**RM**

# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr S Leacy**

**Respondent:** **The Building Craft College**

**Heard at:** **East London Hearing Centre**

**On:** **10 – 13 & 17 September 2019 and**
**(in chambers) 3, 4 & 8 October 2019**

**Before:** **Employment Judge C Lewis**
**Members:** **Mr T Burrows**
**Mrs S Jeary**

**Representation**

Claimant: In person

Respondent: Mrs P Hall – Employment Consultant, Peninsula

# RESERVED JUDGMENT

**The unanimous judgment of the Tribunal is that:-**

**In respect of each or both claim forms (ET1s):**

**(1) The claims for discrimination contrary to section 6,13,15,19, 20 and 21 of the Equality Act 2010 fail and are dismissed;**

**(2) The claims of harassment contrary to section 26 of the Equality Act 2010 fail and are dismissed;**

**(3) The claims of victimisation contrary to s 27 of the Equality Act 2010 fail and are dismissed**

**(4) The claims of instructing, causing or inducing contraventions of the Act contrary to section 111 of the Equality Act 2010 fail and are dismissed**

# REASONS

## Issues and case management

1. The Claimant brings claims of disability discrimination against his former employer, including complaints of direct discrimination under section 13, discrimination arising from disability under section 15, failure to make reasonable adjustments under section 21, harassment under section 26, and victimisation under section 27 of the Equality Act 2010. He was employed by the Respondent from 1 September 2017 until either the 6th (the Respondent's case or 13 April 2019 (the Claimant's case). His claim was issued on 17 August 2018 and a further claim followed after his resignation, which the Claimant relies on as a constructive dismissal. The Claimant does not have two-years' service to bring a complaint of unfair dismissal but relies on this as a further act of discrimination, along with a number of further complaints of direct discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment, victimisation and claims of instructing, causing or inducing contraventions of the Equality Act 2010

2. The two claims were consolidated and the hearing was listed for six days from the 10th to 13th and 17th to 18 September 2019 for the Tribunal to deal with liability only. The hearing time was reduced and the hearing took place over five days 10th to 13th September and the 17th of September with the Tribunal sitting in chambers on 3, 4 and 8 October 2019.

3. The claims had been case managed at two preliminary hearings, firstly in November 2018 by Employment Judge Goodrich and then in July 2019 by Employment Judge Massarella. Following the second case management hearing in July there remained an outstanding dispute in respect of disclosure. The Claimant had made further applications for specific disclosure which the Respondent resisted on the grounds that the documents requested were subject to privilege, either legal professional privilege or without prejudice privilege. That disclosure application was dealt with separately by Employment Judge Russell, unfortunately the documents that the judge needed to read to decide the application had not reached the Tribunal in time for the application to be dealt with before this hearing was due to start, we therefore had the parties in to deal with some case management matters.

4. The hearing before us started with two sets of bundles having been provided to the Tribunal: the Respondent's bundles were in four lever arch files but the files were not divided in the same place in any of the bundles, some of those bundles were overloaded and there was a large number of missing documents as well as some duplications. The Claimant had produced his own bundle which was in four lever arches each separated equally and at the same juncture and numbered sequentially. The Claimant had cross-referenced his 78-page witness statement to his version of the bundle although he was aware that the case management orders had directed that the Respondent would prepare the bundle.

5. The Agreed list of issues was discussed. The issues arising from the two claims had been set out in one document which ran to 14 pages and consisted of 82 numbered paragraphs with numerous sub-paragraphs identifying separate allegations.

6. The Tribunal indicated that it would take mid-morning and mid-afternoon breaks, taking account of the Claimant's disability, but that the Claimant was to let the Tribunal know if he required any further breaks at any time. The Respondent confirmed the order in which the witnesses would be called so that the Claimant knew which witnesses he had to prepare and in which order.

7. The Claimant objected to Mr Mayes' statement being introduced because it was not exchanged on the date provided for in the case management order but he accepted that he had had it at least two weeks before the hearing. There has already been a ruling on that point by Employment Judge Massarella.

8. The Tribunal spent the morning reading the witness statements whilst the parties were waiting for the documents to arrive for the disclosure application before Employment Judge Russell. At the end of the first day those documents had not arrived and the Tribunal was still engaged in reading the statements and the documents referred to in the statements. It was agreed to revisit the situation at the beginning of day two.

9. The Tribunal decided that the Claimant's bundles would be used, the Claimant's witness statement was by far the longest statement and contained numerous references to page numbers and the Tribunal accepted that it would be difficult for him to go through the Respondent's bundles and renumber his witness statement, Miss Hall is a professional representative and also her witnesses' statements were considerably shorter. Numerous pages were missing from the Respondent's bundles, and the bundles were not in a fit state to be used by the Tribunal. Miss Hall was invited to identify any documents that were not in the Claimant's bundle that she wished to be included.

***Day 2 disclosure application***

10. The relevant documents having reached the Tribunal by the morning of day 2 Employment Judge Russell indicated that she would be in a position to hear the application by 12:30 p.m. The Claimant and Miss Hall were given three options: (1) to start the hearing before us and then adjourn at 12 pm to prepare for the disclosure application before Employment Judge Russell, (2) the Tribunal would rise early and Employment Judge Russell would hear their application at four o'clock, or (3) recommence the next morning at 10 o'clock after the disclosure application, although that would involve some loss of time in an already shortened timetable. The Claimant indicated he would prefer the first option and Mrs Hall for the Respondent agreed.

11. The correct name of the Respondent was confirmed as The Building Craft College not Building Craft College Trading Ltd which is a separate trading company.

12. The Claimant began his evidence and the Tribunal rose just after 12 o'clock to allow the parties to prepare for the application before Employment Judge Russell. The hearing resumed after lunch at 2:45p.m. once the disclosure application had been dealt with. No further documents were introduced into our bundle as a result of that application. The Claimant's cross-examination continued for the rest of the afternoon and the next morning. Mr Conway was then called to give evidence. The Tribunal allowed Ms Hall to ask a number of supplemental questions as they arose out of the Claimant's 78-page witness statement and his oral evidence. Mr Conway's evidence continued into Friday morning with the Claimant's cross-examination completed just before lunch. On Friday afternoon we heard from Mr Mayes and Miss Datta. At the end of Friday the Tribunal

revisited the timetabling and the need to hear two further witnesses on Tuesday morning and allow time for submissions in the afternoon. The parties were invited to exchange any written submissions they intended to rely on the following Monday before the hearing resumed on the Tuesday but it was made clear to the parties they were not required to produce anything in writing. The Employment Judge indicated that submissions should not be longer than 45 minutes each. The parties were informed that the Tribunal had set aside the 3rd and 4th of October for their deliberation in Chambers and that the parties would not need to attend on those two dates A provisional date for a remedy hearing was set for 16th of January 2020.

13. At the end of the evidence the Tribunal took an early lunch so that the parties could prepare for submissions after lunch. Mrs Hall produced written submissions. The Claimant had a written document but it was his own note and not to hand up; he did hand up a copy of his bibliography which consisted of 63 cases and 5 pieces of legislation and 5 other sources for the Tribunal to read, including a reference to the, gov.uk website. The Employment Judge informed the Claimant that we would not be reading each of the 63 cases unless he referred us to them, he could indicate the principles that he sought to rely on in his submissions but he could be assured that we were familiar with the provisions of the Equality Act 2010 applicable to his case.

14. Mrs Hall spoke briefly to her written submissions and concluded her submissions within 10 minutes. The Claimant's submissions lasted for almost an hour and a half hour with a 10 minute break. The Employment Judge reminded the Claimant that we would decide the claim on the evidence we had heard, applying the relevant law, and he was not able to introduce new evidence in the in the course of his submissions. At the close of the Claimant's submissions Mrs Hall indicated that she had not been provided with a list of cases in advance.

15. The Claimant provided a written chronology. Mrs Hall indicated that while the Respondent did not dispute the sequence of events it did dispute the descriptions attached to those events. The Claimant also handed up a document headed "Appendix 1 - Comments related to disability" which he stated contained comments that were in the documents that related to his disability. The Employment Judge again explained to the Claimant that the Tribunal would not be going through each of the documents in the bundle but would consider the documents we had been taken to in evidence and would be making a decision on the evidence that we had heard, deciding the issues that had been agreed by the parties and set out in the list of issues. The issues set out in the combined List do not follow a chronological order. We have attempted to deal with our findings in a chronological order as far as possible.

16. Given the multiplicity of issues we have set out our findings of fact and our conclusions on the particular issues as we deal with each of them below rather setting out findings of fact, the relevant law and then returning to each of the issues to set out our conclusions. We have done so to avoid unnecessary repetition and given the already lengthy nature of the judgment. In reaching our conclusions we had in mind the following law and legal principles and applied them to our findings of fact.

**Relevant law**

17. Section 13, s15, s19, 20, 21, s23, s26, s27, s39 and s109 and s111 of the Equality Act 2010.

**Section 13 – direct discrimination**

18. In order to establish a claim based on direct disability discrimination under EqA 2010, s 13, a claimant must show:

(a) treatment that is less favourable than that which has or would have been accorded to others without the claimant's disability;

(b) that such treatment has been accorded to the claimant because of his disability; and

(c) that the comparison is such that the relevant circumstances in the one case are the same (or not materially different) than in the other (see EqA 2010, s 23).

Mummery J in *Neill v Governors of St Thomas More RCVA Upper School and Bedfordshire County Council [1997] ICR 33*, *[1996] IRLR 372 (EAT)* at 376 identified the correct approach to causation as follows:

'(*b*) The relevant principles are these:

(i) The tribunal's approach to the question of causation should be simple, pragmatic and common sense;

(ii) The question of causation has to be answered in the context of a decision to attribute liability for the acts complained of. It is not simply a matter of a factual, scientific or historical explanation of a sequence of events, let alone a matter for philosophical speculation. The basic question is: what, out of the whole or complex of facts before the tribunal is the 'effective and predominant cause' or the 'real and efficient cause' of the act complained of? As a matter of common sense not all the factors present in a situation are equally entitled to be treated as a cause of the crucial event for the purpose of attributing legal liability for consequences.

(iii) The approach to causation is further qualified by the principle that the event or factor alleged to be causative of the matter complained of need not be the only or even the main cause of the result complained of (though it must provide more than the occasion for the result complained of.) 'It is enough if it is an effective cause.''

The correct approach to establish causation for unlawful discrimination is to ask whether the protected characteristic was the effective and predominant cause, ie to ask 'why' the disabled person was treated as he was. This test is set out in *Nagarajan v London Regional Transport [1999] IRLR 572 (HL); Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830 and Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR* 285, all of which were confirmed in *Martin v Lancehawk Ltd (t/a European Telecom Solutions) [2004] All ER (D) 400 (Mar), and Amnesty International v Ahmed [2009] ICR 1450.*

**Section 15 - Discrimination arising from disability**

19. The correct approach to determining a claim under s.15 was summarised by Simler J in *Pnaiser v NHS England [2016] IRLR 170* at 31. In essence, the Tribunal must decide:

(1) Whether there was unfavourable treatment.

(2) What the reason for that unfavourable treatment was. The focus is on the mind of the employer at this point. If there is more than one reason, it will be sufficient to establish causation that something has a "*significant influence*". In deciding this, the employer's *motives* are not relevant.

(3) Whether that reason was "*something arising in consequence of disability*". This is a looser test compared to "*caused by*", as emphasised by Simler J in *Sheikholeslami v Edinburgh University* [2018] IRLR 1090 at 66.

(4) Whether the reason for the treatment was the "*something arising*" is an objective test and does not depend on the thought process of the employer. Nor is it necessary for the employer to know that the "*something arising*" arises in consequence of the disability, *see City of York v Grosset [2018] ICR 1492* at 38-41.

(5) It does not necessarily matter which order the Tribunal answers these questions in, but they all need to be addressed.

20. The Tribunal must address two separate questions of causation: (i) did the "*something*" arise from C's disability, and (ii) was that "something" the reason for C's unfavourable treatment. See *Basildon v Thurrock NHS Trust v Weerasinghe [2016] ICR 305 a*t 26. The burden is on the Claimant to show the "*something arising*", since it is a fact necessary for the Tribunal to conclude that there has been a contravention of the Equality Act 2010.

*Objective justification*

21. The proportionality test is essentially a balancing exercise. It was summarised in the context of indirect discrimination, by reference to the leading EU case of *Bilka-Kaufhaus GmbH v Weber von Hartz* [1986] IRLR 317, by Mummery LJ in *R. (Elias) v Secretary of State for Defence* [2006] 1 WLR 3213 at [151]:

> "… the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group."

22. Sedley LJ in *Allonby v Accrington and Rossendale College [2001] ICR 1189* at 29 described the exercise as follows:

> "… at the minimum a critical evaluation of whether the college's reasons demonstrated a real need to dismiss the applicant; if there was such a need, consideration of the seriousness of the disparate impact of the dismissal on women including the applicant; and an evaluation of whether the former were

sufficient to outweigh the latter.”

23. The Supreme Court confirmed in *Homer v Chief Constable West Yorkshire Police [2012] ICR 704 at [22]* that “to be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary in order to do so.”

Pill LJ in Hardy & Hansons Plc v Lax [2005] ICR 1565 at [32]:

> “It must be objectively justifiable (*Barry v Midland Bank plc* [1999] ICR 859) and I accept that the word “necessary” used in *Bilka-Kaufaus* [1987] ICR 110 is to be qualified by the word “reasonably”. That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word “reasonably” reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary.”

24. In *Hensman v Ministry of Defence [2014] UKEAT/0067/14/DM,* Singh J referred to the above passage and stressed at [44] that in applying this approach the Tribunal, “*must have regard to the business needs of the employer*.”

25. In considering whether there are alternative non-discriminatory means of achieving the legitimate aim, the legitimate aim itself must be the focus; a non-discriminatory alternative will not defeat a defence of justification if it defeats the legitimate aim, see *Chief Constable West Midlands v Blackburn* [2009] IRLR 135 at [25]-[26].

**Section 19 - Indirect discrimination**

26. Indirect discrimination will be held to have occurred if a person applies to a complainant a provision, criterion or practice (PCP) which is discriminatory in relation to that person's protected characteristic. 'Discriminatory' means that they apply or would apply the PCP equally to people who do not share the characteristic but it puts or would put the complainant at a particular disadvantage when compared with the person with whom they do not share the protected characteristic and the PCP cannot be shown to be a proportionate means of achieving a legitimate aim.

**Sections.20-21 - Failure to make reasonable adjustments**

27. The correct approach for the Tribunal in determining a reasonable adjustments claim is set out in *Environment Agency v Rowan [2008] ICR 218* at 27 (the reference to sections are to sections of the Disability Discrimination Act 1995 “DDA”):

> “In our opinion an employment tribunal considering a claim that an employer has discriminated against an employee pursuant to section 3A(2) of the Act by failing to comply with the section 4A duty must identify: (a) the provision, criterion or practice applied by or on behalf of an employer, or (b) the physical feature of premises occupied by the employer, (c) the identity of non-disabled comparators

> (where appropriate) and (d) the nature and extent of the substantial disadvantage suffered by the claimant. … Unless the employment tribunal has identified the four matters we have set out above it cannot go on to judge if any proposed adjustment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice, or feature, placing the disabled person concerned at a substantial disadvantage."

28. The focus of the Tribunal is on practical outcomes, this was confirmed by Langstaff P in *Royal Bank of Scotland v Ashton* [2011] ICR 632 at 24:

> "… so far as reasonable adjustment is concerned, the focus of the tribunal is, and both advocates before us agree, an objective one. The focus is upon the practical result of the measures which can be taken. It is not – and it is an error – for the focus to be upon the process of reasoning by which a possible adjustment was considered. As the cases indicate, and as a careful reading of the statute would show, it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment. It is an adjustment which objectively is reasonable, not one for the making of which, or the failure to make which, the employer had (or did not have) good reason."

29. The time at which a failure to make reasonable adjustments occurs was addressed in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194 at 14:

> "Pursuant to section 20(3) of the Equality Act 2010, the duty to comply with the requirement relevant in this case begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage."

30. The burden is on the Claimant to show the PCP, to demonstrate substantial disadvantage, and to demonstrate a *prima facie* case that there is some apparently reasonable adjustment which could have been made (and therefore, *prima facie*, that there has been a breach of the duty), see *Project Management Institute v Latif* [2007] IRLR 579 at 45 and 54. If the PCP contended for was not actually applied, the claim *falls at the first fence*: *Brangwyn v South Warwickshire NHS Foundation Trust* [2018] EWCA Civ. 2235 at 40.

*Substantial disadvantage*

31. The substantial disadvantage applies in respect of the disabled person compared to *persons who are not disabled*. The EAT has made clear that "*the function of the provision, criterion or practice within section 20(3) is to identify what it is about the employer's operation which causes disadvantage to the employee with the disability*" (see *General Dynamics Information Technology Ltd v Carranza* [2015] ICR 169 at 39). As observed by the EAT in *Sheikholeslami v Edinburgh University* [2018] IRLR 1090 at [48]:

> "The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP."

32. In assessing substantial disadvantage, the Tribunal needs to identify what it is about the particular disability that gives rise to specific substantial disadvantage. As observed by the EAT in *Chief Constable West Midlands Police v Gardner* [2011] UKEAT/0174/11/DA at 53:

> "There may be many cases in which it is obvious what the nature of the substantial disadvantage is, and why someone with the disability in question would inevitably suffer it. … But there are also cases, of which this is one, in which in our view simply to identify a disability as being a general condition – such as "a knee condition" – does not enable any party, and more particularly a court of review, to identify the process of reasoning which leads from that to the identification of a substantial disadvantage, and an adjustment which it is reasonable to have to make to avoid that disadvantage. The conclusion remains unexplained by any description of what it is that the Claimant can and cannot do in consequence of his disability, and there is therefore no information as to the nature of any step or steps which might be taken in order to prevent that particular disadvantage. The words of *Rowan* are clear and correct. They may however insufficiently emphasise the need to show, or to understand, what it is about a disability that gives rise to the substantial disadvantage, and therefore what it is that requires to be remedied by adjustment. Without knowing that, no assessment of what is, or is not, reasonable by way of adjustment can properly be made."

*Reasonableness of adjustments*

33. In *Smith v Churchill Stairlifts Plc [2006] ICR 524, CA* the Court of Appeal confirmed that the test of reasonableness is an objective one. Paragraphs *6.28 of the EHRC Code of Practice on Employment* sets out some of the factors (previously set out in the DDA) which may be taken into account when assessing what is a reasonable step for an employer to have to take:

> *"– whether taking any particular steps would be effective in preventing the substantial disadvantage;*
>
> *the practicability of the step;*
>
> *the financial and other costs of making the adjustment and the extent of any disruption caused;*
>
> *the extent of the employer's financial or other resources;*
>
> *the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and*
>
> *the type and size of the employer."*

***s.26 Harassment related to disability***

34. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724, [2009] IRLR 336 EAT, Underhill P presiding, stated that the approach that the Tribunal ought to take in determining a claim of harassment should be broadly the same, regardless of the particular form of discrimination in issue and that, in each context, 'harassment' is defined in a way that focuses on three elements: (a) unwanted conduct; (b) having the purpose or

effect of either: (i) violating the claimant's dignity; or (ii) creating an adverse environment for him/her; (c) on the prohibited grounds. (Confirmed by Underhill LJ in the Court of Appeal in *Pemberton v Inwood* [2018] ICR 1291 at 88 see below).

35. In each case, there is a proviso that means that, even if the conduct has had the proscribed effect, it must also be reasonable that it did so. There is a subjective element '… having regard to … *the perception of that other person* …' ultimately the proviso can deal with cases of unreasonable proneness to take offence. Although 'purpose' is not determinative, it can be a factor: 'the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt' (*Dhaliwal* at 15). Ultimately, this is all 'quintessentially a matter for the factual assessment of the tribunal'.

***Related to***

36. Whether conduct is related to a protected characteristic is a question to be judged by the Tribunal by reference to all of the evidence, not simply the perception of a claimant; the knowledge or perception of the claimant's protected characteristic by the person making the comment is also relevant (see *Hartley v FCO Services* [2016] UKEAT/0033/15/LA at 23-25).

37. The context in which a comment is made will be relevant to determining whether it is related to a protected characteristic, and the tribunal must contextualise the comment appropriately (*Warby v Wunda Ground Plc* [2012] EqLR 536 at 21-24. As observed by Underhill J in *Amnesty International v Ahmed* [2009] ICR 1450 at 37 (cited in *Warb*y in the context of harassment):

> "The fact that a claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment."

38. In *Nazir and Aslam v Asim and Nottinghamshire Black Partnership [2010] ICR 1225*, *[2010] EqLR 142*, the EAT adopted the questions identified in *Dhaliwal* but gave particular emphasis to the last, ie whether the conduct related to one of the prohibited grounds. When considering whether facts have been proved from which a tribunal could conclude that harassment was on a prohibited ground, it was always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on that ground. That context may in fact point strongly towards or against a conclusion that it was related to any protected characteristic.

