprofessional feedback on the summer term. He would be referring to these incidents which would be joined in a "single action". He contended that Ms Dhillon had subconsciously or consciously been guilty of bullying or harassment contrary to the schools bullying and harassment policy and the dignity at work policy. Further he went on to refer to the "1997 Act" and section 15 of the Equality Act. He also made reference to the Health and Safety at Work Act 1974 , and the Management Regulations 1997. He made reference to vicarious liability. He also used terminology in relation to the elements of harassment from the Equality Act 2010, and that her actions could amount detriment for asserting a statutory right to time off to care for dependent child. He went on to refer to the aspects of failure to demonstrate consistently high standards of professional conduct and proffer two colleagues could provide support for his contentions.

4.102 In his covering email (page 739 the bundle) the claimant referred to his previous concerns regarding the unprofessional manner of the lesson observations he had withdrawn. He said however that he had reactivated those concerns as part of this grievance as showing a course of action. He referred to the school's grievance policy and Dignity at Work guidelines.

4.103 At 07:21 on 9 October 2017 (page 740 of the bundle) the claimant sent to Anne Lucas and Liam Horrigan evidentiary documents in relation to his pending grievance. He noted that since admitting the grievance neither Ms Dhillon nor the head of faculty have made any conscious attempt to resolve matters informally, and he therefore intended to pursue the grievance and the allegations contained therein.

4.104 Later that day Andrew Griffin wrote to the claimant a letter entitled "Formal Response to Grievance Letter" (pages 741 to 742 of the bundle). In it he explained how he

had decided upon the most appropriate response. He had considered the email of which the claimant was complaining, and said that he was confident that Ms Dhillon was acting within the remit of her role and merely raising legitimate concerns about a perceived breach of accepted policy and process. Whilst the claimant may have found the tone unacceptable , he considered that this matter had the potential to be resolved informally , and he urged the claimant to consider this.

4.105 He went on to deal with the concerns of the claimant had previously expressed about the observation cycle, performance management and the school's approach to supporting individuals covered by the Equality Act 2010. He considered that the grievance referred to a number of incidents and complaints that to his knowledge and understanding had been resolved already to the claimant's satisfaction. He referred to the meeting on 6 June 2017 and the discussion that was then hold in relation to a revision of teaching observation and performance management processes. Reference is also made to the agreement for termly meetings to review his timetable and other reasonable adjustments to support the claimant in maintaining his health and well-being at work. He referred to a meeting that had already taken place as part of this and the completion of the HSE Management Standards Indicator.

4.106 Andrew Griffin then dealt with the claimant's complaint in relation to the feedback he received after a lesson observation following which the claimant withdrew from school in June 2017. He confirmed that he had investigated that incident and were satisfied the feedback given to him as both professional and constructive. At no point had any reference been made to his condition either impliedly or explicitly. He noted the email to Louisa Taylor on 4 July 2017 in which the claimant said he did not intend to pursue the matter further. He then stated how in his opinion he had worked extensively with the claimant during the last academic year to address his concerns and create an environment conducive to his needs. For this reason he said he was not prepared to formally investigate the matter is that the claimant had outlined in his letter, and referred him to the grievance procedures and the options available at the informal stages of the policy. He ended by reminding the claimant that the school took any allegation of harassment and bullying extremely seriously and was committed to ensuring that all employees were able to carry out their duties in line with the values and behaviours of the school and in accordance with Teaching Standards.

4.107 The claimant replied firstly by an email at 14:30 on 10 October 2017 (page 746 of the bundle) , in which he thanked Andrew Griffin for his letter detailing that the school would not investigate his concerns relating to bullying and harassment. The contents of the letter had been duly noted in conjunction with the respondent's grievance procedure. Later that day , however , he sent a further email at 18:59 (page 745 of the bundle). In this email he said that he would be more than happy to engage in any form of informal resolution under the direction of HR. He said that he was currently dealing with a number of issues which had coloured his response to negative correspondence and set out some five circumstances mainly in his personal life that he was referring to. There the matter was left, the claimant not seeking that after to pursue this grievance, informally or formally.

4.108 By an email of 12 October 2017 (page 747 of the bundle) the claimant reminded Tom Critchley and Anne Lucas of his condition of ankylosing spondylitis, which he said amounted to a disability under the Equality Act. He referred to his treatment of bi

weekly injections, which had the effect of significantly reducing his immunity system and giving rise to the need to attend his GP or hospital in relation to any illness that he caught.

4.109 On 13 October 2017 is Louisa Taylor wrote to the claimant inviting him to a short term absence review stage I meeting on 20 October 2017 (pages 752 to 753 of the bundle). This letter had been left in his tray by Tom Critchley, and the claimant asked for a copy by email. This was provided and later that day the claimant wrote by email (page 749 of the bundle) to Heather Prest (and others) asking for confirmation as to what triggers had been agreed in relation to the absence process before he attended this meeting. He said that this appeared to be a standard letter which may not take account of any reasonable adjustments . He mentioned to stress absences which were work-related and should be discounted.

4.110 Heather Prest replied to this email later that day (page 748 of the bundle), referring back to the meeting on 6 June 2017 and how the claimant had agreed that the absence of indicators did not need to be adjusted specifically for him. As he had had two incidents of short-term sickness totalling 14 days one of which was for 10 days, he had met one of the indicators outlined in the policy. She said the meeting would discuss this, and any management intervention that might be required. They would also take the opportunity to review the results of the HSE stress assessment that the claimant had completed.

4.111 The claimant replied later that day (same page) saying that he appreciated the information provided, and raising the possibility that stress-related absences should be treated like work-related injury absences, considering potential management interventions that had already been discussed, and pointing out that one of the absences may have been in relation to the actions of Liam Horrigan, and should also possibly be discounted. He was looking forward to discussing these absences and the triggers which were being applied to him.

4.112 The absences which had led to this review being convened are set out in the letter of 13 October 2017 on page 752 of the bundle. They were an absence of 28 days starting on 3 May 2017, four days from 30 June 2017 and 10 days from 10 July 2017. This level of absence was said to meet or exceed one of the indicators for an absence review, five days absence within a three month period. Of these absences the first and third are recorded as being by reason of stress, depression and anxiety, and the second, neurological.

4.113 On 18 October 2017 the claimant sent an email to Anne Lucas and Heather Prest (pages 761 and 762 of the bundle) ,copied to others, in which, having had an opportunity to review the absence management policy, he attached for their consideration his concerns and objections regarding the same, which may form part of their discussion at the stage I absence meeting due that Friday. He went on to comment that the policy may amount to a PCP which triggered the requirement of reasonable adjustments particularly in reference to short-term absences and trigger points. Whilst there was an attachment to this email, it is unclear whether it was the document entitled “Disability Related Grievance” which is at pages 763 and 764 of the bundle, but which is dated 19 October 2017. Whether it was attached or not, in it the claimant clearly contended that the school’s absence management policy may amount to a discriminatory PCP, and made other suggestions as to how the process may impact upon someone with his particular disability.

4.114 Anne Lucas replied to the claimant at 10:45 on 18 October 2017, pointing out that in previous meetings the claimant specifically stated that he did not want or need any adjustments to the absence triggers as part of his reasonable adjustments, only adjustments to cover, duties and timetable had been required and these were already in place. She would discuss this with Heather Prest, but the meeting would go ahead on Friday.

4.115 The meeting was held on 20 October 2010. The claimant attended alone and Heather Prest and Louisa Taylor were present, with Tom Critchley as the notetaker. The notes of the meeting are at pages 765 to 768 of the bundle. Whilst Louisa Taylor was the claimant's line manager this meeting was largely conducted by Heather Prest. The claimant opened by saying that he did not agree with the respondent's absence management policy, and Heather Prest stated that the meeting was to discuss all of his absences that the focus would be on the last two which were for four working days from 30 June 2017 and 10 working days from 10 July 2017. She explained how the claimant's short-term absence was still a cause for concern, and how over the past six months the respondent felt that a lot of time and effort been put into building a positive working relationship with the claimant. The reasons for the absences were discussed, and reference was made to the meeting on 6 June 2017 where equality and diversity training had been discussed. The claimant made the point that this training had not been given to managers since the meeting, and Heather Prest stated that plans were in place to deliver it.

4.116 In this meeting the claimant explained the effect of his condition upon his reactions to various events, and how he tended to see things in black and white terms, and resorted to formal procedures in response to problems. Heather Prest expressed the hope that in future the claimant would try to resolve things informally first.