39. 'Related to' imports a potentially very broad test, some guidance as to the scope of the test has now been given by the Court of Appeal in *UNITE the Union v Nailard [2018] EWCA Civ 1203*, *[2018] IRLR 730* (upholding the judgment of the EAT at *[2016] IRLR 906*). The employment tribunal had allowed that a failure to address a sexual harassment complaint, made against elected officials of the union could itself amount to harassment related to sex 'because of the background of harassment related to sex'. That, the Court of Appeal held, went too far. The tribunal had not made any findings as to the mental processes of the (employed) officials of the union dealing with the complaint and whether they had been motivated by sex discrimination.

40. In *Pemberton v Inwood [2018] EWCA Civ 564*, *[2018] IRLR 542*] Underhill LJ re-visited the guidance he had given in *Dhaliwal*, to better reflect the language of the Equality Act, as follows:

> "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))."

41. In order to constitute harassment, it is necessary that the conduct has in fact given rise to the proscribed consequences. This is an objective test, albeit the subjective perception of the Claimant is relevant (provided it is reasonable) [Dhaliwal at 15].

42. As explained by Underhill LJ in Pemberton v Inwood [2018] ICR 1291 at 88:

> "The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

43. *In Land Registry v Grant* [2011] ICR 1390, per Elias LJ at [47], the Court of Appeal emphasised the importance of not trivialising the statutory provisions:

> "the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset that he could not release the information in his own way, but that is far from attracting the epithets required to constitute harassment".

44. The EAT in *Betsi Cadwaladr University Health Board v Hughes* [2014] UKEAT/0179/13/JOJ, at 12, referring to the above stated:

> "*We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.*"

45. However the tribunal also had in mind the guidance in *Read and Bull Information Systems Ltd v Stedman* [1999] IRLR 299 per Morison J at 28, (in respect of a case of sexual harassment but applicable generally to other forms of harassment):

> "It is particularly important in cases of alleged sexual harassment that the fact-

finding tribunal should not carve up the case into a series of specific incidents and try and measure the harm or detriment in relation to each, …

"…instead , the trier of fact must keep in mind that "each successive episode has its predecessors, that the impact of the separate incidents may accumulate, and that eth work environment created may exceed the sum of the individual episodes."

**Victimisation**

46. EqA 2010, s 27, makes it unlawful discrimination for an employer to subject a person to a detriment because the 'victimised' person does, may do or has done a 'protected act' (or the discriminator believes this to be the case). Protected acts are:

(a) bringing proceedings under the EqA 2010;
(b) giving evidence or information in connection with proceedings under the Act;
(c) doing any other thing for the purposes of or in connection with the Act; or
(d) making an allegation that the discriminator or any other person has contravened the Act.

47. Protection is given even where the allegation made is false, provided that such allegation was made in good faith (s 27(3)).

48. There must be a causal link between the fact that the act done was a protected act, and the detriment suffered by the complainant. The requirement of conscious motivation was rejected by the *House of Lords in Nagarajan v London Regional Transport [1999] IRLR 572* which held that the proper question was whether the complainant was less favourably treated (now, under the EqA 2010, whether the complainant suffered a detriment) because he or she had done a protected act. The test is one of causal connection, and is the same as the test for direct discrimination. The motivation and intention of the discriminator are not therefore relevant. More recently, *St Helens Metropolitan Borough Council v Derbyshire [2007] UK HL 16* established that when considering whether or not an act has caused detriment, the question should be assessed primarily from the point of view of the victim.

***Section 111 causing or inducing discrimination***

49. It is unlawful for one person who has actual or customary authority over another to instruct that person to do any act that is unlawful under the specified parts. Cause bears its ordinary meaning, to bring about or attempt to bring about a course of action.

50. It is also unlawful to induce or to attempt to induce another to do an act declared unlawful by the legislation, Neill J in *Commission for Racial Equality v Imperial Society of Teachers of Dancing [1983] IRLR 315*, *[1983] ICR 473, EAT* stated that [in section 31 of the Race Relations Act 1976] the words 'to induce' meant 'to persuade or to prevail upon or to bring about'.

***Constructive dismissal***

51. There is no general implied contractual term that an employer will not breach some other statutory right such as the right not to suffer discrimination *Doherty v British Midland Airways* [2006] IRLR 90, EAT. However, the same facts that might support a finding of unlawful discrimination or any disregard of such a statutory right may, depending on the facts, suffice to establish a breach of the implied term of mutual trust and confidence see *Green v Barnsley MBC* [2006] IRLR 98 and *Amnesty International v Ahmed* [2009] ICR 1450.

**Findings of fact**

52. In his witness statement and in his oral evidence to the Tribunal the Claimant made a number of complaints in respect of various matters which were not themselves the issues in the claim that the Tribunal had to decide, although they also relate to his understanding or his interpretation of events. We have not addressed each and every one of those complaints but have confined ourselves to those that are relevant or which we needed to address in order to decide the issues before us.

53. The Tribunal made the following findings so far as is relevant to the issues in the claim.

54. The Respondent, Building Craft College, operates as a speciality stone masonry construction and carpentry college situated in London. The Claimant was employed as Lead of Furniture Apprentices. His employment commenced on 4 September 2017. As part of his role he was allocated one apprentice furniture maker. The Claimant was recruited via an agency and was interviewed on 27 July 2017 by the College Bursar, Mr Martin, and Mr Len Conway, the College Principal. During the interview the Claimant informed Mr Conway that he had previously suffered with depression but that he had not had symptoms of depression for some time and his work would not be affected.

*List of Issues: 22 (a) On or around 27 July 2017 asking whether the Claimant was currently struggling with depression [harassment]*

55. The Claimant states that he was asked about his depression by Mr Conway, that this was an unwelcome question and he was surprised and embarrassed by it, he had not declared his health issues and the question came out of the blue. He surmised that Wendy Johnson who he had worked with at Chelmsford College during his last episode of depression in 2014 had told Mr Conway or another manager at the College, most likely Doris Simon or Frances Williams about his depression.

56. The Claimant believed that Mr Martin was also aware of his condition at the interview stage. He states that he told Mr Conway that his downturn in health had been triggered by bad management, lack of autonomy to do his job and a campaign of harassment and victimisation by an unscrupulous manager when that manager found out he had depression.

57. Mr Conway denied that he was aware of the Claimant's disability through having worked with Wendy Johnson; she was someone he had worked with at Lambeth College but that was some years ago and he had not had contact with her for over 12 years. Nor had he been told about the Claimant’s depression by Doris Simon or Frances Williams. He

did not know who Mr Leacy was when he applied for the job; he did not remember him from Lambeth College. Mr Martin interviewed the Claimant and then invited him Mr Conway to speak to him; he had not had any discussions with anybody about the Claimant at that point. Mr Conway explained that he hadn't looked at the details of the Claimant's CV, he met him and liked him. In cross-examination he told the Claimant that on meeting him he felt that they had a common Craft background. He had a discussion with Mr Martin and agreed that the Claimant was suitable and offered him the role.

58. Mr Conway denied asking the Claimant if he had struggled with depression, he remembered asking two questions about health amongst a lot of that other discussions and questions. He always asked why someone had left their previous employment and whether there are any health concerns. A discussion then took place in which the Claimant told Mr Conway that he had suffered from depression in the past but that he had it under control. He had no prior knowledge about any condition and he did not raise any questions about his suitability to do the role as a result of the Claimant's response, which was that it was under control and he had not suffered from depression for some time. Mr Conway had not seen the health declaration form from the recruitment agency, JJ Fox, that would have gone to the Bursar.

59. The applicant profile from JJ Fox [at 2.1 - 2.2] refers to there being a health declaration in the self-declaration form. In the health declaration [at 2.30] the Claimant declares that he had depression.

60. We accept Mr Conway's evidence that he did not ask the Claimant if he was currently struggling with depression. We find that there was a conversation about the Claimant's depression but that this was intended to be supportive. We do not find that Mr Conway or Mr Martin acted in a discriminatory way in reliance on the information provided (see our findings on 7 (s) below). Nor do we find that Mr Conway's conduct could objectively justify the finding that it violated the Claimant's dignity or created a degrading or hostile environment for the Claimant. If that was the Claimant's perception we find that it was not reasonable for the conduct to have that effect in the circumstances.

*Issue 7 (s) giving the Claimant a salary less than advertised [direct discrimination]*

61. The Claimant alleges that Mr Conway or Mr Martin, or both of them, decided to offer him a lower salary than that advertised as a result of the information about his depression believing that they could get him for a cheaper rate because of the condition. The Claimant was informed by the agency that the job was advertised at a salary of £34,000 but he was offered £32,000.

62. Mr Conway was clear that the job was never advertised and the role did not justify a salary of £34,000. There was a range between £30,000 and £36,000 but that depended on responsibilities. There were three other lecturers in the Wood Occupations department who were on £29,000 to £30,500.

63. The Claimant relies on documents disclosed by the agency under a Subject Access Request, containing emails with the Respondent. He specifically relies on an email from 28 July 2017 in which the agency is offered two placements by the Respondent, "Jim in stone and Sean in Furniture making. 34K pro rate 0.4 and £32K FT" [ 2.12]

64. The Claimant asked the agency to seek a salary of £33,000 but was told that the role would attract the salary of £32,000. The Claimant points to the salary offered to "Jim

in stone" as showing that he was being paid less once the Respondent knew that he had a disability.

65. Mr Conway had no knowledge at all of anyone called 'Jim' in the Stone department. He was clear that in his knowledge others in woodworking were being paid substantially less than was being offered to the Claimant. He had assessed the salary offered as being what was affordable within the budget and what was commensurate with the Claimant's experience and skills. The Claimant's role was to be in charge of one apprentice and their assessment, and to share the lectureship with others in the Department for the remaining students, on that basis he considered £32,000 was an appropriate salary. It was possible that someone with greater responsibility, for example if they were to be in charge of all wood apprentices, might attract a salary of £36,000. Mr Conway was adamant that the Claimant's disability had no bearing on the level of salary that he was awarded.

66. We accept Mr Conway's evidence on this point. We do not find that this was less favourable treatment because of his disability.

67. The Claimant agreed the salary in July 2017 and this did not form part of his grievance raised in January 2018, nor was it mentioned in his notes on the email of 23 April 2018 at [2.78]

68. The Claimant had a meeting with Mr Martin on 31st July 2017 and wrote an email [at page 2.33] in the following terms:

> "It was good to sit down with you yesterday get an idea of my role come September (subject to the Colleges final needs of course). I'm very much looking forward to settling setting up the furniture apprenticeship programme and lecturing on the bench joinery and furniture courses hopefully.
>
> As discussed, I would like to get a head start in the preparation for the first half term if possible. If any of the following are available, I would appreciate a copy;
> the proposed framework and any other information for the furniture apprenticeship programme
>
> Schemes of work the bench joinery and furniture courses I may be teaching on"

69. Mr Mayes and Mr Clifton were the other tutors on the Fine Woodworking Level I course (FWW 1) Mr Clifton understood that he, Mr Mayes, Cheryl Mattey and the Claimant had joint responsibility for teaching the Fine Woodworking 1 group. He understood that the Claimant was a full-time member of staff with the course Fine Woodwork 1 and had additional responsibility for one furniture apprentice one day per week, and that the Claimant's time allocated to Fine Woodworking 1 was five days per week.

70. Mr Mayes was a full-time member of staff, his time was allocated 2 day per week on FWW 1 with additional courses FWW 2, Wood Machining and Wood Machining Apprentices accounting for the other three days. Mr Clifton was employed part-time. He worked four days a week for the Respondent and one day at London Met University. Two of his days were with FWW1, two days with Bench Joinery level 2 teaching 19 or more adults. His time with FWW1 was two days until March 2018 then 1 1/2 days after that. Ms Mattey was employed part-time, one day per week with FWW1. The total allocation to

FWW1 was 10 tutor days per week of which the Claimant accounted for five of the 10 teaching days, i.e half of the teaching allocation for that course.

71. We find that Mr Clifton sat down with the Claimant and Mr Mayes in September in the admin week prior to the start of term and they agreed that for FWW1 they would proceed with the course content along similar lines to the previous year's delivery, the Claimant being new to the course but Mr Clifton and Mr Mayes having taught at the College for some time. The day-to-day plan from September was sequentially working through the skill building set out in the scheme of work. Each day the Claimant was partnered with one of the other three members of staff. In addition, the theory classes were mainly delivered by Mr Mayes.

72. Mr Clifton recalled that at the start of term it was agreed the Claimant would mark the first three theory books, 01) Health and safety, 03) Building construction, and 04) Information and quantities because Mr Clifton was assessing the exact same three books and workload with his 19 + Bench Joiners and Mr Mayes had a heavier workload than both of them with his Wood Machinist groups. Mr Mayes volunteered to do the unit 40 workbook and Mr Clifton volunteered that he would do a later but unspecified unit. Ms Mattey was returning from a year's sick leave and it was not appropriate or necessary to burden her with assessments. Mr Clifton believed that they all understood that this gave the tutors a reasonable share of the theory marking workload across their teaching commitments. The Claimant disputes that this was what was agreed and refers [witness statement paragraphs 48-49] to Mr Mayes "pass[ing] his marking off" to him.

73. The theory unit workbooks discussed at the meeting make up eight parts of approximately 28 parts of the students' course assessment. They are contained in a diploma folder for the qualifications awarding body's approval. That year they had 20 students, which meant 20×28 assessments so approximately 560 tutor assessments in total for that group that year. The workbooks were to be completed by students in their own time and submitted for assessment in eight staggered periods at approximately three-week intervals beginning in the second week of term in September and finishing at Easter before the external exam in May.

74. Mr Clifton acknowledged that this workbook theory assessment was a very significant chunk of the tutors' work and that it was fair to say that the work was something they all found to be an effort but it did need to be completed in the scheduled manner to allow students to successfully complete their course and so the tutor does not feel inundated post-Christmas.

75. We find that there was an agreement at the start of term in September 2017 that the marking would be shared out as described by Mr Clifton.

*The knowledge inferred by the Claimant to Mr Mayes and Mr Clifton in respect of his depression /mental health disability*

76. The Claimant alleges that Mr Mayes and Mr Clifton were aware of his history of depression and/or that he was showing signs of depression by late October or early November 2017. The Claimant states that by this time he had started to show a number of signs of early-stage depression and anxiety, including shaking hands, eyes and nose twitches, talking fast and social withdrawal.

77. The Claimant alleges that he noticed Mr Mayes focusing his efforts on actions and omissions that made coping with stress more difficult (i.e deliberately making things harder for him). The Claimant alleges that there was a shift in Mr Mayes' behaviour towards him around October/November 2017 when he became 'overtly hateful and aggressive' and in the absence of any other noteworthy events he believes that must be because Mr Mayes had newly discovered his mental health disability. This date however also coincides with the meeting the Claimant had with Mr Mayes and Mr Clifton in which they discussed workloads and it became apparent that the Claimant had not yet completed any marking of the students' workbooks. Both Mr Clifton and Mr Mayes stated that the Claimant did not raise any issues or give any reasons why he was having difficulties with completing the marking at that meeting

78. We find the earliest evidence of Mr Martin mentioning to Mr Mayes and Mr Clifton anything about the Claimant's health was in February 2018 when Mr Martin made reference to the Claimant having had health difficulties and the need to ease him back into work. This was in a conversation with Mr Mayes and Mr Clifton when the Claimant was due to return from two months' sickness absence. Mr Mayes had no recollection of any mental health issues being referred to in that conversation and Mr Clifton recalled a reference to some fragility but nothing more than that.

79. It was the Claimant's case that Mr Mayes held or holds strong stereotypical views about people with mental health conditions and that this played a large part in Mr Mayes' decision to make things more difficult for him at work. The Claimant did not put forward any evidence of any instances where Mr Mayes expressed any such views, or any other expressions of stereotypical views, to support his belief. It was simply an assumption the Claimant made based on his perception of how Mr Mayes treated him.

80. Mr Mayes denied having any stereotypical views about mental health. He described to the Tribunal his experience of dealing with mental ill health through his mother's dementia, which he explained was a stressful experience, and that he also had an aunt with dementia. Mr Mayes also told us that he had his own experience with depression in the past. Around the time Claimant makes the allegation that Mr Mayes was unwelcoming and standoffish he had just lost his father and his mother had gone into a home with dementia. His mother's condition deteriorated over the course of the next few months and he explained it was a very stressful time for him. His mother died in March 2018 on the same day that he received the questionnaire from Mr Hickman in respect of the Claimant's grievance.

81. We accept Mr Mayes' evidence that he only became aware of the Claimant's disability when Mr Conway told him about it one or two weeks before Mr Mayes' interview with Mr Matthews which took place on 27 June 2018.

*List of Issues 7 c) Failing to provide the Claimant with his own desk - direct disability discrimination*

82. The Claimant claims that he was promised his own desk by Mr Martin but was not provided with a desk of his own and this was an act of direct disability discrimination.

83. Mr Conway told the Tribunal that there was a large desk with computers in the staff room adjacent to the workshop in which Mr Leacy worked. There were two computers installed on the desk and only two staff working in the workshop. The long desk

was shared but it was large enough for two staff. Mr Clifton was working part-time two days per week and the Claimant had the same facility as in any other member of staff. Mr Conway denied that the Claimant ever mentioned to him that he did not have a desk.

84. The Claimant did not dispute Mr Conway's account in respect of the desk.

85. Mr Mayes told the Tribunal that all the tutors share the same space and the Claimant was in the practice of sharing a desk with Robin Clifton, he explained that Mr Clifton was only in the department two days a week, being downstairs for the two days of the week when he was dealing with the Fine Woodworking 2 tutor group.

86. We find that Mr Clifton also had to share a desk with the Claimant. The Claimant was not treated less favourably than his colleagues. Nor has the Claimant put forward any evidence to link the fact that he had to share a desk to his disability. We find that in the following term when he complained that he did not have a space to do his marking he was told he could use the Boardroom to carry out marking if he needed.

87. There is no reference in either the grievance dated 1 January 2018 or his annotated comments on the email from Mr Conway dated 23 April 2018 to not having been provided with a desk, either as being a matter about which the Claimant complains or having any connection to his disability, or impacting on his ability to do is work.

*List of Issues 7 (a) Mr Mayes insinuating that the Claimant was lazy [direct discrimination]*
*Issue 9 (a) Insinuating that the Claimant was lazy [section 15 "discrimination arising"]*

88. Mr Clifton recalled that in November or December he sat down with the Claimant and Mr Mayes to discuss the existing workloads that that been agreed in September, the purpose of the meeting was to work out whether they were on schedule and if not how to get back on schedule in terms of their workload. It is at that this meeting that the Claimant alleges that remarks were made which he relies on as being direct discrimination and discrimination arising from his disability, namely the insinuation that he was lazy. The Claimant relies on his difficulty in completing the marking as being in consequence of something arising from his disability, when asked about this however other than referring pointing to his feelings of fatigue his evidence was vague.

89. Mr Clifton told the Tribunal that there were discussions to try to understand the reason for the slow progress in the unit marking but there were no remarks during that meeting about work ethic. The Claimant did raise concerns about the level of work and Mr Clifton informed him that his workload was in line with other tutors and suggested that if on reflection he felt he was unfairly burdened he should raise his concerns with the College Principal, Mr Conway. Mr Clifton did not understand the Claimant to have consulted Mr Conway regarding his workload as a result of this meeting.

90. During the meeting it became apparent that hardly any progress had been made in terms of marking the first three units which it had been agreed previously would be the Claimant's responsibility. At the meeting they discussed the amount of time the Claimant spent in the office and Mr Mayes accepted that he did refer to that as being excessive; he observed that the Claimant disappeared into the office on numerous occasions and left him to struggle with a large group on his own. At no point in the meeting did Mr Mayes state that the Claimant was lazy or intend to insinuate he was lazy. The purpose of the meeting was to discuss workloads and to plan ahead so everyone had a fair share of the

work.

91. The Claimant did not say that the word lazy was used directly but he alleges that is the insinuation that was being made as a result of what was said.

92. Mr Clifton accepts that he suggested 'as an idea' that the Claimant complete some of his work at home if he wished. He pointed out that teaching is a short day. Mr Clifton's normal practice was to stay on after the students' departure at 4:30 pm, often working during his commute and at home. He suggested this to the Claimant as a colleague, simply as an idea, but he believed that it must have occurred to him to do this; the alternative was that other tutors unfairly had to undertake the outstanding work on behalf of the Claimant.

93. Mr Mayes did not recall the Claimant raising any issues or reason as to why he could not complete the marking at that meeting. Mr Mayes recalled that he had pointed out to the Claimant that he had two other groups' marking to deal with and that Mr Clifton had one other group's marking and asked the Claimant what he wanted them to do about it, at which point the Claimant got angry and said he wasn't going to discuss it any further.