4.117 The claimant wanted to discuss what would happen if he had a manic episode and was unable to attend work. Heather Prest stated that a reasonable adjustments review meeting had been arranged for the first week back and this would be the best place to discuss such a plan. She went on to say that the respondent would be issuing a first written warning for short-term absence, with a target of no absences until February half term. She added that consideration would be given to any periods of illness that the claimant had and the respondent would exclude those periods when he is not permitted to come into school for example by reason of manic episodes. The claimant stated that he felt that this was inappropriate, but Heather Prest stated she believed that reasonable adjustments have been put into place and despite this the claimant's attendance had not improved. The claimant stated that he would be appealing and would be issuing a questionnaire under the Equality Act 2010.

4.118 The claimant in fact appealed the following day by email on 20 October 2017 (page 769 of the bundle). This was before he had received written notification of the outcome of the meeting. His email refers to a letter of appeal which was attached to this email. The Tribunal does not appear to have seen this document, but this may not matter as the claimant also sent an email of 21 October 2017 (pages 770 to 771 of the bundle), to which Heather Prest replied on 24 October 2017 (pages 772 to 773 of the bundle).

4.119 The outcome letter from the meeting was dated 25 October 2017 (pages 776 to 777 of the bundle) and was signed by Anne Lucas, who in fact signed "PP" for Louise Taylor. The letter, however, purports to come from Louisa Taylor as it uses the first

person, and Anne Lucas was not present in that meeting. The claimant's absence history of two occasions for a total of 14 days over the last six months was referred to. The percentage of his absences was referred to, and the observation made that his sickness absence level had increased. This was despite a number of interventions to support him in terms of reasonable adjustments which had included a reduction in teaching hours, the removal of responsibility for cover, flexibility in terms of start and finish times, and time off during the school day to attend appointments with his psychologist.

4.120 It was stated in his letter that his sickness absence was a significant cause for concern, given the impact this had on the capacity of the humanities department to deliver high quality teaching. The decision was therefore to issue a first written warning, and set future targets for no further absence until February 2018 in line with the indicators described in section 5.1 of the respondent's absence management policy. The letter continued to record the discussion of the claimant's health condition, and the agreement that any manic episodes or illness relating to his ankylosing spondylitis would continue to be monitored, and assessed against the absence management policy. It would be subject to a regular timely review as part of recognising the need to manage the claimant as an individual with complex needs. The claimant was advised of his right to appeal which he had by that time already exercised.

4.121 The claimant continued to communicate with the respondent, and by email of 26 October 2017 to Anne Lucas he referred to an intention to mediate matters through ACAS , and enquired as to the appropriate contact person for them to contact (page 781 of the bundle). He also queried how the outcome letter came to be signed . Email communication continued between the claimant and Anne Lucas on 26 October 2017, see pages 778 to 780 of the bundle. Anne Lucas explained the signature on the outcome letter and replied to the claimant's points about reasonable adjustments. She informed him that he would be contacted in relation to a date time and location of his appeal hearing after the school reopened after half term. The claimant in a reply made reference to case law, ***Griffiths v DWP*** and ***Archibald v Fife***, and said he would be relying upon recent EAT judgements in the context of disability -related absence and section 15 of the Equality Act. He referred to the ruling in the latter case which he said required organisations to treat disabled employees more favourably than non - disabled employees.

4.122 In a reply , sometime on 26 October 2017 Anne Lucas expressed some confusion with regards to the claimant talking about taking the respondent to a Tribunal and pre-conciliation with ACAS, as she thought the steps had already been taken. She also took up the point the claimant had raised about the need for employers to treat people with a disability more favourably, which she said was incorrect. She said the law stated that anyone with a disability should not be treated any less favourably than someone who is not disabled.

4.123 The claimant replied by email at 21:49 that evening , suggesting that Anne Lucas looked at the judgement in ***Archibald v Fife*** , which did require employers to do more than to treat disabled employees the same as non-disabled employees . He also referred to the judgement in ***O'Hanlon v Revenue and Customs Commisioners*** which , he argued, further supported that there was an obligation upon employer to treat disabled employees more favourably to alleviate the consequences of disability. He said that he would presume that the position based upon her email was that the school did not believe it should treat any disabled employee more favourably, and hence the written

warning. He said that his submission to ACAS would include this position amounting to a relevant PCP that required reasonable adjustments.

4.124 The claimant sent a further email that night at 23:25 (page 782 of the bundle) in which he set out further arguments and made reference again to the legislation. He explained how he had lodged a request with ACAS as part of the early conciliation service.

4.125 On 27 October 2017 the claimant sent a ”prohibited conduct” questionnaire to Heather Prest, who replied that she would respond to the questionnaire and that she would be the representatives for the school it with ACAS (page 788 of the bundle).

4.126 In the meantime from mid-October to 31 October 2017 IMASS were in contact with the claimant in an attempt to arrange a consultation for an occupational health report. A suggestion had been made of a face-to-face consultation taking place via Skype, which the claimant declined. In connection with the referral the claimant contended that IMASS should contact his previous psychiatrist at the Priory in Hale. He also suggested that any such instruction to occupational health should include an enquiry as to his qualification for enhanced retirement on ill-health grounds, which the respondent would have to consider before dismissing him on health grounds (see pages 780 to 800 of the bundle). Heather Prest by email of 1 November 2017 reassured him that there was no intentional desire by the respondent to terminate his employment. She was concerned that he had mentioned this in his emails. Any discussion about retiring on the grounds of ill-health or otherwise was not an issue. The respondent was seeking as much information as possible regarding his health, and as his employer respondent was entitled to request that he see a psychiatrist appointed by the respondent.

4.127 On 2 November 2017 the claimant sent a further email to Anne Lucas (page 802 of the bundle) in which he sought to add a further ground to his appeal against the stage I sanction. He apologised for the oversight in not doing so previously but had now reviewed the absence policy. The absence indicators were noted as episodes relating to his disability and not to illness per se . He quoted section 5.5 of the policy that short-term absence indicators should only include absences related to sickness absence. The section stated that any disability -related absences, protected under the Equality Act, should not be counted when reviewing the absence record. He should have raised this in the stage I meeting. He went on to refer to section 5.3 of the policy which required a review of absences as part of the return to work meeting with the curriculum area lead. He was not sure if this had happened in his case, and hence had requested all return to work forms. He asked if this could be considered at the forthcoming welfare review meeting.

4.128 That meeting was held on 3 November 2017, with the claimant, Louisa Taylor, Heather Prest present , with Anne Lucas as notetaker. The notes at pages 804 to 805 of the bundle. In this meeting there was discussion of the material that the claimant had provided to HR and his line manager and how his therapy sessions with his therapist have now ended. Heather Prest wish to discuss the current reasonable adjustments and to review how they were working. The claimant explained that the adjustment to his working hours worked exceptionally well for him as fatigue hit him from 4 p.m. to 7 p.m.. He had no issues with periods of cover and his current timetable and working pattern were working extremely well. There was discussion about the requirement to see a psychiatrist nominated by the respondent and the reasons why the claimant did not want to agree to that, preferring that a report be obtained from one of his own practitioners. He no longer

trusted occupational health. Heather Prest stated that they had done everything they could to help and to meet the claimant to discuss the things that he was unhappy about. Everything seemed to be okay but then the barriers went up and he started to fire off emails when they had worked hard to give the claimant reasonable adjustments. He was asked what reasonable adjustments did he want, to which he replied that he wanted people - by which he meant the senior leadership team and curriculum area leaders - to sit down and learn more about his condition.

4.129 Heather Prest asked the claimant to talk to her and her colleagues rather than sending lengthy, and sometimes aggressive, emails which some people found very intimidating and were threatened by. The claimant said he understood that , and agreed that maybe he should not send emails. There was discussion of the proposed appeal hearing the date which was set in week commencing 20 November 2017. The claimant was fine about this and accepted the proposed date. There was discussion as to how the claimant would share more information about his condition with his colleagues, which was left for him to decide, and which he was happy to do.

4.130 The claimant subsequently by email of 4 November 2017 thanked Heather Prest and Anne Lucas for the previous days meeting which he describes very useful, and in a following email sent a copy of the “guide for employers to bipolar in the workplace” (pages 806 and 807 of the bundle). He also that day sent an email to Heather Prest and Anne Lucas , copied to Jacqui Craddock at IMASS , to which he attached a report from his clinical psychologist. Whilst not clearly identified , it seems likely that this is the document dated 17 October 2017 from Dr Sandra Neil (pages 754 to 760 of the bundle) in which she set out the results of the therapy that the claimant had undergone with her.

4.131 On 6 November 2017 Heather Prest, having received the claimant’s document “Bipolar in the workplace” send him an email referring to the recommendation therein that there be a referral to Access to Work, and contact with Bipolar UK . She asked him what his thoughts were about self referral. He replied later that morning that he recalled asking for details regarding the pay structure for supporting teaching assistant, and if he can obtain this information he could look into making an application for funds. Heather Prest replied that the employer was responsible for the first £1000, and thereafter the government would pick up the cost up to £10,000 though she may be out of date on her figures. (see page 809 of the bundle).