94. Whilst we accept that the Claimant may well have been feeling fatigued as a consequence of his disability and this may have contributed to his reluctance to take on marking, on the evidence before us we are satisfied that the Claimant's belief that it was not "his" marking was also a significant factor in how he felt about being asked to do the marking and contributed to his reluctance to do it.

95. We do not find that the word lazy was used and nor was it reasonable for the Claimant to believe that this was being insinuated.

96. We do not find that the Claimant was treated unfavourably in the manner that he alleges. We do not find that this amounts to unfavourable treatment of the Claimant in the circumstances or that he was subjected to a detriment or any less favourable treatment because of his disability.

*Issue 7 (e) Questioning the Claimant's understanding of his subject in front of students Conversation with the Claimant on 29 November 2017 which the Claimant described as an "olive branch meeting*" [direct discrimination]

97. According to the Claimant he was approached in the staff office by a student called Claire who had been asked by Mr Mayes to produce a scaled drawing but had not been given the information needed for the task. He sat down with the student to assist her and Mr Mayes walked into the office as Claire was asking the Claimant about one of the dimensions that had been omitted from the College drawings. She wanted to know the depth of the string housing for the treads and risers of the stairs. The Claimant described how, in his view, tensions have been increasing between himself and Mr Mayes over the previous few weeks and he was keen to put an end to it so he thought he would ask him a neutral question to engage him in conversation. Although the Claimant knew broadly one of the accepted answers, he asked Mr Mayes what he considered a suitable depth of housing for the string. He thought this was the perfect question to break the ice and show that he respected Mr Mayes' opinion as a lecturer. According to the Claimant Mr Mayes' response illustrates his mindset as he took the opportunity to make a fool of him in front of the student by aggressively asking him a series of patronising and condescending

questions, and saying “It’s standard. Standard is standard”, and, “Yes, standard, you should know this.”

98. In the Claimant’s mind this is evidence that Mr Mayes had no interest whatsoever in being professional with him. He describes this as an attack and as completely unnecessary, humiliating and degrading to have his subject knowledge attacked in front of the student. The Claimant alleges that Mr Mayes would not have had the audacity to behave like that towards him had he not been struggling with early symptoms of a depressive episode.

99. Mr Mayes remembers being asked the question as he walked into the office where the Claimant was sitting with the student, Claire. He recalled being asked what is the measurement and responding just to keep it standard. He explained he was quite busy so was probably quite rushed and it was very short exchange. He did not say “standard is standard” but he did say “just keep it standard”. This is the same response he would have given to anyone who he would assume was reasonably familiar with or experienced in the industry. Standard within the College is one third not anything else and he would expect anyone in the College to be an aware of that, however he did not say “you should know this”.

100. Mr Mayes told us that he never deliberately tried to humiliate the Claimant in front of a student by referring to the measurement as standard. He explained that he later apologised to the Claimant because he felt he may have been a bit sharp with him. Mr Mayes was asked about this apology in the grievance appeal investigation [ 2.296] and at that time he explained that he was feeling under pressure with 20 students and was sharp with the Claimant. He considered it to be a low profile event but he did apologise.

101. We accept Mr Mayes evidence about this incident. We also accept that at this time Mr Mayes did not know that the Claimant had, or had had in the past, depression. We do not find that anything that was said on this occasion was said because of the Claimant’s disability.

*List of Issues 7 (b) Mr Mayes barking orders at the Claimant [direct discrimination]; and List of Issues 22 (b) [harassment]*

102. One of the Claimant's complaints was that Mr Mayes barked orders at him. This is a complaint of direct discrimination, and harassment

103. The Claimant complains that on 4 December 2017 Mr Mayes barked an instruction at him in respect of a timber delivery, to “Get your lot to help unload the timber delivery”.

104. The Claimant believes that Mr Mayes became aware of his disability on 4th or 5th December 2017. He believes Mr Martin, the Bursar, had approached Mr Mayes and told him that the Claimant had put in a grievance and Mr Martin disclosed his mental health disability to Mr Mayes. The Claimant alleged that Mr Martin had a history of disclosing others’ medical conditions.

105. The Claimant described Mr Mayes in the following terms in his statement,

> “… my relationship with Mr Mayes did not get off to the best start. He was a quiet

> man and I found him to be very unwelcoming and suspicious of me. I have come across similar characters in the past, it seems every construction department has a resident curmudgeon" [paragraph 34],
> and [paragraph 38]
>
> "By this point, Mr Mayes had also earned a reputation for being unapproachable, dismissive, and even condescending."

106. The Claimant was asked, given this description, why he thought Mr Mayes' behaviour towards him was because of or related to his disability rather than simply a reflection of how he behaved with everybody. The Claimant's evidence was that he was absolutely sure Mr Mayes would not have barked orders at him if it was not for the views he believed Mr Mayes had of him because he had a mental health disability.

107. The Claimant put to Mr Mayes that he had brought an informal grievance to Mr Martin about Mr Mayes the day before Mr Mayes barked the instruction at him. Mr Mayes told the Tribunal that he had no knowledge of any such informal grievance or any grievance at that time.

108. The Claimant's chronology of events describes 4 December 2007 as follows:

> "FWW Yr 1office
> Told by Andy to cover Travis's L1 joinery apprenticeship group downstairs
>
> Joinery Apprentice workshop
>
> Andy says "get your lot to help unload the timber delivery" as he walks past me and student. His tone is abrupt and demanding. There is no question of whether or not I have other plans for the class.
>
> Boardroom:
>
> Meeting with Mr Martin (first informal Grievance)"

109. The Claimant deals with this complaint at paragraphs 73 to 78 of his witness statement. The sequence he describes under the heading "Informal Grievance 1: (4 December 2017)", is that he had planned to spend the day preparing for his course but that Mr Mayes told him (he says, very rudely with no room for discussion) to cover a sick teacher's class. The Claimant acknowledged that the message was being passed on from Mr Conway or Mr Martin. The Claimant then describes how later that day Mr Mayes found an opportunity to bark orders at him in front of the students (the order about the delivery) and after that he had a meeting with Mr Martin in which he complained about Mr Mayes treatment of him and his rudeness.

110. In his cross-examination of Mr Mayes the Claimant suggested that the grievance was made to Mr Martin the day before Mr Mayes barked the order and that at the point he told the Claimant to help unload the timber delivery Mr Martin had made him aware of the grievance and of the Claimant's disability. This is not consistent with his own evidence in which he stated that he requested a meeting a number of times and that it finally took place on 4 December.

111. We have found that Mr Mayes had no knowledge of the Claimant's mental health issues until the following year when Mr Conway informed him of it shortly before he was to be interviewed by Mr Matthews as part of the grievance appeal interview. Mr Clifton told us, and we accept, that he did not know about the Claimant's mental health disability until February 2018.

112. Mr Mayes was asked about his interactions with the Claimant and whether he was rude or barked orders, particularly in respect of instructions to cover a class that was without a tutor. He told the Tribunal that he just passed on the message, it was nothing more than that. He denied treating the Claimant as a skivvy or barking orders at him. He told us that he doesn't bark orders and it would have been a request, "Could you get your lot help unload the delivery", nothing more than that, the same as he would to any other tutor.

113. We have found that the meeting at which the Claimant alleges these remarks were made took place before the Claimant made his complaint to Mr Martin.

114. We do not find that Mr Mayes barked orders at the Claimant. We also accept that at this time Mr Mayes did not know that the Claimant had, or had had in the past, depression. We do not find that anything that was said on this occasion was said because of the Claimant's disability. Nor do we find that Mr Mayes' treatment of the Claimant was related to his disability, or that it could reasonably be perceived as creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant

*List of Issues 27 (a) First protected act - "Informal grievance" complaint to Mr Martin on 4 December 2017; and 29 (j) the suggestion that the Claimant's probation period was extended [ victimisation]*

115. The Claimant described how after the incident on 29 November with Mr Mayes saying "standard is standard" he went to see Mr Martin at home time to speak to him about Mr Mayes being so aggressive. Mr Martin told him they could meet the next day but the meeting did not take place until 4 December when the Claimant says that he raised concerns over how, in his words, "controlling, aggressive and rude" Mr Mayes was being, how he was losing too much time away from his apprentice and how Mr Mayes appeared to be treating like a skivvy. He states that he told Mr Martin that he was struggling to remain positive with his autonomy being stripped by his colleagues and managers and that he reminded Mr Martin that having a lack of autonomy is what triggered his previous episode of depression. According to the Claimant Mr Martin's response was to suggest that the College extend his three-month probation period. This left him feeling as though he was being punished for raising a grievance and that Mr Martin was trying to intimidate him in to dropping his grievance. The Claimant describes leaving the meeting believing that Mr Martin had turned on him, and that he was being dehumanised on the basis of ill-health.

116. The next day the Claimant had a meeting with Mr Conway at which we find Mr Conway made it clear to the Claimant that his probationary period was not being prolonged regardless of what Mr Martin may have suggested. Mr Conway did not understand the Claimant's conversation with Mr Martin to have been a grievance, or to have raised complaints of discrimination and as far as he was aware nor did Mr Martin.

117. The Claimant points to the report produced by Mr Matthews into his grievance

appeal and quotes from paragraph 10 of that report [page 2.406]: Mr Martin told him that he had become aware of tensions between Mr Mayes and Mr Leacy in October/November 2017, that there was an informal discussion with Mr Mayes and perhaps Mr Clifton, it was not clear who initiated this discussion but that Mr Martin was clear that Mr Mayes and/or Mr Clifton raised some perceived inefficiency in Mr Leacy's performance but that discussion did not descend into detail and that he told Mr Mayes that he should put any concerns in writing, nothing was received and so that was not taken any further.
List of Issues 22( c) [harassment] and 29 (k) On or around 5 December 2017 the comments made by Mr Mayes [victimisation];

*List of Issues 29 (m) Mr Mayes being verbally aggressive to the Claimant [victimisation]*

118. The Claimant complains that on 5 December 2017 in the Fine Woodworking office Mr Mayes, in response to the Claimant raising concerns over workload and stating that he cannot take on any further marking until had a chance to clear some of his first batch of 21 papers, launched into an unprovoked tirade of abuse and groundless accusations including saying, “You're not really a lecturer” and “You only have one student”, “you find plenty of time to sit on the computer”.

119. Mr Mayes recalls a discussion taking place about workloads in the meeting in November, as referred to above, in discussing the progress the Claimant was making in marking the first term’s work it came to light that hardly any progress had been made in marking the first three units. Mr Mayes accepted it was mentioned that the Claimant's time spent in the office was considered to be excessive: this was made as an observation, Mr Mayes had on numerous occasions observed that the Claimant disappeared into the office and left him to struggle with a large group on his own, but at no point did he state the Claimant was lazy or intend to insinuate that he was lazy. In his oral evidence he also accepted that he referred to the fact that the Claimant only had one student, saying that one student was not of full-time job; but he strongly denied ever saying the words “you're not really a lecturer” or the words “you find plenty of time to sit on the computer”. Mr Mayes thought the meeting had taken place in November.

120. When the Claimant said he was struggling with work Mr Mayes told the Claimant that Mr Clifton worked part-time with exactly the same amount of marking and that he had two other groups with their marking, teaching and assessment. He asked the Claimant, what he wanted him to do about it and told him that if he was unhappy with the work allocation then he thought it was an issue for the line manager. The Claimant’s response was to tell him that he wasn't going to talk to him anymore.

121. Mr Clifton also recalled that Mr Mayes had later offered to do some of the Claimant’s marking over the Christmas holidays but this had been discounted on the basis that it would be unfair to Mr Mayes to take on additional work during the holidays.

122. We are satisfied that Mr Mayes and Mr Clifton’s recollection is more accurate. The Claimant has referred to this incident has taking place on a number of different dates and makes the same allegation about what was said on each occasion. We find that he has been inconsistent in respect of the dates, with different dates appearing in his statement, his chronology and his oral evidence. We also find that the Claimant has read into events motivation that he says “must have” been there with no evidence to support those allegations other than his own subjective feelings and interpretation of others’ intentions.

123. We note that in his evidence to the Tribunal the Claimant maintained that the work was Mr Mayes' marking and not his because Mr Mayes had been the tutor who had taught the course, despite what both Mr Clifton and Mr Mayes recalled being their discussion and agreement at the start of term.

124. We do not find that Mr Mayes made the remark "You're not really a lecturer" , or "You find plenty of time to sit on the computer" as alleged by the Claimant or that he was verbally aggressive towards the Claimant. We do not find that referring to the Claimant only having one student to be aggressive. We find that the comment was made in the context of a discussion about respective workloads and in circumstances where the Claimant had fallen behind with what Mr Mayes understood to be the Claimant's share of the marking but which the Claimant disputed was his responsibility.

125. We do not find that the comments was in any way related to the Claimant's disability, and nor was it reasonable to perceive it to be.

126. It was not disputed that at the end of the first term the Claimant had completed none of the approximately 160 unit books for their group's qualification. Nor was it disputed when Mr Clifton told the Tribunal that on the completion of the diploma files for that year he did not recall seeing any assessment decisions signed off by the Claimant out of approximately 560 in total, although the Claimant was half of the tutor hours allocation for the group for the year.

127. Mr Mayes denied knowledge of any grievance at that point and he had no reason to believe the Claimant suffered from depression. We accept his evidence. There was no connection between what was said in this discussion and any protected act relied on and no basis for a complaint of victimisation.

*List of Issues 7 (d) Moving the Claimant's apprentice to a different workstation; [direct discrimination]; and l) On or around 5 December 2017 moving the Claimant's apprentice [victimisation]*

> "The Claimant alleges that a few minutes after the meeting about workloads (which he describes as taking place in December but which Mr Mayes remembers as taking place in November) Mr Mayes instructed the Claimant's apprentice, Kieran, to pack up his tools and materials and to move workbenches so that one of Mr Mayes' students, Joe, could have his space. The Claimant described this as Mr Mayes "asserting his dominance in the workshop".

29 The Claimant complains the other work bench was poorly lit and the power was faulty. This was disputed by both Mr Mayes and Mr Clifton.

30 Mr Mayes accepted that he had asked the Claimant's apprentice to move and he had swapped the students around. He explained his reasoning to the Tribunal as follows: his student, Joe, was in the workshop five days a week and was being taught alongside a larger group and it was sensible to have them all sitting together; all the full-time students generally have a bench each where they kept their tools and all the stuff they need. Mr Leacy had asked one of the full-time students, Joe, to move all his stuff to another bench so he could put Kieran in his place, which Mr Mayes thought did not make sense, so Mr Mayes asked Kieran - who was only in one day a week - to move his tools to allow Joe to move back to where he had been originally. According to Mr Mayes it was Joe who had

raised with him the fact that he has been asked to move by the Claimant.

31 We are satisfied that the student who had been moved first was Joe. He went to Mr Mayes and explained that he had been asked to move his tools so that Kieran could sit at his bench. It was as a result of Joe bringing this to his attention that Mr Mayes intervened and asked Kieran to move his tools to a different bench so that Joe could resume his original bench position alongside the other students on his course. Mr Mayes accepted that lecturers do normally have control over their own students, but in his view it is not just your own interests that you have to consider in exercising this control, you have to think of the whole College.

32 We find that the action was not directed at the Claimant, rather it was simply to allow the student, Joe, to resume his position at the workbench with his peers. We do not find that the Claimant's disability had any bearing on the decision to move his apprentice, it formed no part of the reason for the move.

33 We find that neither Mr Clifton nor Mr Mayes were aware that the Claimant had made a complaint about either of them, let alone a complaint that could be characterised as a protected act at the time his apprentice was moved. Again, this formed no part of the reason for moving him.

34 In his witness statement the Claimant described this as being "degrading" [ at 97] and "being subjected to aggression and humiliation "[100], but this allegation is not characterised as harassment in the list of issues. Having heard from Mr Mayes we are satisfied that he had no intention of humiliating the Claimant and did not understand how the Claimant could find that to be humiliating treatment of him. We do not find that it was reasonable for it to have that effect.

*"Informal grievance 2"*

35 On 5th of December 2017 the Claimant had a meeting with Mr Conway in which he repeated the concerns he had raised the previous day with Mr Martin, complaining that he was shocked that Mr Martin wanted to extend his probationary period and refused to investigate the issues. According to the Claimant Mr Conway appeared inconvenienced by his grievance and was unwilling to investigate, seeming to have made up his mind he wasn't worth the effort. Mr Conway told the Tribunal that he did not understand that discussion to have been a grievance, he believed that the Claimant ascribed a formality to a number of conversations and interactions which they did not warrant and that he did not recognise and which did not reflect the culture of the College. He did not understand the Claimant to have made a complaint alleging any form of discrimination to Mr Martin

36 Mr Conway was clear that he did not countenance extending the Claimant's probation. It was right that he did not investigate what was being raised with him but that was because he did not consider it to be a grievance as such. Mr Conway pointed out that the Claimant went off sick the following week and there was no time in the remainder of that term for him to address any of the concerns which he then considered were then overtaken by the written document received on 2 January 2018.

37 The Claimant says that he raised the issue of marking and workload with Mr Conway. He left the meeting feeling Mr Mayes was untouchable and that Mr Conway was defending a friend against the stranger. Mr Conway denied that this was in fact what

happened or reflected the tone of their conversation.

38 Mr Conway confirmed that he would have seen the written document on 2 January, which was the first day back in the new term. He would normally discuss this with the Claimant but he had no opportunity to do so because the Claimant had gone on sick leave and it's not his practice to contact staff while on sick leave. He planned to meet with the Claimant when he returned to work.

*List of Issues 7 (f) Mr Mayes calling the Claimant "sensitive" [direct discrimination]*

39 The Claimant alleges that on 7 December he attempted to broach the subject of his feeling under pressure with marking with Mr Clifton in the staffroom, Mr Mayes arrived and they both proceeded to suggest either that he was lazy or that he should do his marking at home. He alleges that he attempted to bring up Mr Mayes' attitude towards him and the way he spoke to him in front of students but was told he was being sensitive. He alleges that the use of the word sensitive is a reference to his disability. The Claimant alleges that he was being treated with contempt and he concluded that Mr Clifton must have been told about his grievance and history of depression.

40 Mr Mayes' and Mr Clifton's account of this meeting are set out above. We do not find that Mr Mayes called the Claimant sensitive. We are also satisfied that given the context even if he had used that word it was not because of the Claimant's disability.

*List of Issues 7 (g) Leaving the Claimant on his own to handle a whole class of students [direct discrimination]*

41 As far as Mr Mayes was aware the Claimant was not left with a whole class of students alone. He accepted that on occasion when two tutors are working together one of them will need to supervise part of the student group in the mill, which meant that for a short period the other teacher is left to cover the remaining group of up to 18 students without another member of staff in attendance, but this was the same for all teachers. We accept Mr Mayes evidence

42 The Claimant has not pointed to any evidence to suggest that being left alone with the class, whether the whole class or part of the class was in any way connected to or because of his disability. We do not find that the Claimant was treated less favourably than his colleagues, or that he was left alone with part (let alone all) of the class because of his disability.

*Issue 22 (d) On or around 13 December 2017, the Claimant was criticised by Mr Conway for not being approachable enough with students [harassment]; and*
*Issue 29 (n) [victimisation]*

43 The Claimant told us that on 13 December he was called into Mr Conway's office, supposedly over a comment from a student that he had looked out of sorts on 8 December. He complains that instead of asking him if anything was wrong, he was asked why he was not being approachable. The student in question was the class rep and the Claimant remembered that she had asked him if he was okay and thought that she was genuinely concerned for his well-being but that Mr Conway chose to use the opportunity to reframe the students concern as a complaint and thereby to harass him.

44 Mr Conway described the discussion as amicable, it was not a complaint. He saw

it as a discussion amongst colleagues. He did not remember using the word approachable. He described this as an example of the Claimant implying a formalised structure to this and other events which was not warranted. Mr Conway was at loss as to why the Claimant would complain about him in the way that he does. He felt that he had tried to be supportive but the Claimant would not co-operate in those attempts.

45 We accept Mr Conway's evidence that he was not treating the matter as a complaint, nor was he treating it in a formal way. We find that it was intended to be an amicable and supportive discussion to find out if there was any cause for concern, or anything the Claimant wanted to bring to his attention. Mr Conway was aware of the Claimant's history of depression and we accept that he was trying to be supportive. The Claimant was not being chastised for having a low mood and nor was he being told to cheer up or being told that he should be more approachable.

46 We do not find that Mr Conway had any intention to create a hostile or otherwise 'harassive' environment for the Claimant, we find that was not a reasonable perception for the Claimant to hold in the circumstances.