4.132 On 8 November 2017 the claimant sent further emails to Anne Lucas and Heather Prest in anticipation of his appeal providing further information as to his medical conditions, and in particular his ankylosing spondylitis (pages 812 and 813 of the bundle).

4.133 The same day the claimant was sent a letter dated 8 November 2017 signed again by Anne Lewis on behalf of Louisa Taylor, summarising the outcome of the meeting on 3 November 2017 in which the claimant’s workload and reasonable adjustments were reviewed. The claimant’s confirmation that the adjustments were working really well was recorded, as was the relapse prevention manual that he had produced with his psychologist which would be disseminated with his agreement to the SLT and middle leaders. There was reference to the discussion about referral to a psychiatrist and the potential benefits of an independent medical opinion upon the claimant’s resilience and fitness to teach. The claimant’s current position on this, however, was accepted. Reference was made to the appeal against the first written warning, and it was confirmed that this would be heard by Frank McCarron, in week commencing 20 November 2017.

Finally the letter records discussion about the relationship between the claimant and managers in the school, and how some of the issues may have been avoided through informal discussion. A 'go to' person within the school was discussed, with the school counsellor being one possibility, or the employee assistance program helpline, with trained counsellors, was another. The letter enclosed printout of the contact details of agencies which may be able to offer support.

4.134 On 9 November 2017 an issue arose about the claimant leaving school for what he considered emergency carer's leave. There was an issue as to whether he needed permission to this, and if so who could give it. This led to email communication on 11 and 13 November 2017, which prompted Ann Lucas in an email at 11:32 on 13 November 2017 (page 817 of the bundle) to say this:

"We agreed last week during your meeting that you would not keep emailing but if you had a problem you would talk to us instead of sending emails which you usually later regret sending. I have had 5 emails from you this morning, which is not what was agreed last week.

I understand from Mr Horrigan that you are very unwell and that he has advised you to go home, therefore can we discuss this once you are back in school and well enough to be able to discuss in person."

4.135 The claimant replied to Anne Lucas at 14:16 that day (page 821 of the bundle) that in situations such as that it was important to keep an adequate and appropriate trail and emails were appropriate as a record of conversations or actions.

4.136 By letter of 16 November 2017 (page 825 of the bundle) the claimant was advised of his appeal hearing on 20 November 2017. He was informed that the appeal panel will consist of Frank McCarron and Tracy Foster, of HR. a note taker would also be present. Louisa Taylor would present the management case, supported by Heather Prest.

4.137 The appeal hearing took place on 20 November 2011 chaired by Frank McCarron supported by Tracy Foster of HR. Louisa Taylor and Heather Prest were present with Anne Lucas taking notes. The notes are at pages 828 to 831 of the bundle). The claimant outlined his case at the outset. He said that the absence policy did not allow for disability, and no return to work meetings had taken place upon his returns to work. Heather Prest and Louisa Taylor then presented the management case went through the history of the claimant's employment since January 2017 and the adjustments that had been made. Frank McCarron put questions to Heather Prest and Louisa Taylor.

4.138 In the course of the appeal the claimant said that he was not always an easy person to manage, and was often complicated by his 'black and white' perception of things. He agreed that he wrote emails at length, and used them to articulate and think things through. He was aware this could be perceived as intimidating, but when he perceived that the policy process was not correct he challenged it. He admitted that he did not always deal with things in the best way.

4.139 Frank McCarron put questions to the claimant, and touched upon his reasonable adjustments, the support action plan that had been drawn up, the meeting on 6 June 2017 and the amount of time that the claimant had then been off work. He agreed that the 54 days off did seem a lot but he was not aware that this was mostly disability

related with very little non-disability illness. He recognised that there were things he should have done in hindsight that now that he had a document in place , his relapse prevention manual, things would be better in the future. Frank McCarron suggested that in respect of any future absences the claimant should speak to the school or HR, and that he should keep a diary.

4.140 Frank McCarron did not make a decision at that point, but had some recommendations which he would be putting in writing. He did note however that there should be weekly meetings between the school and the claimant that all staff involved in giving and receiving observations of performance plans were aware of what was meant by equality training and that observations and feedback should refer to the seven teacher teaching standards. They should all have training in feedback of performance management. He went on to say that the claimant should keep a diary and talk to the school and keep in touch during his absences. He said that it may be better for the claimant not to send emails but to meet with people instead. It might be better to have conversations, although he understood this was part of the claimant's condition.

4.141 Thereafter , after some communication about the notes that had been provided to the claimant, on 23 November 2017 Frank McCarron provided his appeal outcome letter (pages 834 to 836 of the bundle) . On the first page he announced his decision to allow the appeal as he had decided the decision made to issue a written warning absence was not appropriate. The written warning was therefore withdrawn with immediate effect. He gave has his reason that the claimant had made reference in his appeal to the respondent's current management policy which indicated that short-term intermittent absence relating to disability could not be counted as part of an absence indicator or trigger. It was for that reason that the written warning was withdrawn.

4.142 The remainder of the letter went on to deal with concerns relating to the return to work process. Frank McCarron recommended the return to work meetings should take place in line with the current absence management policy. He said it was important that they occurred at every period of absence, regardless of the length of absence. He also recorded the discussion about the claimant keeping a diary to record his mood state which he had agreed to do. He also referred to the discussion in the appeal meeting of the use of email communication. He recorded the claimant's confirmation that at times his use of lengthy and complex emails was not necessarily the best way to communicate, but that it helped him to think things through and articulate how he was feeling. His recommendation was to communicate verbally wherever possible, and the return to work meetings were a good opportunity to express how he was feeling rather than constructing lengthy, complex emails. He then went on to talk about performance development and observation feedback processes at the school. He referred also to the discussion about having a designated welfare contact in the school for the claimant to discuss any concerns that he may have. He set out, however, that it was important for the claimant to do for his part in order for his condition to be manageable for the school. He said that he was hopeful that the recommendations made as part of the process would facilitate and afford the opportunity for regular meaningful communication to take place in school in order to support the claimant in maintaining good attendance and managing his condition.

4.143 An issue arose at this time about the claimant not being paid for carer's leave that he took, but no claim is made about this.

4.144 On 5 December 2017 the claimant's partner lost their baby that she was carrying. The claimant informed the respondent of this by email to Andrew Griffin morning (page 846 of the bundle). He said he would be in the following morning to set cover and apologised for any trouble caused. He sent a similar email to colleagues later that morning (page 847 of the bundle) and later that day informed Tom Critchley Louisa Taylor and Parbinder Dhillon that he would need to take sickness leave for the remainder of the week (page 849 of the bundle).

4.145 On 7 December 2017 Anne Lucas sent an email to the claimant (page 853 of the bundle) in which she referred to his absence from the school for the remainder of the week. She pointed out however that he needed to follow the same process as everybody else when advising of absence , as noted in the staff handbook. She asked that he called the staff absence line instead of emailing various members of management and HR to report any absences. She went on to refer to an agreement that he emailed only one person, herself, but the claimant had sent several emails that week that she was not aware of. She asked that he tried to keep his emails to a minimum and to send them to her first, copying them in to others if he wished. She did say that she understood that as part of his condition he found that sending emails gave him control and helped with his thought process. He asked that going forward he called the absence line and left a message if he could not speak to anyone rather than emailing about his absence. She went on to refer to the issue about pay for the previous leave, which was now being processed in the December payroll. She pointed out that the claimant was now over the limit of five days for this type of leave, and that payment was not an entitlement that was at the discretion of the Head, and could be declined at any time.

4.146 Within an hour of receipt of that email the claimant replied (page 852 to 853 of the bundle) describing Anne Lucas's email as "appalling", and saying that he now intended to lodge his claims with the Manchester Employment Tribunal once he had discussed matters with his solicitor. He said that she had shown herself to be entirely without understanding, and had no doubt that this constituted an act of harassment. He said that he would lodge a formal grievance, and in one single email she had undone the good work of Heather Prest , Louisa Taylor and Liam Horrigan over the preceding 48 hours. He sarcastically thanked her for making matters significantly worse for him, and described her attitude as appalling in the circumstances.

4.147 The claimant submitted what he described as a "letter before action" on 8 December 2017 (pages 862 to 865 of the bundle). This was addressed to Andrew Griffin, and in it the claimant set out a number of complaints, including one of harassment in relation to the email from Anne Lucas on 7 December 2017.