47 We have stated above that we do not find that Mr Conway understood or was aware that the Claimant had made a complaint of discrimination to Mr Martin and we are satisfied that did not form any part of his reasons for speaking to the Claimant.

48 The Claimant went off sick in December 2017 with flu symptoms.

*List of Issues 28 (b) second protected act the Claimant's complaint of disability discrimination on 1 January 2018*

49 The Claimant emailed a letter to Mr Conway on 1 January 208 headed "Strictly Private & Confidential" [2.44-46] in which he complained about his treatment and its effect on his mental health; he told Mr Conway that he was back on ant-depressants and set out some of his symptoms He concluded by stating that he was more than willing to look at the issues with the College but if they were not able to address them he would be left with no choice but to resign and seek alternative employment, as his health had to take priority.

50 The Claimant remained off sick until 26 February 2018. The reason for absence being certified by his GP as depression.

*List of Issues 29 (o) On or around 14 February 2018, Mr Martin notified the Claimant that his pay had been retroactively cut by 50% and was due to drop to SSP if he did not return in two weeks [victimisation]*

51 On 13 February 2018 Mr Martin wrote to the Claimant a letter [2.53] entitled "Continuation of sick pay after one month": he began by expressing that the College was sorry to hear that illness continued to preclude his return to work and acknowledged that the earliest the College could expect him to return to work was 19 February. Mr Martin emphasised that it was important that the Claimant kept the College up to date with progress and developments in his condition. He set out the following paragraph in respect of pay and sick pay:

> "As you will be aware, your contract of employment at the Building Crafts College

> states that, on a discretionary basis, we will pay sick pay at the full employed rate (which includes statutory sick pay (SSP)) for a period related to length of service. In your case, with under two years' service, this period is specified as up to four working weeks in any 12 month period. This includes the legal obligation to pay SSP for a maximum duration of 28 weeks."

52 Mr Martin informed the Claimant that his salary was due to reduce to SSP from 30 January 2018, but that on a discretionary basis the College had decided he would continue to be paid at half the full salary rate for a further four-week period to 28th of February 2018.

53 The Claimant responded on 14 February 2018 stating that he was not aware of the sick pay policy for the College and that he had yet to receive a written contract of employment from the College or its policies.

54 The Claimant describes this as being a detriment and an act of victimisation. The Claimant disputed that there was any entitlement to reduce his pay in the absence of him having been sent a copy of his contract. Having seen the contract, we find that the contractual position afforded to the Respondent's employees was as stated by Mr Martin and that the Claimant was being granted an extended period of full pay beyond that to which he was entitled under his contract. We are satisfied that rather than being a detriment, it was an exercise of discretion in his favour.

*List of Issues 43 c) Making critical and/or inappropriate remarks about the Claimant to outside organisations – the emails from Mr Martin to JJ Fox [direct discrimination]*

55 On 14 December 2017 Mr Martin sent an email to the recruitment agency JJ Fox [2.43], a large part of which was redacted as being related to people not involved in is litigation, but the relevant paragraph reads

> "Sean Leacy is being a bit problematic as well, so he's going onto a second 3 second three months' probation - but I reckon he'll stay".

56 By this point in time we find that there had been a meeting in November with Mr Mayes Mr Clifton and the Claimant in which it became apparent to his colleagues that the Claimant had not done any of his marking and when they had discussed that with them he had walked out of that meeting saying that he wasn't going to talk to them. The Claimant had then taken concerns to Mr Martin about the way Mr Mayes spoke to him and Mr Mayes and Mr Clifton had mentioned concerns about some perceived inefficient ( Mr Mathews Grievance Appeal Report [2.406]).

57 Mr Conway was asked about the comments Mr Martin made in his email to JJ Fox, that the Claimant was 'a bit problematic'. He was not aware of the email or of the comment, nor did he countenance the probation being extended, and this is what he had told the Claimant when he spoke to him in December. Mr Conway told the Tribunal that he would not sanction an extension of the probation period and that in fact no extension had been sought or imposed on the Claimant.

*Mr Martin sent an email to the agency on 5 January which included reference to the Claimant giving an ultimatum to the College about his contract*.

58 This was taken to be a reference to the contents of the Claimant's grievance letter. Mr Conway was asked about the reference to an ultimatum but was clear that he did not consider it to be an ultimatum. He had not seen the email from Mr Martin so he could not challenge the use of that word. Mr Conway accepted that he probably wasn't happy about receiving the Claimant's letter but this was because he wasn't happy that there was a member of staff who was feeling they were not supported by colleagues, or there were colleagues who were not working well together.

59 Mr Martin sent an email to the agency on 5 January 2018, "Sean is suffering from depression has signed himself off"; and on 11 January 2018 in the following terms, "have heard nothing from Sean Leacy, so probably need to line up a replacement." At this point it was correct that they had not heard anything from Mr Leacy

60 On 23 February 2018 Mr Martin sent an email to the agency in the following terms

> "I have no idea what [ blank] is playing at. Sean was starting a graduated return to work next week but we do not wish to retain him. May however take some time to ease him out on medical grounds without being sued for constructive dismissal [Len] is paranoid about this). I've had this before [Len] refuses to even discuss replacement staff because he believes this takes us into for constructive dismissal territory. The key word is at present"

61 On 28 February Mr Martin again emailed the agency on this occasion he says "So our only outstanding requirement is a joiner/cabinetmaker as a guard in case we lose Sean Leacy. Please keep on looking/advising."

62 We find the content of the email of 28 February to be a neutral statement by an employer wishing to be prepared for the possibility that a member of staff may not return.

63 However Mr Martin's previous comment in respect of easing out the Claimant is more problematic. Mr Conway's evidence to us was that he had no intention of easing out the Claimant or otherwise getting rid of him and he was visibly unhappy about the content of Mr Martin's emails. We accept that he hadn't seen them at the time and that whatever Mr Martin's view was Mr Conway was able to countermand Mr Martin. We are satisfied that no steps were taken to ease out or get rid of Mr Leacy by Mr Conway or indeed by Mr Martin.

64 We find that the comments were made in the context of the difficulties Mr Martin was aware had arisen in the relationships between the Claimant and Mr Mayes and Mr Clifton and the lack of cooperation in respect of the workload; in February Mr Martin did not know whether the Claimant would be returning to work having indicated in January in his grievance letter that he was considering resigning. We find that that a comparator who had had similar difficulties and had been off work for the same amount of time would have been treated in the same way. We do not find there to have been less favourable treatment of the Claimant because of his disability. Nor do we find that the comments were made because of the Claimant's disability,

65 The Claimant complains that what his managers did do was fail to respond to his grievance and take no steps to make adjustments which in effect forced him out of his job. We will come on to those complaints in due course.

66 The Claimant returned on the Tuesday, 27 February 2018, apart from being unable to reach work because of the snowstorm (the so-called "Beast from the East") between Wednesday the 28th and Friday, 2 March he remained in work on a graduated return until the Easter holidays.

*List of Issues 29 (p) Giving the Claimant more marking when he was off sick [victimisation]*

67 The Claimant referred to being required to do additional marking on his return to work in February 2018. In paragraph 150 of his witness statement he refers to Mr Clifton and Mr Mayes adding to his pile of marking while he was off sick. We are satisfied that at this time there had not been any discussion about reallocating the marking that had been assigned to the Claimant at the beginning of term 1. We accept Mr Clifton's evidence that the students did not all complete the respective workbooks in term 1 but continued to hand them in for marking in term 2. Mr Mayes told us that when any student passed a workbook to him to mark and it was not one he had been allocated he would tell them to pass it on to the relevant tutor. If the work was intended to be marked by Mr Leacy he would tell the student to pass it to Mr Leacy.

68 We do not find that this was additional marking. It was the same marking that had been originally allocated to the Claimant. There was no additional marking allocated such that could be described as a detriment, nor was the fact that the pile of marking was increasing anything to do with the Claimant having put in a grievance or made any complaints of discrimination.

*Issue 29 (q) Upon his return from sick leave, the Claimant was excluded from work his apprentice was doing [victimisation]*

69 The Claimant has complained that on his return to work he was treated as though he was a teaching assistant to Mr Mayes and Mr Clifton and that they had taken over his apprentice. It is not disputed that Mr Mayes and Mr Clifton had carried on teaching the cohort of students during the Claimant's absence. Nor was it disputed that Mr Mayes had been told by Mr Conway to take on the Claimant's apprentice during the Claimant's absence.

70 Mr Conway described the apprentice as being put under the care of another tutor while the Claimant was off and disputed that this could be interpreted as a threat to the Claimant's job or as part of a plot to make him redundant. Mr Conway told us that the Claimant was formalising something that was not there, it was not a demotion. The student had spoken to him and was concerned he was not getting proper tutoring (due to the Claimant's absence), the arrangement was for the student's benefit and was not done to create a situation where the Claimant was redundant. Mr Conway was clear that the student was not removed from the Claimant as a result of his grievance, he was simply concerned about the best interests of the student. Mr Conway considered that it was important that the Claimant's grievance with Mr Mayes did not affect the student. He denied that the Claimant was not allowed to go near his student. The Claimant had never spoken to him about it or suggested that since he only had one student he was being demoted. There was no question of demotion on his return.

71 We accept Mr Conway's evidence as to the reason that the apprentice was allocated to Mr Mayes during the Claimant's absence. We do not find that the Claimant 's

grievance had any bearing on that decision.

*Issue 29 (r) Upon his return to work the Claimant was increasingly used as cover for other classes*; [victimisation]

72 Mr Mayes and Mr Clifton both told the Tribunal that they would regularly be asked to cover classes for absent colleagues. They did not recall the Claimant being asked to over classes any more frequently than anyone else. The Claimant's own evidence in respect of the requests on 20 and 21 March 2018 (see below) was that he was asked because the tutor was not present and he was available.

73 We are satisfied that the most likely explanation for the Claimant being asked to provide cover for other classes was because he was available. We do not find that the Claimant's grievance had any bearing on the requests for him to cover other classes.

*Issue 7 h) Being asked to cover classes known to be troublesome on 20 and 21 March 2018 [direct discrimination]; and*
*Issue 29 (t) [victimisation]*

74 This took place after the Claimant's second period of sickness absence when he was on a phased return to work. He was asked on 20 March 2018 to cover what he described as a particularly boisterous and troublesome class of young students. He was asked to do this by Frances Hill who was manager. We did not hear from Mrs Hill but the Claimant asserts that she must have known about his health condition given that she was effectively the third ranked manager in the College. The Claimant told Mrs Hill that he would rather not take the class, but he states she would not take no for an answer, so in the end he agreed. He was told he would have teaching support, however that teaching support left within 30 minutes. He was then asked to cover the same class again the next day. The Claimant could not believe that he was being asked to cover this class instead of Mr Mayes, Mr Clifton or one of the other lecturers. He accepted that these were not one of the days when his apprentice was present at the College. These were days when he was due to be teaching alongside either Mr Mayes or Mr Clifton or having his preparation time.

75 Mr Conway disputed the use of the word 'troublesome' to describe any of his students but acknowledged that there were some groups that were slightly more demanding or more difficult to work with in terms of their behaviour, specifically the younger students. He had no knowledge of the Claimant being asked to cover that particular class on two days in March and was not at the College at that time, being away on a trip to Venice.

76 We heard no direct evidence from Miss Hill as to why she asked the Claimant to cover those two classes only the Claimant's own evidence which was that he was asked because the tutor was not present and he was available. The Claimant asserts that Miss Hill must have been aware of his health condition because she was the third ranked manager in the College. The Tribunal has no evidence of whether she did or did not know about his health problems but there was no evidence to suggest that she asked him to cover those classes because of his depression, or that the fact that he was asked to do so in was any way related to the fact that he had, or had had, depression, or related to the fact that he had raised any complaint of disability discrimination either on 4 [or 5 December] 2017 or in his letter dated 1 January 2018.

77 The Claimant believed that the College was hoping that he would not be able to cope and would down tools and storm out or react badly or something so that the College could then discipline him for gross misconduct. Again we find that there is absolutely no evidence to support this contention; there is no evidence that Miss Hill had any ill intention towards him whatsoever.

78 The Claimant was then off sick from 9 April 2018 to 20 April. On 13th of April 2018 Mr Martin wrote to the Claimant to seek his consent to approach his GP for a medical report. The questions to the doctor are at page [2.74] also dated 23 April 2018. At the date of writing the letter the Claimant had arrived for work but the College still wished to have a report to consider whether he would be well enough to perform his duties reliably.

79 Following a return to work meeting with the Claimant on 23 April 2018 Mr Conway sent the Claimant an email with his account of that meeting. The Claimant disputed Mr Conway's description of what was discussed and responded with an amended version of the email with 13 comments inserted. The Tribunal found this to be an instructive document, the original version setting out Mr Conway's understanding of events at the time of the meeting on 23 April and the response setting out the Claimant's. The Claimant accepted that his comments reflected his interpretation of events and were not things that were all discussed or said by Mr Conway in the meeting.

80 What was discussed included the following: Mr Conway explained the reason for not having taken further steps in respect of the Claimant's grievance was the Claimant's absence for the majority of the intervening period. He asked the Claimant if there was anything that could be done to assist his return to work. The Claimant replied that he did not think there was. Mr Conway asked if there was an alternative teaching role that would help the Claimant and the Claimant responded that he would stay with his current role. Mr Conway informed the Claimant that he had asked another assessor to mark outstanding workbooks as this would remove one burden from him at this time, the Claimant agreed that this would be helpful. Mr Conway also suggested the idea of a meeting between himself, the Claimant and Mr Mayes in an attempt to address the difficulties in the relationship- the Claimant agreed but not at the present time.

81 We find that these appear to be sensible suggestions from Mr Conway in the light of the matters raised by the Claimant and were made in a genuine attempt to be supportive of the Claimant.

82 The Claimant's general complaints include the complaint that he should not have been assigned the marking for the parts of the course that he wasn't lecturing. We find that this does not reflect the reality of the arrangement in the College, the expectations of all of the tutors, nor does it reflect the allocation of work agreed by him and his colleagues Mr Clifton and Mr Mayes in their discussion at the beginning of the first term.

*Issue 22 (e) On or around 24 April 2018, during his lunchbreak, the Claimant was told by Mr Conway that having to arrange cover for his lessons was causing Mr Conway extra stress [harassment]*

83 Mr Conway was surprised by some of the Claimant's comments in his reply to his email of 23 April and so when he saw the Claimant the next day he approached him to speak to him about it. The Claimant was sitting in his van in the car park at the time. The Claimant criticises Mr Conway for approaching him in this way: he says he was having his

lunch in his van and it must have been obvious that he did not want to be disturbed. Only the previous day he had expressly stated that he did not want to have meetings sprung on him. He asked Mr Conway if he could have a meeting after lunch.

84 Mr Conway did not agree with the Claimant's description of this conversation as a meeting, and again referred to the Claimant describing a formality to some of the conversations that took place in the College which they did not warrant and which did not exist. He had no idea that the Claimant felt that his approach was an intrusion; he thought it was appropriate to talk to him at lunchtime and he would do that with any member of staff. The reason he wanted to talk with the Claimant was that he was surprised by his response and was concerned that the Claimant was upset and wanted to reassure the Claimant and allay his fears.

85 The Claimant criticises Mr Conway for allegedly saying during that conversation, that he was feeling under stress as a result of having to arrange replacements to cover the Claimant's absence and arrange for a new assessor to mark the workbooks. Mr Conway denied saying that having to deal with the Claimant's absence or arrange cover was causing him stress. Mr Conway told the Tribunal that responding to the Claimant's subsequent requests for documents and information in July and August 2018 (his subject access disclosure requests and follow up queries, request for salary information for numerous comparators) became a major task, taking up hours of his time to respond to with the correct information and did cause him to become stressed and to experience painful headaches, however he was clear that at this time he did not consider the Claimant's actions to be causing him any particular stress and he definitely did not say this to the Claimant. We found Mr Conway to be truthful in his account and we accept his evidence.

86 We are satisfied however that even if he had said words to the effect that he was finding it stressful that it was not his intention to create an intimidating, hostile, degrading, offensive or humiliating environment for the Claimant and it would not be objectively reasonable for perceive it to do so.

**Grievance hearing**

87 The next day the Claimant sent a message to say that he would not be in work. On 26 April the Claimant sent another email saying he is not going to make it into work. On 30th of April he emails Mr Conway to tell him it had been a rough weekend that he can't get into work that day and the next day. In the meantime he contacted his union rep on 25 April.

88 On 30 April the Claimant was invited to an independently chaired grievance meeting to take place at the College on 4 May. On 3 May [2.96] Deborah Driscoll emailed Mr Martin to inform him that the Claimant would be relying on both his written grievance namely the formal complaint submitted on 1 January 2018 and the email dated 23 April 2018 (his comments on Mr Conway's email).

89 The grievance hearing took place on 4 May 2018 at the College and was conducted by George Hickman of HR Face-to-Face (part of the Peninsular Group) [2.19] the minutes of the meeting show that the Claimant was accompanied by Deborah Driscoll of the UCU. There are no complaints before us in respect of the grievance itself, that is not one of the issues raised in the comprehensive list of issues, although the Claimant does

make complaints in general terms about it in his witness statement in respect of the lack of time to prepare; he accepted that neither he nor his representative requested an adjournment and told us in evidence that his union rep had managed to get up to speed in time.

90 The grievance was identified as consisting of four parts. The first part related to 'concerns with working relationship between the Claimant and Mr Mayes' [paragraph 34]: that grievance was not upheld. Mr Hickman found that it was apparent the College failed to assist individuals to resolve any issues they may have with each other rather than Mr Mayes acting in an intimidating and unprofessional way towards the Claimant.

91 The second part was 'concerns relating to the role and responsibilities of the Claimant within the College'. This was upheld in part, on the basis that it was clear that his role needed to be discussed in a period of consultation with the Claimant as to what the College envisaged his role moving forward would look like, it was recognised this had been restricted "due to the College's inability to now proceed with the program that he was employed to set up" and the" limited opportunity to enter into those detailed discussions with Claimant due to his prolonged absences".

92 The third aspect was his 'concerns around perceived lack of managerial support': this was upheld as it appeared that there had been a failing to ensure that his grievance was dealt with in a timely and appropriate manner. It is recorded that the College may have had Mr Leacy's best interest at heart by suggesting he should be fully fit and back in College on a full-time basis before undertaking the potentially stressful process of investigating his grievance however this approach was ultimately detrimental to his recovery process.

93 The fourth aspect was 'concerns in relation to general workload': this aspect was not upheld, it was found that this had not been raised officially prior to raising his grievance.

94 It was recommended that mediation take place to restore professional working relationships with Mr Mayes and also with Mr Conway; and that a meeting be held without delay to detail what the College envisaged Mr Leacy's role to be going forward. The Claimant appealed the outcome and his appeal was subsequently dealt with by Mr Matthews.

95 Also dated 30th of April 2018 is the report from the Claimant's GP, Dr Gardner, which confirms that the Claimant had been suffering with depression for several years, since at least 2010, and described some of the symptoms. The GP had been asked a number of questions including the expectation of absence going forward and whether the Claimant would be up to carrying out his role in the future, which he described as being impossible to answer with accuracy. In respect of any reasonable adjustments the GP also stated that this was very difficult answer, noting that the Claimant would require support from his employer and 'a very open and understanding attitude towards mental health in the workplace', suggesting this would need to be discussed between the Respondent and the Claimant.

*Issue 29 (s) Upon his return from sick leave the Claimant was excluded from demonstrations and planning classes: he was effectively demoted to a secondary assistant. [victimisation]*

96 The Claimant described at paragraph 153 of his statement, how on his return to work in around 26 February 2018 following his first period of sickness absence, [he says as a result of the action of Mr Clifton and Mr Mayes] he came to feel that some of the students started to see him as just teacher support, or would tell him that they were waiting for their "main teacher". At paragraph 180, under the heading "Second Return to Work", the Claimant described how on his second return to work on 23 April 2018 (immediately following a severe crisis in his mental health) he felt that some of the students and other staff were distancing themselves from him and they were annoyed that he had had to take time off again.

97 The Claimant deals with this again at paragraph 214 of his statement under the heading "Third return to work (8 May 2018)". He describes feeling like an outsider in his own workshop and there being an expectation that he would do all the donkey work in the mill (Machine shop) as Mr Mayes and Mr Clifton did demonstrations and helped solve problems with students in the workshop, the enjoyable bit of teaching.

98 We found no evidence to support the Claimant's allegation that these matters were acts of victimisation or that they were in any way related to his having brought informal or formal grievances.

99 We accept that the students may well have looked to Mr Mayes and Mr Clifton as their primary sources of guidance during this term but if they did so that is more likely to be as a result of the fact that they were a consistent presence and through no fault of his own the Claimant had been absent. We do not find that Mr Mayes or Mr Clifton deliberately excluded the Claimant. We find that the Claimant's perception was coloured by his own feelings of insecurity at that time.

*List of Issues 7 (i) Making the announcements on 15 May 2018 to the Claimant's class [direct discrimination]; and*

*9 (b) [section 15];*

*22(f) [harassment] and 29 (u) [victimisation] On or around 15 May Mr Mayes and Mr Clifton announced in front of the class that the Claimant's marking would now be done by someone else*

100 This is described variously as an act of direct discrimination, discrimination contrary to section 15, harassment and victimisation. The Claimant addresses this in his witness statement at paragraphs 218 to 222. He alleges that Mr Clifton and Mr Mayes both made a point of making a whole class announcement that Mr Pearham was there to take over his marking. The Claimant was present at the time and felt completely humiliated. Mr Pearham was a former Deputy Principal (he was the assessor referred to by Mr Conway in his meeting on 23 April 2018 with the Claimant). Mr Conway had arranged for him to come in to take over the marking of the workbooks which were now seriously behind. At this point the Claimant had not marked any of the workbooks.

101 Mr Mayes does not remember any announcements regarding the Claimant being made to the class. He did recall instructing students to hand in their work to a colleague who was covering during his absence. For him this was not a significant event focused on the Claimant it was about the students.

102 The Tribunal was told by Mr Clifton that it was critical that the students' work was marked, otherwise their qualification was put in jeopardy. They were now in the third term and they needed to have those assessments completed in order to be able to complete the course and to succeed in obtaining their qualification. Mr Clifton disputed that there was an announcement to the class, he told us that the students were informed in an informal way while they were sitting around their workbenches, in the same way as they always did whenever they had any change to course administration and assessment. He explained that the situation with the unit marking had become extremely urgent if students were to complete their work before the deadline. The external marker, Mr Pearham was found at short notice, he would only be at the College on two days and would be working to very tight deadlines. There were approximately 100 workbooks to mark so there needed to be a clear collective appreciation of what was involved. For the exercise to be successful the students needed to understand the urgency of handing in their work. Mr Clifton's understanding was that the Claimant was working with the group and would have had usual tutor duties including answering unit workbook questions if students asked about marking. There was not an announcement as such. The fact the Claimant was no longer marking the work was not the subject of the gathering but it was necessary to inform the students that they had to complete the work promptly and submit it by given dates to the external marker. A sheet was pinned on the wall showing the students' work, indicating what had been received and outstanding work was highlighted.

103 We accept Mr Mayes' and Mr Clifton's accounts of what took place, the reason for informing the students of the new assessor, and the necessity for ensuring that the students' work was duly completed to the deadline.

104 We do not find that the information was conveyed in the way that it was because of the Claimant's disability, or that it would have been handled differently for a tutor who's marking was being done by someone else for a non-disability related reason. We do not consider that objectively it put the Claimant to any disadvantage or amounted to a detriment.

105 We accept that the Claimant's disability was part of the factual matrix giving rise to the need for the marking to be reassigned (as a reasonable adjustment) but are satisfied that this was not unfavourable treatment of the Claimant. In any event we find that it was a proportionate means of achieving the legitimate aim of ensuring the students knew the arrangements for marking their work and that they had to complete their work and hand it in promptly so that it could be marked.

106 We find that neither Mr Clifton nor Mr Mayes intended to create a hostile, intimidating or otherwise 'harassive' environment for the Claimant. We went on to consider whether it was reasonable for the conduct complained of to have that effect on the Claimant, we took into account the Claimant's perception and the circumstances in which the 'announcement' was made and we do not find that was it reasonable for him to perceive the event in that way.

Issue 7 j) *Sharing confidential remarks from the grievance meeting with other colleagues [direct discrimination]*

107 The Claimant complains that the questions for the investigation into his grievance

were sent by email to Mr Martin, Mr Conway and Mr Mayes, which he says gave them plenty of time to consult with each other to formulate agreed responses. He alleges that he saw Mr Clifton and Mr Mayes going through the questionnaire together in the office, he saw them standing over the computer together and he knew it must have been the questionnaire that they were looking at. He had seen Mr Clifton and Mr Mayes standing together looking at the computer screen which he says had a questionnaire from Face-to-Face on it. In his evidence he accused Mr Mayes and Mr Clifton of colluding to push him out because of his disability, however this was not put to either of them.

108 The complaint is made in relation to sharing of confidential remarks. The Tribunal has seen the questions that were sent to Mr Mayes and Mr Clifton. Mr Clifton's explanation was that Mr Mayes wanted to confirm dates with him to aid his recollection. Mr Martin. Mr Conway and Mr Mayes were each sent questionnaires and as a result were each aware of the content of the Claimant's grievance. There was no suggestion that they would have behaved any differently had the complaints been about anything other than disability and we are satisfied that they did not to do this in a deliberate attempt to push the Claimant out because he had depression. We do not find this was direct discrimination.

*The meeting on 22 May 2018*

*List of Issues 7 (k) Refusing to allow the Claimant any trade union representation in meetings; and*

*7 (l)Bringing Mr Clifton into a private meeting without the Claimant's permission being sought [direct discrimination]; and*

*List of Issues 22 (g) On or around 22 May 2018 the Claimant was called into an unplanned meeting and he was not allowed to attend with any trade union representation; and*
*22 (h) On or around 22 May 2018 the Claimant's request to stop the meeting and/or to have the complaint put in writing was ignored [harassment]*

*List of Issues 29 (v)* On or around 22 May 2018 the Claimant was called into an unplanned meeting and he was not allowed to attend with any trade union representation; and
*29 (w) On or around 22 May 2018 the Claimant's request to stop the meeting and/or to have the complaint put in writing was ignored [victimisation]*

109 The Claimant's description of this meeting in his witness statement [paragraphs 229 to 243] is that Mr Conway had asked for a 'quick word' and they spoke in the Boardroom. Mr Conway informed the Claimant that a student had made a complaint that morning that he was sharing his feelings in regard to his job role and that he was refusing to supervise in the mill or machine shop. The Claimant disputed the account of the conversations reported by the student. He described this as Mr Conway seizing an opportunity to try to discipline him for some form of misconduct, or force a reaction out of him that would give him grounds to do so. He described this as bullying tactics by Mr Conway, who, according to Claimant, ought to have opened an investigation into a malicious accusation against one of his staff instead, although he accepted that Mr Conway told him this was not an allegation. The Claimant alleges that Mr Conway stood up and said he was going to get Mr Clifton to join the meeting and before he could object Mr Conway had left the room and returned with Mr Clifton.

110 The Claimant sent an email to his union rep on 22 May 2018 after the meeting, based on his recollection. [2.121-122]. Mr Conway produced a note [2.124] which was written the same day.

111 Mr Conway told us that he called the meeting because a student had come to see him to state that she and other students were concerned about an occurrence in the machine shop that morning when the Claimant had been supervising students using machines and had declared that he would not continue to do this because he was a lecturer not a wood machinist. The students felt they were being drawn into some kind of College politics and the Claimant shouldn't be talking about his role like this in front of them, the Claimant then left the machine shop so the students felt they were not being supported in completing their work. As a result of the student telling him this Mr Conway had asked the Claimant to join him in the meeting room to discuss the concerns and how the Claimant viewed it. The Claimant's reply was he was spending too long the machine shop, the delivery of the program needed to be better organised, and he also said he was not prepared to discuss third-hand allegations from students.

112 Mr Conway had suggested bringing Mr Clifton in to discuss the organisation of the course and the Claimant agreed to this. Mr Clifton joined the meeting and there was discussion about the organisation of the course and the planning of the delivery.

113 In his cross-examination of Mr Conway the Claimant suggested that Mr Clifton then, "laid into him", during this meeting. Mr Conway strongly refuted this and described this as a 'fabrication'. We note that the Claimant did not make this allegation in his detailed statement nor indeed in his responses to cross-examination; his own account was that he objected to Mr Conway pulling him into meetings without notice.

114 Mr Conway told us that he had only spoken to the student a few minutes before and it was reasonable for him to discuss with staff issues that arise at the time; there was no suggestion it was a disciplinary meeting but rather was an effort to resolve the situation that had arisen. The Claimant informed him that if he wanted to speak with him he should put it in writing and should only meet with him accompanied by his union rep. Mr Conway did not accept that he should not be able to meet with College staff when issues arose regarding courses or students. He accepted that the Claimant's role should be better defined and suggested there should be start of the day meetings. In response the Claimant referred to his recent return from long-term sick leave, saying he "did not need this", and proceeded to say that he was "going to kill this", and" I've had enough of this I'm going home". He left the meeting and went home. The Claimant was then off sick until the 19th June 2018.

115 Mr Conway explained that he usually tried to deal with matters as they arose, this was not like a formal disciplinary, the trade union rep in any event was not based on site and it would take time to arrange a meeting if such a meeting was required. The Respondent refers to this as another example of the Claimant giving a formality to meetings that they did not and warrant. This was not the sort of meeting that required representation.

116 We accept that there was no formal meeting that would give rise to the entitlement to a trade union representative at that point. Nor was it reasonable in the circumstances to expect the complaint to be put in writing. The Claimant's request to end the meeting was not ignored, when he said he had had enough he brought the meeting to an end by

leaving.

117 The Tribunal found the Claimant's account to be somewhat confused and entirely subjective, inferring motives to Mr Conway that having heard Mr Conway's account we are satisfied were not justified. We accept Mr Conway's account of that meeting. We accept Mr Conway's evidence that the Claimant was asked about bringing Mr Clifton into their meeting and agreed to this.

118 We do not find any evidence that the Mr Conway would have behaved any differently with any other member of staff without the Claimant's disability, nor do we find that his actions were influenced by the fact that the Claimant had raised a grievance referring to his depression.

119 We find that it was not Mr Conway's intention to create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant and nor was it reasonable for the Claimant to perceive it as having that effect.

*List of Issues 7 m) Making accusations relating to the Claimant's depression [direct discrimination]*

120 The Claimant was asked what these accusations were and responded that this referred to the content of paragraph 115 of his witness statement, which is where he describes, "being called into Mr Conway's office supposedly over a comment from a student that he looked out of sorts on 8 December". The Claimant complains that instead of asking him if anything is wrong Mr Conway asked him why he was not approachable enough. This was denied by Mr Conway, we have addressed this in our findings above.

*List of Issues 7 (n) failing to follow the advice from the Claimant's GP;*

*o) failing or refusing to refer the Claimant to OH until June 2018; and*

*p) failing or refusing to consider adjustments to the Claimant's existing role [direct discrimination]*

121 The Respondent had sought a report from the Claimants GP on 23rd of April 2018 and the report was received dated 30 April 2018. We find that the advice provided in the report was, in effect, to have a discussion with the Claimant as to how the Respondent could support him and to provide support. We find that the Respondent did provide support by employing Mr Pearham to undertake the Claimant's marking so that the Claimant did not have to do it; and allowing the Claimant to have use of the Boardroom to do some of his work, including any marking. The Respondent also suggested joint meetings to discuss working relationships and arrangements.

122 The Claimant disputed that the provision of an alternative marker was done as a reasonable adjustment for him. He described this as being done to bully and humiliate him, and for the benefit of the students not for him. When asked which recommendation the Respondent failed to follow he disputed that the marking was a reasonable adjustment he said that they failed to follow at all these recommendations and just ignored the report.

***The Claimant's disability -related absences***

123 The Claimant was off work from 2 January 2018 until 27 February 2018 when he started a phased return to work, 3 days a week. He was unable to attend work on 28 February due to snow. He continued his phased return from 1-23 March, the Easter holidays were from 24 March to 9 April. He was signed off by his GP between 9- 23 April returning to work on 23 April on a 5 day week but rang in sick on 25,26 and 30 April and 1-3 May. He returned to work on 8 and 9 May and attended work until 22 May when he went off sick again. On 4 June the Claimant emailed Mr Conway to inform him that it was unlikely he would return to work that week informing him that he was going to see his GP on 5 June. He sent his doctor's note on 6 June. On 10 June he requested 3 days unpaid leave from 28 June to 3 July to attend a friend's wedding [this was granted on 15th June], he also informed Mr Conway that he was fit enough to work if he was allowed to carry out his duties unmolested. He then emailed Mr Conway on 12, 13 14 and 18 June to let him know that he was not fit to attend work. He returned to work on 19 June and attended a return to work meeting with Mr Conway. He then emailed on 20 June to say he had had another rough night and was running late. On 22 June Mr Martin met with the Claimant in what Mr Martin described as an informal meeting.

*Grievance outcome*

124 The Claimant 's grievance hearing was held on 4 May 2018. The College engaged George Hickman of HRFace2Face to conduct the hearing. On 30 May 2018 [2.134] Mr Martin wrote to the Claimant in respect of the outcome of the grievance hearing enclosing the grievance report. He told the Claimant that the College accepted unreservedly the findings from the grievance, acknowledging that the Claimant's grievance had been upheld in part and that the report made specific recommendations for actions which needed to proceed without delay. Mr Martin also informed the Claimant of his right of appeal. He asked the Claimant to attend an informal meeting on 1 June to discuss the situation and develop a way forward. The agenda items he proposed were to include the Claimant's return to work on 4 June after the events of 22nd of May 2018 suggesting,

> "if attempting to meet your role in College is exacerbating your illness, we should consider referral to an Occupational Health Assessment",

125 Also on the suggested agenda was the Claimant's 'role and duties going forward in the longer term'; 'how College might approach the mediation process as outlined within the report' [ a reference to the recommendation that mediation take place between the Claimant and Mr Mayes] and further matters that we have not heard about which are not the subject of specific complaint.

126 On 5 June Mr Conway sent the Claimant a letter requesting his consent for an occupational health assessment [2.165]. The Claimant lodged an appeal in respect of the outcome of his grievance on 6 June [2.167-169]

127 On 7 June the Claimant emailed Mr Conway with a request dated 6 June and headed Subject Access Request requesting all data and information held on him by the Respondent.

128 On 10th of June he completed the access to medical reports consent form and on 11 June he emailed Mr Conway to inform him he felt fit enough to return to work if he was allowed to carry out his duties "unmolested" – stating the reason for his current period of

absence is clearly stated in his union rep's email of 23 May [a without prejudice letter which the Tribunal has not seen] confirming he would like union representation at any meeting, including the return to work meeting. Mr Conway responded on the 11th June thanking the Claimant for his email and asking him to report to work as usual if he was feeling fit enough to return to work. He stated that a return to work meeting would still be appropriate,

> "at least to ensure you do not require anything to allow you to perform your job duties and to allow us to gain a better understanding as to your current period of absence. We can also discuss the job duties you will undertake upon your return to work. Whilst we feel mediation would be beneficial, we are happy to discuss this point further with you." [2.181-182]

129 In his reply on 11 June the Claimant repeated that he would like union representation at any meeting including 'return to work' meetings. On 12th June Mr Conway reiterated that return to work meeting was an informal catch up and it was not necessary for the Claimant's union representative to attend. The Claimant agreed that he would attend a return to work meeting without the union present however he asked to record the meeting, to which Mr Conway agreed.

130 The Claimant returned to work on 19 June and was welcomed back by Mr Conway. The Claimant told Mr Conway that he did not feel brilliant, he was having trouble sleeping but that he felt fit to work and wanted to get back to work. Mr Conway suggested that he see how the day goes, if he felt he could work part of the day that was fine and he could leave the College early and return the following day; he also asked if there was anything else that could be done to support his return to work.

131 Mr Conway confirmed that Mr Pearham had completed the outstanding student assessments and that the Claimant did not now need to complete these. He asked the Claimant to speak to his work colleague to plan the day's activities so that both understood what they should be doing during the day.

132 In the course of this discussion the Claimant raised concerns about the confidentiality of the grievance process and gave his opinion of the veracity of the written answers given in the process. Mr Conway told him that their informal meeting was not intended to address matters other than his return to work.

133 Mr Martin wrote a letter to the Claimant on 25 June 2018 headed "Medical leave of absence"[ 2.20] stating:

> "This letter summarises our informal meeting on Friday, 22 June 2018 where the principal discussion concerned the pressures of the grievance appeal hearing this week and the forthcoming occupational health assessment.
>
> Recognising that you are only able to complete one full working day last week, we feel that it would in your best interests to place you on medical leave of absence until completion of the occupational health report. This will allow you to focus on yourself in the run-up to the hearing, as well as offering further recuperation time without the pressures of daily travel and attendance. As you know, the purpose of the occupational health report which allow both parties to evaluate what adjustments, if any, can be put into place just for a return to full time attendance, so it seems unwise to continue with work on the current unadjusted basis.

> This letter should not alarm you. The medical leave of absence in no way reflects a judgement on your performance last week but is rather a protective measure for both yourself and the College. You will remain on full pay. …"

134 The Claimant complains that he should have been referred to OH in January when his period of sickness absence reached 21 days, this was based on the content of the management referral form [at 3.292]. When asked by the Tribunal the Claimant said that it would have been beneficial to him as he could then have access to other services including counselling; however the failure to provide counselling was not part of his complaint before the Tribunal. He also acknowledged that the referral at 21 days was not a mandatory provision of the absence process.

135 Mr Conway told us that in January and February the Claimant was absent from work and fit notes were received to cover the period. There was a gap in the fit notes and on 13 February Mr Martin to write to the Claimant to point that out. On 14 February there was an email in respect of a phased return to work, the Claimant advised that he would resume work on 26 February 2018. Through January and February there was an expectation that the Claimant would return and that there would be a phased return to work.

136 We find that no-one had contemplated the need for an occupational health report at that point. Due to further absences in April, Mr Martin then sought a report from the Claimant's own GP, which Mr Conway felt was a reasonable starting point, to ask the treating GP some questions in respect of the Claimant's health and any need for reasonable adjustments. The questions asked of the GP were typical of questions normally asked in any occupational health referral.

137 It was not understood to be the Claimant's case that he was deliberately denied access to counselling by not being referred to occupational health in the first instance and in any event there was no mention of counselling in the occupational health report.

138 The GPs report in answer to a question at .7 in respect of any relevant treatment received [page 3.28] reported that the Claimant had,

> "self-referred for the therapy services (NHS therapy services are now self- referral) several times in the past, and will be beginning CBT in a few weeks".

139 The OH report[ at 3.56] records "Mr Leacy is receiving appropriate treatment for the condition in the form of medication and counselling. Mr Leacy is attending cognitive behavioural therapy (CBT) via the NHS. His medication is not likely to cause any problems working."

140 There is no evidence to suggest that a comparator would have been treated any differently or that anyone with any different condition would have been referred to occupational health sooner.

141 On 5 June 2018 the Claimant emailed his grievance appeal to the College via Mr Gregson's PA, the same day he also applied for early conciliation through ACAS in respect of a complaint of disability discrimination against the College. The Claimant applied for further early conciliation certificates in respect of Mr Martin and Mr Conway as

individual Respondents on 22 June 2018, the same day that he was placed on medical leave. His appeal hearing was held on 27 June 2018 the early conciliation certificate was issued in respect of the College on 19 July 2018 and in respect of Mr Martin and Mr Conway on 25 July 2018.

*List of Issues 7 (p) Failing or refusing to consider adjustments to the Claimant's existing role [direct discrimination]*

142 The Claimant makes an allegation of direct discrimination in respect of failing or refusing to consider adjustments to his existing role that is, that because his disability was depression adjustments were not considered.

143 The Claimant was asked by Mr Conway in April 2018 on his return to work what adjustments he needed and he said none. He told the Tribunal he did think of any and it wasn't for him to have to suggest them. We find that he was put on a phased return to work from March; an outside assessor was brought in to mark the outstanding workbooks in May, relieving him of that burden; his classes were covered by his colleagues in his absence; his apprentice was looked after by Mr Mayes. Mr Conway raised with him the possibility of changing his role or putting him in a different role but he flatly refused to consider this.

144 We are satisfied that the reason for not considering adjustments to the Claimant's role was because he told Mr Conway in April 2018 that he did not want to discuss any. We also find that other adjustments were made and that there is no evidence to suggest that there was a reluctance to consider adjustments because of the nature of the Claimant's disability.

145 In answer to a question from the Tribunal in respect of what was he was suggesting the Respondent ought to have done but failed or refused to do the Claimant suggested it was in fact Mr Clifton and Mr Mayes who should have had their roles changed and should have been removed from their posts or sacked to allow him to return to work.

146 The Claimant also suggested that if necessary more tutors should have been employed and the fees to the students increased to allow the College to do that. Mr Conway's response to this suggestion was one of incredulity. The Claimant compared the fees charged by other Colleges and stated that the Respondent could have put its fees up. Mr Conway denied the colleges referred to were appropriate comparators. The Respondent aimed to serve a demographic which included those on low incomes and whilst he acknowledged that it was not exclusively serving that demographic, some on the fine woodworking and other postgraduate courses had comfortable backgrounds, but they aimed to be accessible to those who had less means.