4.148 The claimant continued to correspond with Heather Prest, and on 11 December 2017 had an informal meeting with her, which he noted in a diary note (page 867 of the bundle). He noted that there was an agreement from her that the email from Anne Lucas was inappropriate, but that he did not feel that matters were likely to be resolved, following his return to work after three days of absence. He said he felt entirely isolated.

4.149 Heather Prest followed this meeting up with an email on 13 December 2017 suggesting a further meeting (page 869 of the bundle), to which the claimant replied later that day (page 868 of the bundle) suggesting a time for such a meeting, and referring further to the heads of claim that he had set out in his letter before action.

4.150 On 19 December 2017 the claimant presented his claim form to the Tribunal.

5. Those then are the relevant facts. There was little dispute over a lot of the basic facts. The respondent's case , however , was hampered to some degree by the absence of Andrew Griffin, for any evidence in the form of a witness statement from him. That said, the evidence of Heather Prest, and to a lesser extent Anne Lucas, and the contemporaneous documentation, have enabled the Tribunal to piece together the facts as found above. Anne Lucas's evidence as to the sequence of events on Monday four September and Tuesday, 5 September 2017 as set out in her witness statement is clearly inaccurate. Her account has the claimant being escorted off the premises on Monday, 4 September 2017, when he clearly returned the following day Tuesday, 5 September 2017 as the contemporaneous documents show, and indeed is logical , as his actual suspension was carried out on 5 September 2017. Little, however, if anything in this judgment turns upon this or any other disputed issue of fact.

The submissions.

6. As the parties have made written submissions , which are on the Tribunal file, and it is not proposed to repeat or attempt to summarise them here, as this would add considerably to an already substantial judgment. The claimant, although not legally qualified , has clearly carried out copious research , and his submissions are extensively populated by over 30 references to caselaw, the legislation, and the EHCR Code of Practice. His submissions run to 54 pages. He has also made separate written submissions on time limits, and the burden of proof. Where necessary the claimant's particular submissions will be considered when the claims are individually considered.

7. The respondent's submissions by Mr Bloom run to some 20 page. Likewise, it is not proposed to repeat or attempt to summarise them here. In short, however, in relation to the s.15 claims, the respondent denies unfavourable treatment, and in the alternative argues justification, particularly in relation to the claims relating to the suspension. In terms of the reasonable adjustment claims, the respondent denies that the claimant has shown the necessary disadvantage deriving from the application of any PCP, and in the alternative has argued that the reasonable adjustments contended for would not have had the necessary effect of alleviating the alleged disadvantages from the claimant's relevant disabilities.

The Law.

8. The relevant statutory provisions are set out in Annexe A to this judgment.

The claims and the issues.

9. The claims and issue, were as identified in the preliminary hearing, but they have changed, as some claims have been withdrawn. There are no longer any claims of victimisation. The claimant has previously confirmed there were no claims of harassment, and hence no claim is made in relation to the email from Anne Lucas on December 2017 The claimant's extant claims therefore are:

Section 15 – Discrimination arising from Disability

There are four such claims:

1.The claimant's medical suspension in September 2017;

2.Being escorted by the Head Teacher off the work premises and the manner in which that was conducted in front of his colleagues at the time of the suspension in September 2017;

3.In respect of unfavourable treatment relied upon at points (1) and (2), the claimant's case is that this occurred because he informed the respondent on 31 August 2017 that he had taken an overdose which was "something arising in consequence" of his mental impairment and that, because of that event, the leadership of the school deemed him to be a danger to himself and pupils.

4.The implementation of the absence management process between May and July 2017 and specifically:

The commencement of the absence management policy;

The continuation of that policy despite the claimant's objections; and

The stage one written warning issued during that absence management procedure.

In respect of the unfavourable treatment relied upon in (3), the claimant submits this was because of two incidents of absence which were "something arising in consequence of" his mental impairment between May and July 2017. The respondent banned the claimant from sending emails directly to the respondent's leadership team. The claimant explained that he was given an instruction to send all emails intended for the school leadership team to HR so that they could "filter" his emails.

The claimant's case is that point (4) amounted to unfavourable treatment since he was prevented from communicating directly with management by email because the nature of his condition is such that his emails were verbose, of high volume and might be interpreted as being critical, which was an effect of his mental impairment or "something arising in consequence of" his disability.

Section 20-21 - Failure to make reasonable adjustments

The claimant relied upon ten matters in his list of issues, and a further matter was submitted by way of an application to amend the claim form on 27 January 2017. He was ordered to provide further and better particulars of these claims, as amended, and did so in a document dated 22 March 2018 (pages 78 to 88 of the bundle)

Adopting that enumeration, his reasonable adjustment claims are:

1.The school's act of disapplying the relevant sections of the school absence policy; the instigation and continuation of said policy.

2.Failure to provide mediation in the alternate (sic) of refusing or resolving each of the disability -related grievances.

3.The failure of the school in applying its own Return to Work policy to facilitate constructive dialogue and prevent episodes of bipolar. The failure therefore to hold confidential conversations with the claimant. The employer unreasonably failed to consult

the employee, failed to meet the employee or to discuss required reasonable adjustments as a consequence of inadequate disability training.

4.The failure of the school to provide payment for specific work-related psychiatric support to maintain the claimant in the workplace.

5.The failure of the school to provide substantive or indeed any training to management and staff at the school with regard to Equal Opportunities and/or disability awareness

6.(Withdrawn)

7.The failure of the school to put into practice their policy on investigating allegations of discrimination because of their stereotypical view about the claimant suffering with a mental disability.

8(Withdrawn)

9.The failure of the school to consult over the relocation of classes in April 2016 and September 2017 the consequence of which was to place the claimant's classroom at significant distance away from his colleagues and isolated from his faculty and peers. The decision taking (sic) whilst the claimant was on disability related sick leave.

10.The preclusion of the claimant in raising reasonable concerns of management at the school constituting protected acts.

11.The policy of the school to neither communicate nor share disability -related information with respect to the claimant with key stakeholders and appropriate managers.

10. In respect of the section 15 claim, discrimination arising from disability, the Tribunal is required to determine:

Whether the Claimant has established the unfavourable treatment upon which he relies;

In respect of each detriment established, whether the respondent treated the claimant unfavourably because of something arising in consequence of his disability; and

Whether the Respondent has shown that any unfavourable treatment was a proportionate means of achieving a legitimate aim.

11. There is a claim for a failure to make reasonable adjustments under sections 20 and 21 Equality Act 2010. The Tribunal is to determine:

Whether the respondent applied a provision, criterion or practice under section 20 which placed him at a substantial disadvantage in comparison with persons who are not disabled; and if so,

Whether the respondent had the necessary knowledge and failed to take such steps as were reasonable to avoid or alleviate the disadvantage upon which he relies.

Discussion and Findings.

1.The s.15 claims

a)Claims 1 & 2 , the suspension in September 2017.

12. There are three quite separate and distinct aspects to these claims. The first two relate to the claimant's suspension on 5 September 2017. Whilst the claimant is split these into two separate claims, they are in reality one, and all arise from the events which took place from 4 September 2017 to 13 September 2017. The respondent's initial submissions by Mr Bloom are that the respondent's actions did not constitute unfavourable treatment , and did not put the claimant at any disadvantage. With respect , the Tribunal cannot accept that. Despite the suspension being on full pay and expressly not being a disciplinary sanction, the fact remains that the claimant wanted to come back to work and was prevented from doing so. The reasons for his suspension, it seems that the Tribunal, are relevant to the issue of justification, but it cannot seriously be doubted but that suspension of a teacher, even for medical reasons, and which resulted in him being escorted off the premises in front of colleagues is anything other than unfavourable treatment. Similarly, continuation of that suspension, when the claimant considered he was fit to return to work, was isolated from his colleagues, and forbidden even to contact them, must be unfavourable treatment. The first limb of s.15 is therefore engaged.

13. In analysing whether the respondent has established justification for the suspension, the Tribunal considers that suspension must be looked at in two ways. The first is in relation to the initial suspension on four and 5 September 2017, and the second is in relation to its continuation until it was lifted following the meeting on 13 September 2017.

14. The justification for the initial suspension, which, although discussed and indicated when the claimant saw Andrew Griffin on 4 September 2017, was not formally implemented until the following day, was the school's concern, that having only the previous week made an attempt on his own life the claimant may not be well enough to return to work and to return to work when pupils would be present in the school. Whilst the claimant has categorised the respondent's concerns as amounting to allegations that he would be a danger to children, Anne Lucas in particular has made it clear that the respondents greater concern was for the claimant's own welfare, and not that he may harm children. There was an element of concern in relation to the potential effect on pupils, in that if the claimant were to suffer a relapse, they may witness behaviour which they would find upsetting. That would also be true of staff, some of whom were new starters that term, and would not be familiar with the claimant's condition. The claimant himself has accepted that he has previously had what he describes as a "meltdown" at work, following receipt of feedback from a lesson observation in the summer term of 2017. The Tribunal considers that in the absence initially of any medical evidence as to the claimant's fitness to return to work so soon after an attempt on his own life the respondent was indeed justified in suspending him on 5 July 2017 until the medical position was clarified. That this suspension was to be on full pay, and of limited duration, reinforces how it was indeed a proportionate means of achieving the legitimate aim of safeguarding the claimant's health, and preventing him attending work when he may not have been in a fit state to do so.