*List of Issues 7 (q) Adding to the Claimant's marking workload whilst he was on a period of sick leave. [direct discrimination]; and*
*9 c) [section 15]*

147 This is denied by the Respondent. The evidence that we heard from Mr Mayes and Mr Clifton and which we accepted was that the allocation of marking took place at the beginning of the first term, the marking that came in in the second time during the Claimant 's sick leave was work that he had been allocated in the first term. The timing of

when the workbooks came in to be marked was dependent on the students completing the part of their assessment handing into the relevant tutor and this was the same work that was discussed at the meeting in November. We do not find that was adding to the Claimant's workload because of his disability.

148 Mr Conway told us that not only was it not true that the Claimant's workload was added to while he was on sick leave but the Claimant's work was covered by the members of staff when he was on sick leave and his workload was not added to but reduced. Mr Clifton marked some of the workbooks and Mr Mayes took on his apprentice and found that he had to start from scratch as no scheme of work of teaching materials had been left nor any file with any assessed work. We accept this evidence. It is not disputed that the Respondent employed an external assessor to come in and mark the outstanding assessments.

*Issue 7 (r) Failing to allow the Claimant to take his development/ preparation day [direct discrimination]*

149 This is also denied by the Respondent. Mr Conway, Mr Mayes and Mr Clifton each confirmed that the Claimant was given a separate room him to work in, namely the Boardroom, where he could spend time on any preparation or development work.

150 According to Mr Mayes the Claimant spent a considerable amount of time on the computer which was when he was meant to be developing the course. The Claimant alleged that any preparation or development time was taken away from him by being required to cover for absences, he cited the examples in March and told us there were other occurrences. Mr Clifton and Mr Mayes gave evidence that they similarly were required to cover for absence when they were not already covering their own classes.

151 We have found that it was a function of the timetable and availability of the Claimant that meant he was asked to cover for absent teachers, as opposed to being asked because of his disability. The Claimant relies on this is allegation as direct discrimination, that is, less favourable treatment because of his disability. There is no evidence to suggest that his disability had any bearing on the requests asking him to cover classes or that he was treated less favourably than any of his non-disabled colleagues.

152 Mr Conway told the Tribunal that when the Claimant complained to him (in April 2018) that he was not able to take his preparation day Mr Conway agreed that he could work at home to carry out his preparation (one day a week). We accept that this is what was agreed.

153 There was a separate claim in respect of unfavourable treatment which will come to below and an indirect discrimination claim

*Issue 7 (s) giving the Claimant a salary less than advertised salary*

154 We have already addressed this in our findings

*Issue 7 (t) Sharing confidential information with colleagues without Claimant's consent* [direct discrimination]

155 The Claimant confirmed that this refers to disclosing the Claimant's depression which he alleges Mr Martin shared with Mr Mayes and he believed Mr Clifton in December 2017. Mr Mayes was clear he had no knowledge of the Claimant's history of depression at that time and Mr Clifton similarly was adamant that he had not been told anything by Mr Martin until February when Mr Martin alluded to the fact that Mr Leacy had fragile health; he did not refer to mental health. Mr Mayes's evidence was the first he was told about the Claimant's history of depression was by Mr Conway two weeks before the grievance hearing.

156 We accept that in order to allow them to respond to the Claimant's complaints the Respondent has to provide a certain amount of information to the people who were the subject of the grievance. There is no evidence that this was any different to the treatment that would have been provided to any other to employee who made complaints that were related to their health and in response to those complaints sharing limited information about the health condition relevant to the complaint.

157 We note that the Claimant's GP and the occupational health report both recommended being open about mental health in the workplace.

*List of Issues 7 (u) Ignoring the Claimant's concerns regarding his workload and treatment* [direct discrimination]

158 Mr Conway was criticised by the Claimant for not having done anything about the concerns he raised in January. We have addressed this allegation in our findings above. We have found that he did make suggestions to the Claimant that he talked to his colleagues and that they have general meetings on a daily basis to discuss allocation of work. When there was a formal grievance the outcome was a recommendation for mediation with Mr Mayes and Mr Conway, the Claimant chose not to engage with that suggestion.

159 In respect of the workload the concern was addressed by a number of steps including, covering his work in his absence and allowing him a phased return, arranging cover for the days when he was not there, providing an external assessor to mark the outstanding workbooks, and providing cover for his apprentice with Mr Mayes taking on responsibility for this work

*List of Issues 7 (v) calling meetings at short notice or with no notice at all [direct discrimination]*

160 This has been addressed above. Mr Conway has given his explanation which we accept, the meetings complained about were not formal meetings. We accept that Mr Conway treated the Claimant the same as he would treat any other member of staff. There was no less favourable treatment of the Claimant. Mr Conway would not have behaved any differently towards someone without the Claimant's disability.

*List of Issue 7 (w) Placing the Claimant on medical leave despite his assurances he could fulfil his duties* [direct discrimination]

*Issue 9 (d) Placing the Claimant on "medical leave" despite assurances he could fulfil his duties [section 15]*

*Issue 22 (i) On or around 22 June 2018 the Claimant was placed on medical leave despite being fit to work. [harassment]*

*Issue 29 (x) On or around 22 June 2018 the Claimant was placed on medical leave despite being fit to work. [victimisation]*

161 Whilst the Claimant maintained before us that he was able to fulfil his duties, we find that the Claimant's health was preventing him from providing full attendance at work and he was not attending work consistently despite assuring the Respondent he was fit to attend. The Respondent points to the fact that the Claimant did not object to being placed on medical leave at the time and that he explicitly told the Respondent the reason that he was coming to work was because he did not want to lose his full pay. Having told the Respondent he would be attending there are a number of occasions when the Claimant emailed in the morning to say he was not coming in or he was coming in late. The Respondent decided to place him on medical leave on full pay pending his grievance, we have set out the relevant extracts from the letter of 25 June 2018 above. We are satisfied that the contents accurately reflect the reasons for the Respondent's actions.

162 In the circumstances we do not find this amounted to less favourable treatment, it is not reasonably perceived to be a detriment, rather it put the Claimant in a more favourable position, by not having his pay reduced, which it appeared to the Respondent at the time was his primary concern and was what prompted him to return to work, or to attempt to do so, despite still being unwell. The arrangement meant that Claimant was allowed to remain off work on full pay whilst he was still unwell despite having exhausted his entitlement to contractual sick pay,

163 We do not find that it was unfavourable treatment in the circumstances. We are satisfied that continuing this arrangement until the resolution of his grievance was evidence of the Respondent treating the Claimant more favourably than other employees, and was in fact a reasonable adjustment in the face of clear evidence that attending work in this period was increasing the Claimant's anxiety.

164 We do not find this treatment to be objectively capable of amounting to harassment in the circumstances.

*List of Issues 7 (x) Failing to carry out a workload assessment [direct discrimination]*

165 The Claimant was asked what he meant by the failure to carry out a workload assessment. It was suggested to him that he had a discussion with Mr Conway about his workload in April 2018 and that was when the external assessor was introduced and his apprentice was allocated to Mr Mayes. The Claimant's response was that the apprentice had been taken away from him secretly in January when he wasn't at work.

166 We are satisfied that Mr Conway had a discussion with the Claimant in April which resulted in an external assessor (Mr Pearham) being employed to mark the students' workbooks and the Claimant not being required to carry on with supervising his apprentice.

167 The Claimant did not suggest that anyone who was off work for any other reason would have had a workload assessment in the same circumstances nor suggest why that was less favourable treatment because of his disability.

*List of Issues 7 (y) failing to make available/promote relevant policies and procedures* [direct discrimination]

168 The Claimant was asked to clarify what he meant by this allegation. The Claimant responded that there were policies that were not published and were deliberately not made available to him by Mr Martin. He accepted that these policies were not specifically provided to anyone else but contended that this was less favourable treatment of him because he was the only one that needed them. He accepted the policies were on the intranet and would be available to him through the internet however he had forgotten his password and therefore could not access the Intranet His complaint turned out to be that he had requested that his password be reset but this had not taken place.

169 He alleges that this was a deliberate attempt to deny him access to that information. He says Mr Martin stonewalled him and did not reset the password upon his request in January or February. The Claimant's evidence was that he recalled one occasion when Mr Martin was in the process of changing his password when he was interrupted or abruptly stopped. The Claimant describes the interruption as being a deliberate attempt to stop him getting access to the Intranet. However we find that it is equally consistent with Mr Martin been willing to give him access and actually being interrupted in the process of doing so and overlooking the fact that he had not completed the task. Although the Claimant was back at work in March 2018 he did not ask anybody else for access to the policies; he did not ask Mr Conway, with whom he was in regular email contact to ensure that the password was reset, if he felt the was being obstructed by Mr Martin. He does not mention anything to Mr Conway about passwords or lack of access to policies until August 2018.

170 We do not find that the Claimant was treated any less favourably than his non-disabled colleagues. Or that the reason for not being given access to the policies had anything to do with his disability.

171 Mr Martin left the College around 6th of July 2018.

***Something arising discrimination arising***

172 The Claimant alleges that (a) the *inability to complete marking* and/ or (b) his *sickness absence was* something arising in consequence of his disability

173 The Claimant's evidence to the Tribunal was the inability to complete marking at least in the first term was because he did not have time; he maintained that he could not be expected to do marking in his own time unlike his colleagues who explained they did do their marking in their own time on occasions if necessary.

174 The Claimant's evidence was that he did not suffer from recurrence of symptoms of his depression until the end of the first term however he also told the Tribunal that by November 2017 he was displaying symptoms that showed an onset of a breakdown was imminent. He had not completed a single piece of marking in that term so in the Tribunal's view that is not a complete answer. When his colleagues asked him about his progress in the marking he did not disclose to them that there was anything to do with any health condition that might prevent him or disadvantage him in completing the work.

175 We accept that the Claimant's absence from work was something which arose from his disability. We also accept that while the Claimant was absent he could not complete his marking.

*Paragraph 9 in the List of Issues*
*The Claimant alleges that he was unfavourably treated in the following ways:*

*(a) Insinuating that the Claimant was lazy*

176 This was disputed and we have found that there was no such insinuation

*(b) Making the announcement on 15 May to the Claimant class*

177 We found that there was not an announcement to the class as described by the Claimant. We have accepted the description given by Mr Clifton.

178 We find that the Respondent needed to inform the students about the deadline for submitting their work books for marking and that the students needed to know that Mr Pearham was only available for a limited time. We do not find that providing this information to the students amounts to unfavourable treatment of the Claimant

*(c) Adding to Claimant's marking workload while he was on a period of sick leave;*

179 We have addressed this under direct discrimination. We found that this did not happen in the manner alleged by the Claimant. Whilst the amount of marking that had been submitted by students increased during his absence we do not find that this in itself amounts to unfavourable treatment of the Claimant. The Tribunal has found that the decision in respect of the allocation of marking was made at a time when neither Mr Mayes or Mr Clifton were aware of the Claimant's disability and that the Claimant was a party to and acceded to that decision. He did not raise any objection at the time. After his first period of disability related sick leave he raised it with Mr Conway who took steps to arrange for an external marker to be brought in to do the marking.

180 We find that the decision was a proportionate means of achieving the legitimate aim of a fair allocation of the marking (in the absence of a duty to make reasonable adjustments being triggered).

*(d) placing the Claimant on medical leave despite assurances he could fulfil his duties*
Again, we have dealt with this above. The Claimant's assurances were not borne out by his actual attendance at work.

*List of Issues Paragraph 10 Can the Respondent show the treatment is proportionate means of achieving a legitimate aim?*.

181 In respect of a) and c) we found they simply did not happen. We accept that the Respondent was pursuing a legitimate aim in telling the students that they needed to complete the workbook and to whom they had to hand them, we find that letting them know that in a group setting was a proportionate method of doing so.

182 d) In respect of placing the Claimant on medical leave we find that the aim was to

protect the Claimant and alleviate his stress and to provide consistency for the College. Given the Claimant's intermittent absences and his clear indication that the reduction in pay, as opposed to having recovered his health was a factor in his pattern of absence and return, we find that paying him full pay for the duration of the period of suspension in the run-up to the grievance appeal was a proportionate means of achieving that aim.

**Indirect discrimination**

183 Issue 11 - the Claimant relies on the following PCPs:

a) Requiring tutors to cover classes for absent lecturers
b) Requiring or expecting lecturers to do the marking which has built up whilst they were on sick leave on their return
c) Not allowing lecturers adequate non-contact time

184 We have to decide whether those were PCPs that were applied. We find that in respect of

a) that tutors were required to cover classes for absent lecturers and that is applied to all the tutors including those who do not share the Claimant's protected characteristic;

b) requiring lecturers to do marking that has built up whilst they are on sick leave on their return. We find that that there was a general expectation that tutors who had been absent were expected to do their marking on their return,

185 Did either (a) or (b) put people with the Claimant's disability at a disadvantage ? We find that someone with a mental health disability may well need more time off than people without a disability and therefore be faced with more occasions when they have accrued marking to deal with.

186 Did that put the Claimant at that disadvantage? There was a period of time when the Claimant had accrued a substantial backlog of marking however the evidence before us was that the backlog accrued from marking from term one which he still had not done, the marking that came in in term 2 when he was off sick was work that was allocated in term one, the Claimant clearly felt that he was under pressure to do the marking he refers to meetings and discussions about that in term one. When he raised it with Mr Conway in term 2 Mr Conway took steps to remove that task from him by bringing in an external marker. We find that the Claimant was told by Mr Conway on 23 April 2018 that he had asked another assessor to mark outstanding workbooks to remove that burden from the Claimant [2.78 email from Mr Conway].

187 The legitimate aim was ensuring the marking was done and we find also an ancillary aim was ensuring a fair allocation of the marking between the tutors, it was accepted that the marking had to be done for the students to complete their course. We find that having that having the marking done was a legitimate aim.

188 In assessing proportionality it's relevant to consider the allocation that had been agreed at the outset of the school year and the burden on the other tutors of their own marking and the additional marking for the Claimant. We have found that once it became clear that the Claimant was not carrying out his share and brought to Mr Conway's attention the reason that he was falling behind might be related to his disability steps were

taken to address it.

189 We find on the evidence that the requirement was not applied to the Claimant from his return to work in April 2018 onwards. A reasonable adjustment was put in place once Mr Conway became aware of the problem, namely that the having to complete the marking might put the Claimant at a disadvantage. We find that the PCP was removed and this was a proportionate way of achieving the respondent's legitimate aim.

*c) Not allowing lecturers sufficient non-contact time*

190 It was accepted that there were times when tutors were asked to cover for absent colleagues which ate into their otherwise noncontact time. Mr Conway told the Tribunal that in his experience the teaching staff were professional teachers and knew what to do to deliver their courses, teach the students and mark the coursework, there was no pressure from him or the College to mark outside working hours. The Claimant was the exception, the Claimant came to him and they had a discussion and they came to an agreement which arranged for the Claimant to have non-contact time to do his marking, and he was allocated the Boardroom as a quiet space where he could do this away from interruptions.

191 The particular disadvantage that the Claimant was put to by this PCP was not identified other than the general complaint about not been given time to develop his course or to do his marking. We accept Mr Clifton's evidence that the Claimant was given, and took, time away from the class to carry out his marking and his course development and preparation work. The Claimant complains that he was effectively being required to do the work in his own time but did not present any evidence of actually doing so and thereby being put to that disadvantage, rather he simply did not complete the work with the result being that the work was reallocated.

**Failure to make reasonable adjustments**

192 The Claimant also makes complaints about the Respondent's failure to make reasonable adjustments and in respect of those he relies on the following PCPs

*a) the requirement to mark papers outside normal working hours*
*b) the requirement to work at the Respondent's premises and/or*
*c) the practice of holding meetings without notice*

*List of Issues paragraphs 16 and 17*

193 Did the Respondent apply the above PCPs

*i) the requirement to mark papers outside of normal working hours*

194 The Respondent denied there was a requirement to mark papers outside normal hours we heard evidence from Mr Mayes and Mr Clifton that it was their normal practice and that because of the way that their working day's work they would take some work home from time to time and do the marking on their commute or in other quiet periods. However as far as it being a requirement or even a practice or policy imposed by the Respondent, the evidence before us was that the Claimant was not required to mark

papers outside normal hours; he did not in fact do so, he did not mark any of the papers.

195 Mr Clifton and Mr Mayes disputed the Claimant's claim that he was not provided with enough time in the working day to do his marking. They referred to occasions when he was not required to be teaching and when he had time dedicated to allow him to carry out his marking but which he spent on the computer; whilst some of this time may have been spent on his course development it was up to the Claimant to manage his time effectively.

196 When the Claimant raised the need for protected time and a space to do his marking as a reasonable adjustment we are satisfied that this was provided, he was allowed to use the Boardroom to carry out marking, when this did not resolve the difficulty Mr Conway then made arrangements for an external marker to be brought in and the Claimant was not in fact required to do any of the marking.

197 We do not find that this PCP was applied to the Claimant.

*ii) Attendance at College.*

198 Mr Conway accepted that the normal expectation was that staff would do their work at the College however in April 2018 the Claimant had asked if he could work from home and Mr Conway agreed that he could take his preparation day at home.

199 We do not find the PCP was applied to the Claimant from April 2018

*iii) Holding meetings with no notice*

200 The Claimant had requested that meetings be given on notice so that he could prepare for them. We find that the Claimant did have notice of any formal meetings and was and given time to prepare for those meetings. In respect of the conversations with Mr Conway, we accept Mr Conway's evidence that these were not 'meetings' as the Claimant sought to characterise them but were informal conversations to discuss issues that arose from time to time.

201 A return to work meeting is something that would be expected to take place between a line manager and member of staff when they return to work and we find that the Claimant was aware that this was the Respondent's practice. and when there was a return to work meeting he was provided with a minute of that which he was able to comment on afterwards.

*Did the PCPs identified place the Claimant at a substantial disadvantage in comparison with persons who are not disabled (do not share his disability?*

202 We do not find that the Claimant has established that he was placed at a substantial disadvantage by not having notice of conversations with Mr Conway or of return to work meetings, they were not meetings that required preparation and Mr Conway treated them informally and conducted them in a supportive way. The return to work meeting was to find out what the Respondent could do to address the reasons for the Claimant's absence and consider any adjustments.

*List of Issues 19 If so, would the following steps have been reasonable to take to avoid the disadvantage suffered by the Claimant*?

a) Following advice from the Claimant's GP and /or providing him with more support;
b) Referring the Claimant to OH before June 2016
c) *redistributing some of the Claimant's marking*
*d) allowing the Claimant to work from home on his preparation day*
*e) Giving the Claimant a preparation day*
*f) Giving the Claimant notice of meetings; and/or*
*g) Allowing the Claimant to respond to allegations in writing rather than verbally.*

203 We do not find that there was a failure to make the adjustments contend for at a), c) d) and e). Neither the GP or later OH referred to working from home as being an adjustment that would assist the Claimant. We accept Mr Conway's evidence that he did agree that if he needed to the Claimant could work from home one day a week. There was evidence of the phased return on three days per week and that the Claimant's marking was redistributed.

204 In respect of b) f) and g) we do not find that these amount to reasonable adjustments in the circumstances, for the reason already given above. In respect of g) responding to allegations in writing -there were no allegations of a formal nature to which he was required to respond. In April the Claimant was able to respond to the minute with his own comments.

**Victimisation**

*First protected act*

205 At paragraph 15 of the claim form the Claimant described having a meeting with Mr Martin on 4 December and reporting his concerns about Mr Mayes' treatment of him and his increasing workload, his complaint was nothing was done to alleviate his issues. He says Mr Martin acknowledged Mr Mayes was treating the Claimant like a skivvy and suggested extending the Claimant's probation period. The Claimant alleges he has been victimised for reporting his concerns to Mr Martin. There is no reference to those concerns being of discrimination or raising an issue under the Equality Act 2010. We are satisfied that Mr Mayes had no knowledge of the complaint let alone any complaint of discrimination.

206 We do not find that this amounts to a protected act.

207 In his evidence the Claimant also referred to a meeting with Mr Conway on 5th December as a protected act. He says he raised his concerns about how both Mr Mayes and Mr Martin were treating him but again makes no mention of stating that he was being discriminated against or that the reason for his treatment was anything to do with his disability.

208 We do not find that this amounts to a protected act. The victimisation allegations set out at 29 (j) to (n) of the List of Issues all fail for lack of a protected act. We have addressed their factual basis separately above where relevant.

*Second protected act*

209 The letter of 1 January 2018 made reference to the Claimant's mental health and the effect of the treatment he complains about by his colleagues on his mental health. We find that the matters raised are capable of being read as complaints under or by reference to the Equality Act. However we also accept Mr Conway's evidence that he did not at that time understand the complaints to be complaints of discrimination or believe the Claimant intended to make complaints of discrimination.