15. One vital fact the claimant has overlooked in these claims relating to his suspension on 4 September 2017 is that it was he himself who told Andrew Griffin, and Anne Lucas, of the opinion expressed by Dr Cooper in the occupational health telephone consultation on 1 September 2017 that the claimant was unfit to be in the workplace. That is an opinion

with which claimant clearly disagreed, and he subsequently showed to be wrong. It was eventually accepted as wrong by the respondent, but crucially on 4 September 2017 that was the only medical assessment is available to the respondent. It was provided ironically by the claimant, and disputed by him , but it fixed the respondent with knowledge of a potential risk to either the claimant himself, or others, if he remained in the workplace.

16. In these circumstances, whilst accepting that the claimant's suspension on 5 September 2017 was "because of something arising as a consequence of his disability", so as to engage the first limb of s.15, the Tribunal is satisfied that his suspension at that stage was a proportionate means of achieving the legitimate aim of preventing the risk of harm either to the claimant himself or to others.

17. That was the position in relation to the initial suspension, but the Tribunal has had to consider not only the initial suspension, but its continuation until 13 September 2017 when it was lifted. The claimant had, as requested, and extremely quickly, obtained and provided for the respondent the medical evidence that it required. That evidence did not initially satisfy the respondent that the claimant was fit to return to work, but without obtaining any other evidence, the respondent then changed its mind , and allowed the claimant to return upon the basis of that same medical evidence. This begs the question as to what changed? The answer is that nothing changed, Lisa Cole (from whom the Tribunal did not hear) of the respondent apparently changed her mind, and the claimant was allowed to return to work on the basis of the same medical evidence the respondent had initially rejected when he provided it on 4 September 2017.

18. Another feature of the suspension is its terms. The suspension letter of 5 September 2017 (pages 689 and 690 of the bundle) contains provisions , in the last paragraph of the first page which are usual in a disciplinary suspension – not to come onto the premises or contact colleagues – but the Tribunal cannot see, and there is no evidence advanced to support, any justification of conditions not to contact colleagues or to discuss the reasons for the suspension. The reason was a purely medical one, and the Tribunal can see no good reason why the claimant could not tell colleagues that was the case, nor was there any good reason not to contact them for any other reason, save that this may be injurious to his health, but this has not been advanced. Indeed, whilst the claimant was unaware of it, so it cannot be unfavourable treatment, Andrew Griffin raised the possibility of the claimant being disciplined for not abiding by the terms of his suspension. Fortunately this did not occur, but the Tribunal considers that the respondent must justify not only the fact of the continuation of the suspension, but also its terms, which it has failed to do. As it was, the email which the claimant actually sent which was considered to be a breach of the terms of his suspension was to Louisa Taylor, who was his line manager, and merely enquired as to who was taking his classes at the time, and saying that he was missing school. It is hard to see why such an innocuous communication had to be proscribed. This suspension letter rather looks like a hastily adapted version of a standard , disciplinary, suspension letter, whose terms have not been adequately thought through.

19. Thus whilst the Tribunal finds that the claimant's initial suspension was justified, it finds its continuation beyond 4 September 2017 was not. The claimant's claim in respect of this period of suspension, under section 15 of the Equality Act 2010, accordingly succeeds.

b)Claim 3 : absence management and first written warning.

20. The next claim to be considered is that in relation to absence management policy, and the administration of the first written warning at stage one of that policy. In relation to claims (a) and (b) the Tribunal is not clear what the claimant is complaining of, but having read his submissions this claim appears to come down to the administration of the first written warning. The Tribunal can see nothing prior to that of which the claimant specifically complains.

21. There is no doubt but that a warning was issued, and was issued following the claimant's triggering the application of the absence management policy by reason of absences which were related to his disability. Whilst the claimant had previously stated that he did not require the triggers to be adjusted for his disability, the position was that he did not need to seek this. The respondent's own policy provided that disability - related absences should not be counted for these purposes. That was the basis upon which Frank McCarron allowed his appeal. Regardless of whether the claimant had previously asked for any adjustment to the trigger points is, in any event irrelevant to whether as at October 2017, the respondent was absolved of its responsibility to consider whether it would be a reasonable adjustment not to take disability related absences into account when deciding whether or not to administer a warning.

22. The respondent's argument in respect of this claim relies heavily upon the judgement of the Employment Appeal Tribunal in ***Little v Richmond Pharmacology Ltd UKEAT/090/12/LA***. The facts of that case were that the claimant took maternity leave from 14 September 2009. She was due to return in August 2010. Between January and May 2010 he applied to the respondent for a flexible working arrangement upon her return to maternity leave. That application was refused in June 2010 , and in July 2010 the claimant appealed against that refusal. The claimant resigned before an appeal hearing took place, and upon the appeal claimant was offered a three-month trial period upon the terms that she had requested. The respondent's argument in answer to her complaint of indirect sex discrimination was that no PCP of requiring her to work full-time had actually been applied to her. The Employment Tribunal and on appeal the Employment Appeal Tribunal, rejected her complaint of indirect sex discrimination. The PCP must be applied her when she completed her maternity leave, but never was. The decision to reject a request for part-time working upon her return in the future was conditional and subject to a right of appeal. Consequently the claimant never suffered any personal disadvantage, she never returned to work after maternity leave and the PCP was never applied to her.

23. Mr Bloom in his submissions argues, by analogy, that this claimant is in the same position and did not suffer any unfavourable treatment. The Tribunal does not accept that contention. There are important points of distinction with the ***Little*** case. Firstly, and most obviously, that was a claim for indirect sex discrimination. The claimant's claims in this case, in relation to this treatment, are of discrimination arising from disability s.15 , or of failure to make reasonable adjustments. Whereas the latter requires the application of a PCP, the former does not. All this really amounts to little more than a plea in mitigation, on the basis that the matter was put right on appeal. The claimant, it appears, suffered no financial loss as a consequence of this warning, and the risk of any potential loss in future receded when the warning was removed. The respondent therefore contends that this was not unfavourable treatment for the purposes of section 15. The Tribunal cannot agree. There is no requirement for treatment to be unfavourable that it be permanent, and the administration of a warning under a capability procedure which may then lead to further

action in the event of further absences , seems to us adequately to satisfy the definition of unfavourable treatment. Given that this treatment clearly was because of something arising in consequence of the claimant's disability, i.e. it arose because of his absences which were themselves caused by his disability, the only question that would then arise is whether the respondent could justify that treatment as a proportionate means of achieving a legitimate aim. It has not sought to do so, and given the decision on the appeal, it could not seek to do so. Claimant's claim in this respect therefore must succeed, and does so. All a s.15 claim requires is for claimant to show that he was unfavourably treated. That is a broad concept, and is arguably a less requirement than the need to show the application of a PCP. The treatment relied upon is simply the application of the first written warning under the absence management procedure. Receipt of such warning, the Tribunal considers is clearly unfavourable treatment. It may have no immediate consequences, but it is something on the employee's record, hanging over his head.

24. That in itself, is sufficient to distinguish this case from ***Little***. Indeed, had the claimant in that case been able to complain under s.15 of the Equality Act, the Tribunal has little doubt that any Tribunal would find that the initial refusal of her application amounted to unfavourable treatment. There is this Tribunal considers, a world of difference between a conditional refusal of a request to change working terms and conditions at a future date, and the imposition under a capability procedure of a warning. The Tribunal notes that the warning in this case was also subject to an appeal, and to that extent it could be argued that it did not differ from the refusal of the claimant's request in ***Little*** . That is not, however, a true analogy. The employer's decision in ***Little*** was to maintain the status quo. The employer's decision in this case was to impose upon the claimant, until rescinded on appeal, a warming. The two are very different, and this Tribunal is quite satisfied that this amounted to unfavourable treatment for the purposes of s.15. Whilst it is probably not necessary to decide the point, for the purposes of the reasonable adjustment claim, the Tribunal would also be quite satisfied that the imposition of the warning was the result of a PCP namely the absence management policy, that was applied to the claimant. It may only have been applied until its rescission upon appeal, but that does not mean that it was not applied during the interim period. The crucial difference with the ***Little*** case is that the PCP of requiring full-time working was not applied, and would not be applied unless and until the claimant returned to work. She suffered no disadvantage by reason of the refusal of the application as such, but would only suffer disadvantage if ,upon return to work, she was then required to work full-time. The claimant in this case suffered the disadvantage of this warning being upon his personnel record, and being at risk of further action being taken in the event of other absences, for the whole of the period until it was rescinded.

25. The respondent , however, also argues that any unfavourable treatment arising from the administration of this warning can be justified as a proportionate means of achieving a legitimate aim. Is identified in Mr Bloom submissions the requirement of the respondent is for consistent and regular attendance at work in order to manage the school , and ensure that children are taught a consistent timetable with consistent teachers. That doubtless is a legitimate aim, and one which had the respondent maintained this warning, it may have succeeded in showing was proportionately achieved by the administration of this warning. The difficulty for the respondent, however, is that on appeal Frank McCarron appreciated that the respondent's own procedure allowed for , and required , discounting of disability - related absence, and it was upon that basis that he allowed the appeal. In other words he acknowledged that the first written warning should not have been administered in the first

place. Respondent can hardly in those circumstances argue that its administration, even if short lived, was ever justified, and this argument must fail. This claim therefore succeeds as a s.15 claim, and also amounts to a failure to make reasonable adjustments.

c)Claim 4 : the ban upon the claimant sending emails.

26. The claimant contends that he was "banned" from sending emails to colleagues. As his use of email was a facet of his bi-polar condition, as he used email as a means of ordering his thoughts and ensuring a record was made of any communications, the claimant contends that this was something which arose as a consequence of his disability, and consequently the respondent's attempt to ban him from using this means of communication was unfavourable treatment which fell under s.15 of the Equality Act.

27. The respondent's primary contention is that as a matter of fact there was no such ban. There was ,it is agreed, and is clear from the evidence, discussion on a number of occasions about the claimant's use of email. It was for example discussed with Frank McCarron in the appeal against the stage 1 written warning. Anne Lucas also referred to these discussions in her emails to the claimant. Both these individuals were aware that the claimant used email because of his condition, and recognise that, but they sought to encourage him to reduce the amount of emails that he sent. There was, however, no outright ban, and the claimant was never instructed that he must not send emails, or threatened with any form of disciplinary sanction if he continued to do so. The respondent , at most, sought to discourage the claimant's use of emails, but did no more than that. Further, there was evidence that this was a general instruction to staff, and not just to the claimant. The claimant has in para. 87 of his submission suggested that this limiting of his correspondence has also limited "….as such the availability of lodging a grievance". That is not so. The most he was asked to consider was limiting his emails, there was never any suggestion that he should not raise a formal grievance, as in fact he continued to do well into December 2017. The Tribunal cannot see this as unfavourable treatment.

28. The respondent in the alternative argues that , if it was, it was justified as a proportionate means of achieving the legitimate aim of engaging with the claimant in maintaining proper professional and helpful communications in order to ensure that he was looked after , and the school was properly managed. Anne Lucas in particular the Tribunal noted, along with Heather Prest, tried to encourage direct communication by telephone , or face-to-face contact, and to limit the number of points of contact for the claimant so as to ensure better communication, and prevent a multiplicity of persons being involved in issues of the claimant wished or needed to raise. If, contrary to its finding above, this treatment was unfavourable, the Tribunal would in the alternative find that it was justified for the reasons advanced by the respondent.

The reasonable adjustments claims.

29. The Tribunal will consider these in order.

1.The school's act of disapplying the relevant sections of the school absence policy; the instigation and continuation of said policy.

30. From the claimant's further better particulars document, and paragraphs 55 to 66 of his submissions, this appears to be the same claim in relation to the administration of the

stage 1 warning that the Tribunal has dealt with above as a s.15 claim, which has succeeded, and would similarly succeed as a reasonable adjustment claim.

2.Failure to provide mediation in the alternate (sic) of refusing or resolving each of the disability -related grievances.

31. The PCP relied upon here is the employers requirement for the claimant's attendance environment that was neither safe nor discrimination free. The Tribunal has difficulty in accepting this as a PCP. This is far too generalised and nebulous to be capable of constituting a PCP. Further, in order to amount to a reasonable adjustment, a remedial action must have some prospect of reducing the disadvantage to which the PCP puts the disabled person (see ***Romec Ltd v Rudham [UKEAT/0069/07/DA]***, ***Cumbria Probation Board v Collingwood [UKEAT/0079/08/JOJ*** and ***Leeds Teaching Hospital Trust v Foster [UKEAT/0552/JOJ***). Mediation in itself would not do that, mediation may on some occasions lead to resolution , on others it may not. There is nothing magic in it, and much depends upon the approach of the participants. The claimant has not clarified what he means by "mediation", and whether this was intended to involve any third party. If it was, this would be somewhat unwieldy in the management of a school. If , on the other hand by "mediation" the claimant merely means informal resolution by means of discussion, there is ample evidence that this was attempted , and indeed was preferred by the respondent. It was the claimant who, for understandable reasons, continually raised formal grievances. The Tribunal finds that this complaint is not well-founded.

3.The failure of the school in applying its own Return to Work policy to facilitate constructive dialogue and prevent episodes of bipolar. The failure therefore to hold confidential conversations with the claimant. The employer unreasonably failed to consult the employee, failed to meet the employee or to discuss required reasonable adjustments as a consequence of inadequate disability training.

32. The relevant PCP is identified by the claimant as being the employer's requirement for consistent attendance at work fulfilling the normal functions of his job . With respect to the claimant the Tribunal does not consider that this is in fact the correct PCP , as it does not go far enough . The correct PCP would be to add the words "in circumstances where it had failed to apply its own return to work policy by holding return to work meetings in accordance therewith ".

33. The Tribunal finds that factually the claimant is correct , in that the respondent did not hold formal Return to Work meetings with him strictly in accordance with its own policy. The question then would be whether that PCP put the claimant at a substantial disadvantage by reason of his disability. The Tribunal does not consider, save in relation to the administration of the first written warning, that it did. As set out in paragraphs 4.12 to 4.17 of Mr Bloom's submissions there were numerous meetings with the claimant at which his condition and the appropriate reasonable adjustments were discussed, and actions were taken as result of these meetings. The Tribunal does not see how, had they been formally categorised as Return to Work meetings under the appropriate policy they would have been likely to have achieved any more than they actually did. This claim accordingly fails.

4.The failure of the school to provide payment for specific work-related psychiatric support to maintain the claimant in the workplace.

34. The PCP identified here by the claimant is the claimant being able to return to remain in work, performing the essential features of his job. Again with respect to the claimant, the Tribunal considers that he has not identified the correct PCP, which the Tribunal considers is that of the respondent declining to fund private medical treatment for its employees in general, or the claimant in particular.

35. The claimant addresses this particular complaint in paras. 29 to 31 of his submissions. It is clearly the case that the respondent did decline the claimant's request. Again in order for this to amount to a failure to make reasonable adjustments the Tribunal has to be satisfied that there was some prospect that this refusal put the claimant at a substantial (i.e. more than trivial) disadvantage, when compared to persons who did not have his disability. The Tribunal considers that he has failed to demonstrate this. Whilst in certain circumstances the availability of private treatment, for example, for a specific operation which could be carried out sooner in the private sector sooner that in the NHS, and which would have the effect of removing or considerably alleviating the consequences of the disability, one can see how an employer's refusal to fund such treatment may put such an employee at such a disadvantage. The question then would be whether or not it would be reasonable to make that adjustment.

36. In this case, however, the claimant was receiving treatment with the NHS, and made his request for support in going private with a view to improving the continuity of his care. Whilst private care may have been "better" for the claimant, there is no evidence that without it he would not make any progress in the treatment of his condition, or that private treatment would be so effective as to either cure his condition, or significantly reduce its effects upon him so as to enable him to give more regular attendance at work. The claimant maintains in his further particulars that private medical treatment may have assisted the claimant, and the respondent therefore should have funded it so as to enable him to remain at work.

37. The claimant has cited, and the Tribunal has considered ***Croft Vets Ltd. and ors v Butcher UKEAT/0430/12***. This is an EAT case (seemingly the only one) in which the issue of whether it would be a reasonable adjustment for the employer to pay for private medical treatment was considers. The Employment Tribunal at first instance, and the EAT on appeal, found that in failing to pay for private medical treatment in that case the employer had failed to make a reasonable adjustment.