*List of issues paragraph 29* o) to x) as detriments that follow from the first or second protected act

210 The Claimant also relies on the following as acts of victimisation, whilst we have not found that the protected acts relied on amount to protected acts for the purposes of s 27 for those allegations that we have not already dealt with on their facts we address the factual allegations below:

211 o) *14th February Mr Martin notifying the Claimant's pay has been retroactively cut by 50%* .

212 We do not find there is no basis for suggesting that Mr Martin would have acted any differently had the Claimant not made a complaint on 1 January; his sick pay entitlement had been exhausted and he was paid in excess of his contractual entitlement. We do not find that the complaint had any bearing on this decision.

*p) giving the Claimant more marking while he was off sick*

213 This was dealt with above on the facts.

*u) upon his return from sick leave the Claimant is excluded from work his apprentice was doing*

214 This is an allegation against Mr Clifton and Mr Mayes. Mr Conway had asked Mr Mayes to take the student on after the apprentice had expressed concern about not getting enough attention due to Mr Leacy's absences. It was disputed that the Claimant was excluded from the apprentice's work. Mr Conway strongly disputed that this happened or that it was even possible ring fence the students, however it was accepted that the responsibility for the student had been passed to Mr Mayes. We find that this was as a result of the Claimant's absences and not as a result of any complaint that he may have raised. We accept Mr Conway's evidence that the reason for this was to protect the best interests of the student and to ensure he had a consistent support and was able to achieve to the best of his ability

s) *upon his return from sick leave the Claimant is excluded from demonstrations planning classes and is effectively demoted to secondary assistant*

215 This was disputed. The Claimant did point to any specific instances of where he had been excluded. He described feeling that he was being treated as a secondary assistant however there is no evidence to suggest anything had changed and nor was

there any evidence to link that to any complaint that he may have made about relationships with his colleagues.

t) *19th the 20th and 21st of March the Claimant was asked to teach the most troublesome class*.

216 This allegation on the facts and again there is no link or evidence of any connection to his complaints.

*u) on 15 May Mr Mayes and Mr Clifton announced in front of the class the Claimant's marking would now be done by someone else*

217 Again this is been dealt with on the facts there's no evidence of any link to any protected act

*v) On 22 May the Claimant was called into an unplanned meeting and he was not allowed to attend with any trade union representation*

218 This refers to a meeting with Mr Conway. We have found on the facts there was no link to any complaint that the Claimant had made. We find that Mr Conway had no intention consciously or subconsciously to subject him to any detriment as a result of his complaint in January

*w) Around 22nd of May 2018 the Claimant's request to stop meeting and/or have the complaint put in writing was ignored*

219 We have accepted Mr Conway account of what took place in that meeting. We find that there was no link conscious or subconscious to the Claimant's grievance in Mr Conway's mind; he was taken aback by the Claimant's response to what he intended to be a general discussion to try to progress matters between Mr Clifton and Mr Leacy and the work allocation to ensure that that the students learning experience was not affected by any lack of lack of communication or difficulties between the lecturers delivering the course.

*x) On around 22 June the Claimant placed the medical leave despite being fit to work*

220 We have dealt with this on the facts above, we do not find this to be an act of victimisation

**Second list of issues claims arising from the Claimant's second ET1**

221 By his second ET1 presented on 29 April 2019 the Claimant brought further claims of direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, and instructing, causing or inducing contraventions of the Equality Act, constructive dismissal, harassment and victimisation. The Respondent has raised a jurisdiction defence in respect of all claims on the basis that the claims are out of time.

***Allegations of direct discrimination - less favourable treatment because of his disability***

*List of Issues 43 a) Placing the Claimant medical suspension against his wishes [direct discrimination]*

222 This has been dealt with on the facts already [List of Issues 22 (i)]

*List of Issues 43 b) the grievance appeal hearing on 27 June was chaired by an* inappropriate person as Mr Matthews was not a member of the Building Crafts College committee, who limited the scope of his investigation to protect management

223 The Respondent provided evidence that Mr Matthews was a member of the Building Crafts College Committee, he was a former Master of the College, and was a Governor of the College and had been since 2007. The Claimant disputed this on the basis that he did not appear as a named governor in a document published by the College and he suggested that Mr Matthews was trying to mislead the Tribunal. We accept Mr Matthews' explanation that the names appearing in the document were the named committee chairs and not all the members of each committee.

224 The Claimant also complained that Mr Matthews was inappropriately brought in to deal with his appeal because he was a former solicitor and former President of the Law Society of England and Wales and this somehow made him an improper person to conduct his grievance appeal.

225 We accept the Respondent's explanation that it asked Mr Matthews to hear the appeal because he was a Governor and someone with a legal background who they considered would therefore be better able to deal with the matter impartially and properly.

226 On 15 June 2018 Mr Matthews wrote to the Claimant introducing himself as a Governor of The Building Crafts College who had been deputed to hear the Claimant's grievance appeal. [2.191]. He attached a formal letter inviting the Claimant to a hearing to take place on 27 June 2018 [2.192 to 2.194] , he sets out his understanding of the Claimant's grounds of appeal as follows:

> Point 1: Concerns of working relationships with Andy Mayes, listing the 22 points raised by the Claimant; and Point 4: Workload Concerns, setting out the concerns raised by the Claimant in his appeal letter in seven numbered paragraphs.

227 Having seen the relevant documents we find that this accurately and fairly summarised the Claimant's appeal document, "Appeal to grievance decisions" [2.167 to 2.169 ] which raised two heads of appeal "Point.1: Concerns with working relationships with Andy Mayes", and "Point 4: Workload Concerns". The numbered "Points" relate to the order in which those matters were dealt with in the grievance report.

228 The Claimant complains that Mr Matthews restricted the scope of his investigation to the matters set out in his 1st of January grievance letter and did not include matters in his 23rd April email to Mr Conway. Mr Matthews told us that he was dealing with the appeal letter and the grievance report and only looked into those two aspects that were not upheld. He had not seen the email from 23 April 2018.

229 Having set out what he understood the Claimant's grounds of appeal to be Mr Mathews states,

> "These matters will be discussed and considered at the meeting therefore it is important that you contact me in advance of the hearing, if you deem the above information to be incorrect in any way or if there is anything further you wish me to consider."

230 We do not find this to be consistent with the Claimant's allegation that Mr Mathews was improperly restricting the scope of the appeal, whether in order to protect management or as an act of direct discrimination because of the Claimant's disability.

231 The Claimant accused Mr Matthews of not being impartial. Mr Mathews told the Tribunal that he hoped he was impartial and that was definitely what he had set out to be. He had no knowledge of the Claimant's grievance appeal until he was asked to chair it.

232 As to the scope of the grievance appeal he considered the original grievance and noted that two of the complaints were partially upheld and that the appeal was against the two further aspects which were not upheld. Mr Matthews recognised that the appeal lay to the Principal of the College but Mr Conway was not able to deal with the appeal because of a conflict of interest, it was considered appropriate to bring in a Governor and the decision was taken to ask Mr Mathews (as set out above).

233 Mr Matthews considered that the Claimant's appeal could be summarised into two categories: 1) the Claimant had concerns about the working relationship between himself and Andy Mayes; 2) he had concerns in relation to his general workload. Mr Mathews accepted that did not review or reconsider aspects of the grievance that had already been upheld and that was how he limited the scope of his investigation.

234 Whilst the email of 23 April 2018 was specifically referenced by the Claimant's trade union representative in advance of the initial grievance hearing there was nothing in the appeal which stated that the initial grievance had failed to address that email dated and it was not something that was raised by the Claimant in his detailed grounds of appeal. We reject this allegation against Mr Matthews.

235 The Claimant relies on the appointment of Mr Matthews and the limiting of his investigation as less favourable treatment because of his disability but there was no evidence from which we could infer that a non-disabled comparator would have been treated any differently.

236 We find that Mr Matthews approached the grievance appeal impartially, in good faith and without prior preconceptions in respect of the Claimant's disability and or in respect of mental health. There was no evidence to suggest that he limited the scope of his investigation in order to protect management, as alleged by the Claimant.

*43 c) making critical and/or inappropriate remarks about the Claimant to outside organisations*

237 This has been dealt with chronologically, see above.

*43 d) failing to make contact with and/ or isolating the Claimant during medical suspension*

238 The Claimant describes being sent to Coventry and says that once he was put on medical suspension he received absolutely zero communication from the College in terms of how he was doing/feeling, how his students were doing, reasonable adjustments, return to work plans. Mr Conway explained that the Claimant was on a period of medical leave with full pay, he was aware of the Claimant's mental health history and that he was also preparing for his grievance; in his view if he had contacted the Claimant in this period he felt that he might be up accused of harassing him (in the lay terms) that would be unwelcome contact and would add to the Claimant's stress. It was not the College's practice to contact members of staff when they were absent from work due to ill health or stress. We accept his evidence. We find on there was no less favourable treatment of the Claimant because of his disability, there was no evidence to suggest that any non-disabled member of staff who was similarly absent would have been treated any differently.

*43 e) Permanently removing all of the Claimant belongings during medical suspension*

239 The Claimant complains that when he returned to retrieve an item of his personal possessions his reading glasses from the College all his stuff been put away out of sight. The Respondent denied that the Claimant's things had been removed in order to eradicate his existence as the Claimant alleged. His personal belongings had been put somewhere safe in his absence. He had by this time been off work for a considerable period and the intention was to take care of his personal belongings so that they did not get laid mislaid or damaged in that period. His belongings were retrievable immediately when requested, they had simply been stored in a locker. Mr Clifton noticed that the belongings were in fact retrieved from the locker in which they had been stored within half an hour of the Claimant's request.

240 We accept the Respondent' explanation. We do not find that the belongings were permanently removed. Nor do we find that placing his belongings in a locker for safe keeping amounted to a detriment.

*43 f) The Respondent not taking steps to help the Claimant return to work, despite assurances to the contrary*

241 The Claimant told us that this complaint related to the period of his medical leave and afterwards. this point the Claimant was on medical leave pending his grievance being dealt with and a report from occupational health. Following the grievance outcome he appealed the outcome. The Claimant was referred to occupational health on 19 June, before his period of medical leave began. The grievance appeal hearing was on 27 June 2018. The Respondent acknowledged receipt of the operational health report on 15 August 2018 and requested fit notes from the end of the medical leave period. The opinion from the Occupational Health report was that the Claimant was not fit for work as at 13th of August 2018; the report was unable to provide a timescale when he would be able to return as this depended on a number of factors including the work issues being resolved. On 14 August the Claimant emailed Mr Conway confirming that he was unfit for work at present and requesting that his outstanding holidays be paid in lieu.

242 On 21st of August 2018 the Claimant submitted a sick note (fitness to work notes) covering the period 3 July to 3 September 2018; he submitted further sick notes on 6 September 2018;18 September 2018; 15th of October 2018; 19 November 2018 and 6

January 2008. Mr Conway told the Tribunal that had the Claimant advised the College that he was well enough to resume work steps would been taken to facilitate his return, however fit notes were sent and therefore it had to be assumed that he was not ready to resume work. We accept Mr Conway's evidence, he understood from the Claimant's submission of fit notes and also from what the Claimant communicated to him, that he was not fit to return to work.

243 The original grievance had suggested that there be a period of mediation in respect of rebuilding the working relationships and that was something that was suggested to the Claimant but he declined, saying that he was not able to engage with that at that time.

244 We do not find that the Respondent failed to take any steps to return the Claimant to work, it was unable to take any steps until the Claimant was ready or well enough to engage with them.

*Issue 43 g) The Respondent telling or allowing the Claimant's colleagues to believe his employment been terminated by management*

245 This allegation is based purely on the Claimant's interpretation of events: he says that because people were surprised to see him when he returned to pick up his belongings they must have already believed that his employment had been terminated.

246 Mr Conway denied that the any of his colleagues were told, or were led to believe by anything the Respondent said or did, that Claimant's employment had been terminated However at this point the Claimant had been off work for some period of time and he had not informed his colleagues that he was coming in that day. We accept that that is the most likely explanation for any surprise the Claimant may have perceived his colleagues to have shown at seeing him.

247 We do not find that the Respondent told or led or do anything to allow colleagues to believe that the Claimant's employment had been terminated.

*List of Issues 43 h) Excluding the Claimant from the company's website "Meet the team" page, despite several updates during his employment*

248 This is an allegation of less favourable treatment because of his disability. The Claimant alleged that his name did not appear on the website from the start of his employment. He did not raise this with anybody at any time. Ms Datta accepted it was part of her role to update the information on the website, she told us that the Claimant's omission was a genuine oversight; she had not met the Claimant and had overlooked the fact that his name did not appear in the team section of the website.

249 We accept her explanation, we are satisfied that there was nothing to suggest that the Claimant was omitted from the website because of his disability.

***Discrimination contrary to section 15***

*List of issues paragraph 44 discrimination arising from disability*

250 The Claimant alleges he was treated unfavourably because of his sickness absence in the following ways:

a) Reducing, or seeking to reduce, his pay to 50% or around 13 March 2018
b) Reducing, or seeking to reduce, his pay to SSP on or around 13 March 201[9]

251 The second allegation expressly relates to 13 March 2018 but it appears the Claimant intended to make reference to the period of his medical suspension [ claim form at paragraph 24] the date should be 13th of March 2019. It is not disputed that his pay was reduced to 50% because of his sickness absence

252 In respect of the first period Mr Martin wrote to the Claimant on the 13th of February 2018 [2.53] this was not an issue that was raised on the first list of issues arising out of the first ET1.

253 The Respondent relies on the following justification:

> "Having reviewed the payment to the Claimant the College Bursar realised he was being paid in excess of his contractual entitlement and did not want to create a precedent going forward where other employees would feel that they too had the same entitlement."

254 Mr Martin pointed out to the Claimant that his entitlement to full pay expired on 30 January 2018 and his pay should have reduced to statutory sick pay from 30 January 2018. Without setting precedent and on a discretionary basis it was decided to continue to pay him half pay for further four-week period from 30th January to 28 February 2018.

255 We note that the Claimant returned at the end of this period. We also note that the Claimant's evidence was that he was almost outraged that his pay should have been reduced as a result of his sickness absence, however he made no complaint about it at the time.

256 We find that Mr Martin's actions were in pursuit of the legitimate aim of financial prudence and that his discretionary extension of sick pay to the Claimant was a proportionate means of achieving that aim in the circumstances

257 On 13 March 2019 Ms Datta, having scrutinised the payroll records in February 2019, asked Mr Conway which department the Claimant worked in as he was a member of staff whom she had not met. She was informed that the Claimant was currently absent from work and had been since the previous year due to ill-health. She was also informed that there was a legal situation pending but she did not know the details of his grievance and did not access is personal file to learn about his history. Ms Datta decided on the 21st of February 2019 that the Claimant would start being paid statutory sick pay in accordance with his contract of employment. At this point she was unaware that the Claimant had made an application to the Tribunal or an application to amend his claim dated 5 March 2019.

258 Ms Datta told us that she made this decision in the context of being employed at a time when she was briefed that the College was currently running in a financially unsustainable way and that the Carpenters' Company which financially supports the

College required the College to reduce its reliance on it funds. She had started an investigation in February 2019 into the College's annual expenditure, to identify areas in which expenditure could be reduced. She identified a number of areas in which the savings could be made, including renegotiating service provider agreements, cancelling those due to expire; identifying where non-replacement of leaving staff could be managed with current staff members (reducing head count); tightening up stock storage to eliminate losses of tools; considering how to reduce premises maintenance costs; stopping the supply of single-use plastic cups; and reducing staffing costs by adhering to contractual terms with regard to sick pay

259 We accept that the aim that she was pursuing in reducing the Claimant's sick pay was tightening up the financial controls and to make savings in a period when the financial position of the College was under pressure. The decision was made to bring the payments to staff into line with their contractual entitlement. Ms Datta was aware that staff who were on sick pay would be subject to a reduction in their income. We find that the decision was applied across the board. We are satisfied that paying staff in accordance with their contractual entitlement was a proportionate means of achieving the aim of tightening up financial controls and making savings, also described as financial prudence. The Respondent also relies on the legitimate of not wanting to create a precedent going forward

260 We find that once the Claimant wrote to Ms Datta pointing out the financial hardship that he would be caused, she exercised discretion to pay him a further two weeks at full pay. We find this was a proportionate step in the context of balancing the books of the College and ameliorating the hardship to the Claimant.

261 We find that there were two separate and distinct applications of the policy as opposed to a continuing practice or regime extending over a period.

**Paragraph 49 failure to make reasonable adjustments**

*Paragraph 50 Did the Respondent apply the following PCPs*

*a) The requirement to mark papers outside of normal hours working hours*

262 This has been addressed above.

*b) the requirement to work in the Respondent's premises when not teaching*

263 We have already addressed this above.

*c) the requirement to work in the same area as colleagues who have been the subject of grievances and the claim to the employment tribunal*

264 We accept that there is a practice and that colleagues were required to attend their normal place of work alongside each other. This was still expected when a colleague had raised a grievance against another colleague or a claim to the Employment Tribunal

265 Did this put the Claimant at a substantial disadvantage in comparison to persons who are not disabled? The Claimant asserted that because of his condition the stress of working alongside the people he had raised grievances against meant that he was at a

substantial disadvantage compared to someone who did not have his condition.

266 We accept that this would be potentially more stressful for someone with his condition and could potentially contribute to his anxiety. We take into account that substantial means more than minor or trivial and is a low threshold.

267 Did the Respondent take any steps to remove the disadvantage? The Respondent arranged for the Claimant's grievance to be heard by an independent external consultant. It accepted the recommendations of the grievance report without hesitation and offered to arrange mediation. In June it placed the Claimant on a period of medical leave with full pay to reduce the stress on him pending the resolution of his grievance appeal.

268 The steps they took were not acceptable to the Claimant. The Claimant suggests a number of adjustments including moving the Claimant or his colleagues to another area within the main College building. This was explored in evidence, we were told about the layout of the College building, including the workshops and the mill area, and where the students attended and sat and set up their workbenches. We find that moving a lecturer would also require moving their students for the duration of part at least of their contact time. We are satisfied on the evidence we were given that this would be wholly impractical.

269 The Claimant was given a space in the Boardroom away from his colleagues to do marking and where he could carry out other work but when he was required to be in contact with students he was required to do so in the workshops or in the mill area. We find that was proportionate and in fact the only practical way of delivering the courses to the students.

270 The Claimant suggested that his alleged harassers should have been reallocated, he accepted that this meant they would need to be allocated to different courses and would no longer be lecturers on the fine woodworking 1. We find that this would not be a reasonable adjustment for the College to have to make.

*d) the practice of passing instructions or requests through colleagues*

271 This related to requests from Mr Conway being passed to the Claimant through Mr Mayes or Mr Clifton asking him to cover for sick colleagues. Mr Conway explained that this was his normal way of communicating in an informal group of colleagues and that he would not expect to have to seek out the Claimant to do this when he was able to pass a message via a colleague. Mr Mayes and Mr Clifton confirmed that there was an informal working relationship in the College and that they had similar requests conveyed to them via colleagues in the same way.

Did the practice of doing so put the Claimant at a substantial disadvantage?

272 We do not find that there was any evidence that this put the Claimant at a substantial disadvantage. There is no reference to it in his 78-page witness statement. We do not find that the Claimant was put at a substantial disadvantage in comparison to a non-disabled colleague. If (which is not clear) the effect on the Claimant was to increase his stress or anxiety we do not find there to be sufficient evidence to suggest this effect was more than minor or trivial, it would have been a transitory encounter and the Claimant

well knew that this was not Mr Conway singling him out but was his usual practice. We are satisfied that Mr Conway's practice was a proportionate means of achieving the aim of passing on requests in an informal way within a group of colleagues.

273 The adjustment contended for at paragraph 53 e) is *informing Claimant of cover et cetera directly from the manager rather than through colleagues*

274 We do not find this to be a reasonable expectation of Mr Conway in the circumstances. He could not be expected to seek out every individual tutor or lecturer when he required them to cover and it was proportionate for him to pass that communication via a colleague.

*e) the practice of holding meetings without adequate notice*
This has been addressed previously

*f) the requirement, to cover lessons for absent colleagues*

275 This has also been addressed previously.

*Reasonableness of proposed adjustments*
276 The Claimant did not attend work after 22 June 2018 save for attending his Grievance Appeal Hearing on 27 June 2018. None of the PCPs contended for were applied to the Claimant from June 2018 onwards, and there is nothing to suggest that where a PCP placed him at a substantial disadvantage adjustments would not have been made if he had returned, with the exception of c) and d) which potentially would have been applied had he returned to work but in respect of which we have found the adjustment contended for not to be a reasonable one for the Respondent to have to make (and in the case of d) no substantial disadvantage proven).

**Harassment**

277 We note that the allegations of harassment in the second list of issues are considerably enlarged from those pleaded in the claim form.