38. As ever, the facts bear careful consideration. The claimant in ***Croft Vets*** was off work ill with a depressive illness. The medical opinion was that predominantly work – related stress had triggered a severe depressive episode with marked anxiety. The doctor to whom the respondent referred her recommended that the respondent give sympathetic consideration to funding further (it seems that the claimant had already had some) sessions with an experienced clinical psychologist , at a cost of not exceeding £750, in order to optimise her treatment. In rejecting Counsel for the employer's submission on appeal that it was not a reasonable adjustment for an employer to pay for private medical treatment, Supperstone ,J. said this:

"39. In any event we accept Ms Eddy's (counsel for the employee) submission that the adjustments are job – related in the required sense. They involved payment for a specific form of support to enable the Claimant to return to work and to cope with the difficulty she had been experiencing at work. The medical evidence was that the Claimant was suffering

from predominantly work – related stress . There were reasonable prospects that if Dr Parry's advice was followed and the reasonable adjustments followed they would be successful."

39. Later in his judgment, after observing that he could see nothing in the 1995 Disability Discrimination Act as amended , and the relevant Code of Practice, that lead to any different conclusion. He went on:

"40. … What was recommended by Dr Parry was psychiatric sessions and counselling to enable the Claimant to return to work and enable her to deal with the substantial disadvantage which had arisen because she was not able to fulfil the PCP. We accept Ms Eddy's submission that the issue in this case is not the payment private medical treatment in general, but, rather payment for a specific form of support to enable the claimant to return to work and cope with the difficulties she had been experiencing at work."

40. Thus the EAT held that in appropriate circumstances it can be a reasonable adjustment for employer to pay for private medical treatment. The question is whether that would be the case here. The claimant's request was made in an email of 17 July 2017 (page 728 of the bundle). In it the claimant referred to being under the care of Salford mental health team, and referred to the fact that they changed his psychiatrist every six months, and they were trainees. He felt he was not receiving the continuity of care that he would like. He referred to his previous private treatment at the Priory. There is nothing in this email nor in any of the other evidence and in particular the medical evidence in this case that his changing to private medical care would be likely to have any effect on the claimant's continued ability to attend work regularly. His request was merely framed in terms of a preference, and there was no suggestion that without this change to private care his condition would not improve sufficiently so as to affect his ability to attend work. Indeed it is to be noted that the claimant's next absence from work, and indeed his self harming episode in August were triggered by events that were nothing to do with his workplace. Further , as submitted by Mr Bloom , when the claimant was next off work in September 2017 during his suspension , which he contends in the Tribunal accepts did affect his health , he nonetheless was able to return by 18 September 2017 . He had not accessed private medical care at this stage, and was clearly able to return to work without it .This is thus a position which is very far removed from that in the ***Croft Vets*** case, and the Tribunal is accordingly satisfied that it would not have been a reasonable adjustment for the respondent to fund this treatment.

41. For completeness, were the Tribunal to be wrong and this would have been a reasonable adjustment, the Tribunal would agree with the claimant that the respondent's justification for not granting it solely on the basis of cost would not succeed, on the basis of the reasoning and the authority cited in paragraph 31 of the claimant's submissions.

5.The failure of the school to provide substantive or indeed any training to management and staff at the school with regard to Equal Opportunities and/or disability awareness

42. The claimant has identified this PCP as being the requirement to be managed by the faculty and school. The Tribunal cannot see this as a reasonable adjustment. The provision of training opportunities and/or disability awareness to management or any of the staff at the school would not of itself eliminate or reduce any disadvantage to which the claimant was put a reason of his disability. All it would do would be to provide his colleagues potentially with a better understanding of his disability and its effects upon him

and of how those could be better managed in the workplace. It provides no guarantee that that would actually occur, and is no direct consequence to the claimant. The Tribunal has seen many instances of reasonable adjustments being made by managers and employers with no training in such matters, and many instances of failure to make reasonable adjustments by those who had considerable training in this area. The most the training is likely to achieve is an increased possibility that managers and employers will have better awareness of disability -related issues, which may make them more likely to be able to recognise what reasonable adjustments are required. That is, however a long way from actually removing or reducing any particular disadvantage at any particular time to which the claimant's disability may put him and this is not accordingly a reasonable adjustment.

6.(Withdrawn)

7.The failure of the school to put into practice their policy on investigating allegations of discrimination because of their stereotypical view about the claimant suffering with a mental disability.

43. The PCP relied upon here is failure to further investigate disability -related grievances and provide an outcome. The respondent denies there was any such PCP. All the claimant's grievances which were not drawn were dealt with. The respondent is attached to it submissions a schedule of grievances. There were four it is contended. The claimant has attached his submissions a list of grievances, in total, at first blush nine, but in fact less than that.

44. Going through these two documents it is common ground that the first grievance was raised on 4 March 2016 (page 436 of the bundle) there was a meeting on 5 May 2016, which is agreed. The claimant complains about what happened in meeting but there was a meeting. This grievance , as it was called was , in fact a request for reduced hours which was dealt with in an outcome letter of 16 May 2016 (page 446 of the bundle).

45. The claimant then contends that his next grievance was raised on 30 June 2017. This was an email (page 631 of the bundle) following the claimant's as he put it "meltdown" following the feedback with which it was provided after a lesson observation. This document is not entitled "grievance", nor does the claimant use that word anywhere in it. He expressed his hurt and upset at what had happened, but he did not request that any action be taken. Rather on 2 July 2017 the claimant sent an email to Andrew Griffin informing him that he was now on antipsychotic medication again,. He did make a suggestion as to how future observations should be carried out and how Parbinder Dhillon should receive appropriate training. He went on to accept his part in how he reacted and said that he would gladly submit to any disciplinary investigation deemed appropriate. That was the end of the matter, the Tribunal cannot regard this as the raising of the grievance. Thus boxes three and four on the claimant's list of grievances are not grievances at all.

46. The respondent accepts that the claimant did raise a grievance on 4 September 2017 , and on 5 September 2017, but he withdrew those later on 5 September 2017. The respondent accepts the claimant raised a further grievance on 6 September 2017, which the claimant is not included in his list. Grievance was about his suspension, and was dealt with by Andrew Griffin lifting the suspension at the meeting on 13 September 2017, with

confirmation in his outcome letter of 19 September 2017. The claimant did not thereafter pursue the grievance of 6 September 2017.

47. The next grievance the respondent considers the claimant raised was on 4 October 2017, but this is an error in the schedule, as although the grievance related to events of that day the claimant's grievance was actually put in on 9 October 2017 (page 740 of the bundle) and was replied to by Andrew Griffin the same day (page 741 of the bundle) . On this occasion because the claimant was seeking to resurrect matters which went back to 6 June 2017 Andrew Griffin considered had been dealt with he declined to investigate those matters. In relation to the current incident involving the email exchange between Parbinder Dhillon and the claimant, he suggested that this matter could be resolved informally. He expressly referred the claimant to the grievance procedure and the options available to him under it. The claimant replied on 10 October 2017 (page 745 of the bundle) saying that he was more than happy to engage in any form of informal resolution under the direction of HR. Nothing further came of this grievance. These events are at boxes four and five of the claimant's list of grievances.

48. It is common ground that the claimant's next grievance was on or about 19 October 2017 (page 763 to 764 of the bundle) . This related to the administration of the stage I absence management procedure, following his invitation to a meeting that had been issued on 13 October 2017. That meeting took place on 20 October 2017 and the claimant appealed the outcome. In an email of 21 October 2017 (page 770 to 771 of the bundle) the claimant apologised for raising grievances, and agreed to seek to resolve matters informally. He did not pursue this particular grievance but it in any event related to his appeal against the first written warning, which, of course, he successfully pursued.

49. The claimant's list then has a further grievance on 26 October 2017. There will were a number of emails on this day passing between the claimant and Heather Prest and Andrew Griffin, following communications between the claimant and Anne Lucas. This is the chain of communication in which the claimant indicated his intention to approach ACAS, and he and Anne Lucas engaged in a debate as to the nature and extent of the obligation to make reasonable adjustments. The Tribunal cannot see any of these emails as amounting to a grievance, as none of them are so entitled, nor does the claimant expressly in any of them state that they are being raised grievances.

50. The final grievance in the claimant's list is allegedly one on 13 December 2017, by which he is presumably referring to page 868 of the bundle (the word "grievance" is handwritten at the top of it) , which is an email to Heather Prest in which he makes reference to a previous document, a letter before action, which he had sent to Andrew Griffin on 8 December 2017. In this email he refers to that document and goes on to say that it would probably be useful to clarify the heads of claim in that document. This email therefore was in the context of the claimant's potential employment Tribunal claim which she was contemplating making at that time. Indeed he refers to the ET1 in this document. Again the Tribunal cannot regard this as a grievance document, it expressly refers to the claimant's letter before action which was in contemplation of his Employment Tribunal claims.

51. Consequently the Tribunal does not find that the claimant has actually raised as many grievances as he has contended that he has, and secondly, when he has the Tribunal is quite satisfied that they have been dealt with appropriately by the respondent,

and that the manner in which they have been dealt with has not been influenced in any way shape or form by his disability. It is unclear what reasonable adjustment the claimant is actually contending for in this claim, the Tribunal was quite satisfied that the respondent did not fail to make any such adjustment.

8.(Withdrawn)

9.The failure of the school to consult over the relocation of classes in April 2016 and September 2017 the consequence of which was to place the claimant's classroom at significant distance away from his colleagues and isolated him from his faculty and peers. The decision taking (sic) whilst the claimant was on disability related sick leave.

52. This is an allegation which the claimant raised in his claim to the Tribunal, that had not previously brought the attention of the respondent. Whilst the respondent has not in its submissions raised any time limit issue the Tribunal as this goes to its jurisdiction, has had to consider whether this claim has been presented in time. Given that the claim form was not presented until 19 December 2017, and the latest that the matter of which the claimant complains could have occurred would be the start of the autumn term 2017 on 4 September 2017 application of the three month time limit from that date would make this claim out of time. The claimant however contacted ACAS on 26 October 2017 and obtained his early conciliation certificate on 26 November 2017. Accordingly claims arising on or after 27 July 2017 are in time and this claim consequently can be considered.

53. The claimant was at the end of the summer term off work sick. It may well be a roundabout that time that room allocation was considered, but there is little evidence about this process. The claimant contends that the relevant PCP is being located to a classroom in an area isolated from his faculty without due consultation. The respondent does not appear to dispute that there was no consultation, there certainly was no evidence of it. Equally there was no evidence of the claimant ever complaining upon his return to school in September 2017 about the room to which he had been allocated. The claimant's condition meant that there were several potentially divergent considerations that may need to be taken to into account in making adjustments for his disability. On the one hand, he says he did not wish to be isolated, but on the other he was concerned as to colleagues unduly monitoring him.

54. By the provisions of para. 20 of Part 3 of Schedule 8 to the Equality Act 2010, an employer is not under a duty to make reasonable adjustments if he did not know, and could not reasonably be expected to know not only of the disability of the disabled person (which cannot be the case here) , but also that the person is likely to be placed at the relevant disadvantage. The respondent's primary position and the allocation of this classroom to the claimant did not put him at any disadvantage by reason of his disability. The evidence in relation to this issue is somewhat scarce, but assuming the claimant can establish that this was the case, the Tribunal is satisfied that the respondent neither knew, nor could reasonably have been expected to that he was likely to be placed at the relevant disadvantage. The reasons for this are obvious. There is nothing in the extensive evidence of the Tribunal suggest the claimant ever previously raised through allocation as an issue. Whilst he may not have been present at the end of the summer term 2017 when allocation of classrooms for the next term was being considered at the latest when he returned on 4 and 5 September 2017 he will have learned that allocation. He made no comment about it in any of the grievances that he raised or withdrew, and it is first

(possibly) mentioned in an email to Heather Prest on 10 December 2017 in which he refers to alleged failure on the part of the respondent to "adequately consult or inform in the provision of information and rooming". There is therefore no evidence that the respondent in making this allocation between July and September 2017 knew or could reasonably have been expected to have known that this would place the claimant at any relevant disadvantage by reason of his disability. This claim accordingly fails.

10.The preclusion of the claimant in raising reasonable concerns of management at the school constituting protected acts.

55. The formulation of this claim in these terms in the claimant's further and better particulars is slightly hard to understand but as he goes on to identify the relevant PCP as being the micromanagement of email communications to leadership, the Tribunal takes this to be a repeat, by way of reasonable adjustments claim, of claim 4 of the s.15 claims. As such Tribunal makes the same observations as above, when dealing with that claim to the effect that the Tribunal finds that there was no "ban" upon the use of email, merely a discouragement to the claimant sending so many emails, to different people, and raising issues this way, rather than by talking. This discouragement of excessive emails, which the claimant had himself on occasion acknowledged may not be helpful, did not in view of the Tribunal amount to a PCP which put him at a substantial advantage by reason of his disability. That would have been the case had the respondent banned the claimant from using email to raise grievances, but it never did so, and the claimant continued to use email in his communications with the respondent, and in particular with Heather Prest after this supposed "ban" was applied. This claim is dismissed.

11.The policy of the school to neither communicate nor share disability -related information with respect to the claimant with key stakeholders and appropriate managers.

56. The PCP identified here is the claimant being able to return to and remain in work, performing the essential features of his job with no account taken of his disability or effects therein. Again with respect to the claimant the Tribunal is not convinced that this is a properly formulated PCP. It is a "practice" i.e. the respondent did not share disability related information with respect to the claimant with key stakeholders and appropriate managers (as alleged). The claimant therefore contends that this put him at a disadvantage. A moment's reflection , however, will reveal that, rather like the failure to provide adequate training to colleagues discussed above, this practice of itself would not put the claimant at a disadvantage. All it would do would be to make it less likely that such persons would fail to make reasonable adjustments. In any event, the Tribunal cannot see the relevance of any "stakeholders", whom it takes to be persons outside the respondent's organisation (the claimant has, however, identified Louisa Taylor as one) , or management team. In any event there is ample evidence that the respondent did , with the consent of the claimant, share such information relating to his disabilities as he provided to it , and permitted to be shared. This claim too fails.

Time Limits.

57. Whilst the respondent has in its submissions made reference to time limits, to the extent that the claimant has sought to rely upon any matters going back to 2016, and it has argued that any such claims are out of time, it has not been necessary to consider such issues. The claimant has prepared substantial submissions on the time limit issues.

The claims before the Tribunal as pleaded, appear to go back no further than July 2017. That is certainly true of all the s.15 claims. Of the reasonable adjustments claims, the claimant's claims in relation to the grievance in March 2016 do extend back before then, and are out of time. They have, however, been considered. They had to be considered order to determine if they could be regarded as part of a course of conduct extending over a period of time, so as to fall within s.123(3) of the Equality Act 2010. The Tribunal has found that they do not, and , indeed , there was no course of conduct until the first act of discrimination on 5 September 2017. All claims before 27 July 2017 on that basis are out of time, but most, of course, postdate that date. To the extent that it was necessary, the Tribunal would grant the claimant an extension of time for the presentation of these claims, on the basis that it was just and equitable to do so, primarily on the basis that , as the evidence has revealed, there has been no prejudice to the respondent, which has been perfectly able to respond to, and deal with, these claims, notwithstanding their age. The dismissed claims are accordingly dismissed on their merits, and not on the basis that they, or any of them, are out of time.

Remedy

58. In terms of remedy, the Tribunal having found two of the claimant's claims well-founded , whilst he is entitled to a remedy in respect of them, the Tribunal invites the claimant to consider carefully the appropriate remedy he should seek. In terms of financial losses from his brief period of suspension if there are any (and the suspension Tribunal understands was on full pay), these can of course be claimed. There appear to be no financial losses arising from the administration of the warning. In relation to injury to feelings, the Tribunal can only make an award in respect of the injury to feelings from the two acts of discrimination that it has found. That will require, therefore, the Tribunal to identify the extent and degree to which the claimant's feelings were injured by each of these acts of discrimination, as distinct from any injury caused by any other events, occurrences or circumstances for which the respondent has not been found liable. Any view therefore, whilst likely to be more than trivial, the Tribunal doubts the injury to feelings occasioned by these discrete acts of discrimination alone, in aggregate, would merit an award outside the lowest band of ***Vento***, and, provisionally at least, the Tribunal would doubt that it would merit an award, in total, beyond the middle of the band, if indeed an award of that magnitude could be justified. This is, however, merely an observation without the benefit of argument, which the Tribunal , of course, will consider fully if any remedy hearing is necessary. It is hoped these observations will however assist the parties (perhaps with the assistance of ACAS, whose role remains until the proceedings are concluded) to resolve the issue of remedy without a further hearing. The Tribunal accordingly affords them some time in which to consider these issues and to attempt to resolve them, if this proves unsuccessful , a remedy hearing will be convened.

Employment Judge Holmes

Dated : 6 August 2019

RESERVED JUDGMENT SENT
TO THE PARTIES ON
22 August 2019

FOR THE TRIBUNAL OFFICE

ANNEXE A

The relevant statutory provisions – The Equality Act 2010

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

A treats B unfavourably because of something arising in consequence of B's disability, and

A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (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.

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on 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's 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.

(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 a 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.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) – (13) N/a

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Schedule 8 Part 3

Limitations on the Duty

20. Lack of knowledge of disability, etc

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.