*Issue 56 a) The appointment of Mr Matthews as Chair of the grievance appeal hearing*

278 In the second claim form issued on 29 April 2019 this allegation is set out at paragraph 9 as an allegation that Mr Conway, or the former Bursar, Mr Martin, instructed, caused or induced Mr Gregson into discrimination by having him alter the grievance procedure and appoint Mr Matthews; and that Mr Gregson then instructed caused or induced Mr Matthews to conduct an unfair hearing with limited scope.

279 At paragraph 10 of the Grounds of Claim the Claimant alleges that "Having raised a grievance against Mr Conway and others, he and/or his colleagues predetermined the outcome of my grievance appeal hearing and failed to carry out a sufficient investigation. These are pleaded as allegations of causing or inducing discrimination [paragraph 31 of ET1] they are not pleaded as acts of harassment. However they also appear in the list of issues as harassment and are described as being in the alternative where the same allegations are relied on as direct discrimination.

*List of issues 54(a) The appointment of Mr Matthews as Chair of the grievance appeal hearing*

280 We have accepted Mr Mathews' evidence in relation to his eligibility for that role. Mr Gregson asked Mr Matthews to conduct the appeal in light of his previous legal experience, we have found that the intention was that he would conduct a thorough and fair process. We are satisfied that the actual intention behind the appointment of Mr Matthews was the opposite of that alleged by the Claimant. We do not find that it was reasonable to perceive that the appointment of Mr Mathews violated the Claimant's dignity or created an intimidating, degrading, hostile, humiliating or offensive environment for him.

*List of Issues 54* (b*) Last-minute changes to grievance process prior to grievance appeal hearing*

281 We were told that this refers to paragraph 9 of the ET 1: the appointment of Mr Matthews and then causing Mr Matthews to conduct an unfair hearing with limited scope.

282 We were told by the Claimant that the reference to change last-minute change is a refence to there being confusion at the outset of the hearing as to whether the appeal was a rehearing or a review and that this was raised by his trade union representative with Mr. Mr Matthews understood the scope to be that set out in the appeal letter. We are satisfied that is a perfectly reasonable understanding for him to have reached. That is the basis on which he undertook the appeal.

283 Mr Matthews confirmed that at the outset of the hearing there was some discussion as to whether it was a rehearing or simply a review; in legal terms an appeal can be by way of rehearing or simply a review of the decision. He understood the appeal to be a review and pointed out there was no objection raised by the trade union representative at the time to the way in which he proposed to conduct the appeal.

*List of issues 54 c) Mr Mathews limiting the scope of the grievance appeal hearing*

284 We have dealt with the allegation of limiting the scope of the appeal above. Mr Mathews confined himself to the two grounds of appeal raised by the Claimant. The Claimant told the tribunal that this amounted to harassment because it was unwanted conduct relating to his disability.

285 We are satisfied that the Claimant's disability was entirely irrelevant to the approach adopted by Mr Mathews. It simply had no bearing on it. We do not accept, as suggested by the Claimant, that Mr Matthews would have conducted the appeal in any different way had the Claimant not had his disability. Nor do not find that his approach had the purpose or the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

*54 d) Not reviewing or applying the contents of the GP and/ or OH report*

286 This is not pleaded as harassment. We have dealt with the factual contention already. We do not find that this conduct had the purpose of violating the Claimant's dignity or was intended to create an intimidating, hostile, degrading, humiliating or

offensive environment for him. Both reports indicated the Claimant was not fit for work; although there were suggestions in respect of working together supportively, we have already made findings as to why that was not possible. The Claimant had to be fit to return to work and ready to engage before those steps could be enacted and there was no reason to suggest that the Respondent was refusing or deliberately failing to do that in order to intimidate or create a hostile or otherwise harassive environment for the Claimant nor do we find that it was reasonable for him to perceive it to have that effect.

*54 e) On or around 15th of August 2018, Mr Conway complained the Claimant had not submitted a fit note for his time on medical suspension*

287 At paragraph 15 of his claim form the Claimant alleges that the Respondent requested GP fit notes which were not required. The Respondent accepts that fit notes were not required during the period of medical leave or 'suspension' however after the appeal had been heard and the occupational health report received then the Claimant did require medical notes to explain his absence. The period of medical leave, or suspension, was expressly to cover the period up to the appeal hearing, which Mr Martin understood would be a stressful time for the Claimant, and to allow for the occupational health report to be completed, it was not to continue indefinitely. After the end of that period it was reasonable that the Claimant was asked to provide an explanation to authorise his continuing absence from work and this was provided by his sick notes which were accepted by the Respondent and his pay continued until March 2019.

288 We do not find that the request for a sick note to cover the Claimant's absence amounts to harassment in the circumstances. We do not find that the request was made with the purpose of intimidating the Claimant or creating a hostile or otherwise harassive environment for the Claimant nor do we find that it was reasonable for him to perceive it to have that effect.

*54 (f) The Respondent failing to communicate properly with the Claimant during medical suspension*

289 This is a repeat of the allegation made under the claims of a direct discrimination, which we have addressed on the facts above. We do not find that the purpose of this was to create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant or to violate his dignity nor was it reasonable for him to perceive it to have that effect.

*54 (g) On or around 13 March 2019 Ms Datta sent the Claimant a letter in which she implies the Claimant has become a burden that the College can no longer tolerate*

290 Ms Datta's letter can be found at [2.455 ]. It reads as follows:

> "Dear Sean,
>
> I would like to introduce myself as the new Bursar at the BCC.
> I am aware that from November 2018 to date, as a gesture of goodwill, you have been paid your full salary despite being absent from work as per your recent sick notes.

> Unfortunately, the College cannot sustain this and I am therefore writing to give you notice that from 1 April 2019 you shall be paid statutory sick pay.
>
> I also note that your most recent sick note expired on 3 March 2019 and no updated sicknote has been provided. I'm sure that this is a simple oversight on your part and would be grateful if you would provide your updated sicknote as soon as possible.
>
> If you have any queries about this letter, please contact me by email
> in the meantime, I wish you well.
>
> With all good wishes, yours sincerely
> Rebecca Datta
> Bursar"

291 The inference that the Claimant was becoming a burden that the College could no longer tolerate has been read by the Claimant into the words “unfortunately the College cannot sustain this”, a reference to the continuing payment of full pay above the contractual entitlement. The tribunal finds this to be an example of the Claimant taking personally, or personalising, what are on their face neutral management actions. The College had been paying him full pay for a many months in excess of his contractual entitlement to sick pay. Ms Datta does not describe the Claimant as a burden, she identified that the payment of full pay had been made on a discretionary basis for a considerable period and that this was not sustainable financially. On receipt of the Claimant’s response in which he identified the financial hardship he would experience as a result of this being reduced to SSP she extended his full pay for a further two weeks.

292 In his evidence to the Tribunal the Claimant alleged that this letter would not have been sent to someone who was off sick with a physical illness although he had no evidence to suggest the College had treated anyone differently when they had a physical illness. When asked by the Tribunal how the letter amounted to harassment he then asserted that Ms Datta wrote the letter in retaliation to his application to amend his ET1 to include named Respondents. Ms Datta told us, and we accept her evidence, that she was not aware of any amendments to the ET1 or any application to make amendments at the time she wrote the letter, nor did she intend to intimidate or harass the Claimant in any way. We do not find that it was reasonable for the Claimant to perceive the letter as harassment and we do not find it amounts to harassment. We address the victimisation claim below.

*(h) On or around 25 March 2019 Ms Datta implies the Claimant's job is at risk of redundancy*

293 The Claimant asserts that in March 2019 he was still on a period of compulsory medical leave however we find that this is at best a misapprehension and mischaracterises the position. As far as the Respondent was concerned that period came to an end once the occupational health report had been received, which was what prompted the request from Mr Conway for the Claimant to submit doctor's notes to authorise his absence. The Claimant continued to submit GP’s fit notes until March 2019 and beyond.

294 On 20 March the Claimant sent a letter in response to Ms Datta's letter of 13 March in which he set out 17 numbered paragraphs raising a number of points and asking a number of questions. On 25 March 2019 Ms Datta responded providing information in response to his queries. After thanking the Claimant for his email and updated sicknote, she apologises that she did not inquire about his health in her letter dated 13 March 2019 stating, "I did and still do of course wish you well." She apologised to the Claimant [in response to the criticism in his email] that he had not been provided with updates on his department and students,

> "I did not feel it was appropriate to provide updates about the department or students as I was concerned that this could exacerbate your condition. I would rather you focus on your recovery."

We have already found this to be the explanation for not contacting the Claimant. Ms Datta also responded to a number of his queries: in response to a question about which tutors are working in the fine work woodworking year 1 and all fine furniture making apprenticeship department, she informed the Claimant,

> "fine woodworking year one: our colleague Robin Clifton, at least the year group with part-time tutor Cheryl Mattey supporting. Fine furniture making apprenticeship has one apprentice still on course and due to complete soon after the spring break. There is no intention to continue the apprenticeship after he completes. We are therefore considering all options in relation to this, which could include a potential redundancy situation."

295 The Claimant has characterised this as being an act of harassment. We do not find that it was. There was no intention to violate the Claimant's dignity or to create an intimidating, hostile, degrading humiliating or offensive environment for him by giving him this information. He had asked what the situation was with the courses and had been provided with an honest and accurate response. We do not find that this was intended as a threat to Claimant, nor was it reasonable for him to perceive it to have that effect. It was an honest response to his enquiry. Further the Claimant was employed to lecture on the fine woodworking 1 course as well as the fine wood working apprentice and the lack of an apprentice did not necessarily mean that he would be redundant. The Claimant jumped to the conclusion that this was intended to intimidate him when there is no basis for that allegation.

**Issue 62 Victimisation**

296 The Claimant relies on the following as protected acts:.

(i) The Claimant's submission of an ET1 on or around 17 August 2018 ("the third protected act") and/or

(ii) The Claimant's request to amend the ET1 on or around 5 March 2019 ("the fourth protected act"

The Respondent accepted that these acts are capable of amounting to protected acts but disputes that it subjected the Claimant to any detriment as alleged because of those protected acts. At paragraph 64 of the List of Issues the detriments relied on are as follows:

*In relation to the submission of the ET1 on or around 17 August 2018*

*(a) isolating the Claimant from events at the College whilst on medical suspension*

297 This has previously been characterised as an act of direct discrimination and harassment. We have accepted the evidence of Mr Conway and Ms Datta in respect of their reasons for not contacting the Claimant. We find that they were both conscious that contacting the Claimant whilst he was off sick might be detrimental to his health and well-being. We do not find that they were deliberately isolating him and we do not find that there was any connection between any protected acts and their decision not to contact him.

*(b) Not keeping the Claimant informed of his Student's progress*

298 Ms Datta explained her reasons for this in her response to the Claimant on 25 March, namely, she had not wished to disturb him during his period of sickness absence; she also informed him that if he had asked for progress reports than these would have been provided to him. We accept her explanation. We find that there is no evidence to suggest this was either consciously or unconsciously connected to the Claimant having brought proceedings.

*(c) On or around 13th of August 2018, not reviewing or acting upon Occupational Health's report/advice*

The ET1 relied upon as a protected act was issued on 17 August 2018. The act complained of predates the protected act and cannot be a response to something that had not yet happened. We are in any event satisfied that Mr Conway would have acted on those recommendations as and when the Claimant was ready to return to work however his sick notes indicated that he was not fit to return. In terms of the recommendation that the workplace issues giving rise to the Claimant's anxiety be resolved the Claimant had stated that he was not in a position to consider mediation which had been suggested as an outcome in his grievance.

(d) *The Respondent leading, or allowing, the Claimant's colleagues to believe he had been dismissed during his medical suspension*

299 The Respondent denies the Claimant was suspended from work. There was a period of medical leave which came to an end June 2018. Having heard from the Respondent's witnesses we are satisfied that throughout the period of his absence the Claimant's colleagues understood that he was absent from work due to ill-health. There is no basis for the Claimant's suggestion that his colleagues were allowed to believe that he had been dismissed. The Claimant relies on the surprise expressed by colleagues when he turned up to collect some belongings, we find that this was because they had not expected to see him as he had been off for some months but did not mean that they thought he had been dismissed.

*(e) Failing to work towards returning the Claimant to employment*

300 This has been dealt with above. We do not find this to be an act of victimisation.

(f) *excluding the Claimant from the company's website "Meet the Team" page despite*

*several updates during his employment*

301 Again this largely predates the protected act relied upon. We accept Ms Datta's evidence that this was an oversight on her part. We find that there is no connection with the Claimant's protected acts.

*In relation to the third and/or fourth protected act the issuing of the ET1 of 17 August 2018 and the amendment application on 5 March 2019*

*(g) On or around 14 March 2019, the suggestion that the Claimant was failing to provide fit notes*

302 This relates to Ms Datta pointing out to the Claimant that his sicknote had expired. When the Claimant responded to this as being a criticism of him she informed him that no criticism was meant and that he'd simply not provided an up to date sicknote, she believed it to be an administrative oversight which he had now confirmed was the case. Ms Datta also stated that she would be more than happy to take on board any comments or considerations he may have in terms of reasonable adjustments and current medical advice and his health.

303 The Claimant was given the opportunity to cross-examine Ms Datta but did not challenge her explanation for writing to him in the way she did. She was asked whether she was instructed by Mr Conway to send a letter and she responded absolutely not. She was aware that there had been some form of legal proceedings but she was certainly not responding to those when she wrote to the Claimant. She was addressing the financial position of the College and then responding to his questions sent to her by email on their own merits and separating them from any legal action that may have been brought, we accept her evidence. We do not find this to have been an act of victimisation.

*(h) On or around 14 March 2019, the Respondent giving inadequate notice that the Claimant's pay would be cut to SSP from 1 April 2019*

304 We have addressed this above. We do not find that this was in response to or connected in any way to any protected act.

*(i) On or around 25 March 2019, implying that the Claimant would be facing redundancy because of the Respondent's decision not to continue with the fine furniture making apprenticeship course, despite reallocating Mr Mayes to the course in early 2018*

305 We do not find that this was in response to or connected to any protected act. The decision that there was not going to be an apprentice the following year had nothing to do with his claim having been brought.

***Paragraph 65 of the List of Issues: allegation of instructing, causing or inducing contraventions of the Equality Act 2010***

306 The acts relied upon are:
*(a) Mr Conway and/or Mr Martin leading Mr Gregson to believe the Claimant was a troublemaker thereby affecting the impartiality and fairness of the grievance appeal process;*

(*b) Mr Conway, Mr Martin and/or Mr Gregson instructing. causing or inducing Mr Mathews to protect the management by limiting the scope of his investigation at the outset of the hearing;*
*(c) Mr Conway instructing, causing or inducing Ms data to victimise the Claimant by cutting his pay and impliedly threatening redundancy.*

307 Mr Gregson is the clerk of the Carpenters' Company and Secretary to the Governors of the College, his role was the committee clerk. Mr Matthews told us that Mr Gregson contacted him on or around 11th of June 2018 and told him that a member of the College staff had appealed against some elements of a decision made in relation to grievances submitted and that appeal lay to the Governors; he asked Mr Matthews to hear the appeal. At some stage in the conversation Mr Gregson told Mr Matthews that the matter involved a conflict of evidence about which he would have to make up his own mind. Mr Matthews agreed to conduct the appeal. He then sought to satisfy himself that it was proper for him to hear the appeal and asked to see a copy of the College's grievance procedure and was sent a copy by Mr Conway. The appeal procedure stated that an appeal lay to the Principal, however Mr Conway told him that he could not deal with the appeal because of a conflict of interest hence a Governor needed to do so. Mr Matthews was informed by Mr Martin, then the College Bursar, that the staff handbook stated an appeal of this nature lay to the Governors so Mr Matthews was satisfied that it was appropriate for him to deal with it.

308 Mr Matthews told us that at some stage before the hearing both Mr Conway and Mr Gregson separately made remarks along the lines that Mr Leacy has done this kind of thing before, however in each case his immediate response was that was not something he could take into account; he told us that he neither investigated the possibility of that allegation being true nor considered it again. We accept his evidence on this. We did not hear from Mr Gregson.

309 We did hear from Mr Conway and he was cross-examined on this point. Mr Conway denied instructing Mr Matthews to conduct an unfair appeal or to limit the investigation or doing anything to induce or cause him to do so. On 3 August 2018 Mr Conway informed Mr Matthews that Peninsula had requested to see the minutes and outcome of the grievance hearing before it was issued. Mr Matthews told us that he was concerned about this request and that he would not in any way have acceded to any request that his report be doctored in any way, he was only prepared to release the minutes and the outcome once he was clear that there would be no attempt to influence the outcome by Peninsula. He only agreed to the report being seen when Mr Conway told him that it was a requirement of an insurance policy the College had. However he was adamant that his report was his own and was not influenced by anybody. We accept that he did not let himself be influenced by Mr Conway, Peninsula or anybody else.

310 Mr Conway's email sent on 3 August makes plain his frustration and he states that the situation is becoming intolerable, commenting, "Even if he is unsuccessful in all of the avenues he is following he will still be an employee of BCC in September. For him to return in the new academic year would be unacceptable to many staff and potentially very disruptive to students who do not deserve to be caught up in this."

There follows a reference to some settlement discussions. Mr Conway accepted that this might be seen as an attempt to influence Mr Mathews but that was not his intention. In his opinion Mr Matthews is not someone to be influenced by anyone else, he is someone who

will come to his own view on matters. By this time Mr Conway was having to run the College without a Bursar and the workload was becoming intolerable. The email was predicated on his knowledge that the Claimant wanted to leave, the Claimant had already asked for a settlement via his trade union representative. Mr Matthews was a College Governor and he knew that he would not be influenced by what Mr Conway said. Mr Conway described some of the effects of the having to deal with Mr Leacy's repeated detailed requests for information, the grievance and the litigation were having on him. He told us that he was showing frustration in the email because he was really struggling at that point, he was affected physically and it was causing him serious stress symptoms including severe headaches.

311 Mr Matthews told us that by the time he received the email he had already written a draft of his report and that the outcome was not at all influenced by this email from Mr Conway. He could see why that email might be construed as an attempt to influence the outcome of the appeal. He acknowledged that the context of the email was that the Claimant had sought a settlement which included an exit from the Respondent.

312 We have seen the draft and the final version of the appeal outcome letter, the latter dated 9 August 2018. We accept Mr Matthews' evidence that he had reached his conclusions and the draft outcome letter was written before Mr Conway's email, we find that the draft does not vary, other than some minor corrections, from the final report. We find that Mr Mathews' investigation and his report was thorough and detailed. Mr Matthews did not uphold Mr Leacy's appeal in respect of working relationships Point 4, however he comments that,

> "it is now appropriate to consider his workload, the situation is very different than it was in December 2017 given what is now known about the state of Mr Leacy's mental health."

Paragraph 27 notes that when it comes to recommendations

> "it would be easy to say that it would be desirable for arrangements to be made so that SL and AM did not have to work together but is equally easy to see that in a small institution like the College that would almost certainly not be practical."

He observed that

> "if they are to work together the mediation proposal would seem to be the way forward". And that,
>
> "any form of such mediation would have to be agreed between the College and NFL" and "the union might provide some assistance and no doubt Mr Mayes will also have to agree to the format. If the format is agreed between the College and SL I would hope that the College would encourage AM to agree to participate."

313 These findings are not indicative of someone who has reached a conclusion tailored to try to force the Claimant out or to bring only a management perspective to the application of the grievance process. It appeared to the Tribunal to be a balanced and sensible attempt to try to achieve a way forward which allows the Claimant to return to work.

314 We do not find that there was an instruction from anyone at the Respondent to Mr Matthews that he should determine the appeal against the Claimant, or produce a one-sided report only sympathetic to management. Nor do we find that anything was said to Mr Matthews to cause or induce him to discriminate against the Claimant in the production of his report which we noted was thorough, well-reasoned and based on the information

given to him by both sides. Whilst the Claimant may not find that it entirely reflects his perception of events we find it is a fair reflection of the evidence presented to Mr Matthews.

315 The allegation that Mr Conway and/or Mr Martin instructed or caused or induced Mr Matthews to protect the College's management by limiting the scope of the investigation at the outset of the hearing has no basis in any the evidence we've heard. The scope of Mr Mathews investigation was determined by the matters set out in the Claimant's appeal letter.

(c) *Mr Conway instructing causing or inducing Ms Datta to victimise the Claimant by cutting his pay and impliedly threatening redundancy*

316 Mr Conway did not instruct Ms Datta to treat the Claimant in the manner complained of. We have set out our findings in relation to this allegation above under the heading of harassment.

**Discriminatory constructive dismissal**

*Paragraphs 67-70 of the second list of issues*

317 The Claimant contends that the Respondent breached the implied term of trust and confidence by the discriminatory acts and omissions summarised in the list of issues and that he resigned in response to those breaches. The Respondent asserts that the Claimant affirmed any breaches, that he delayed in tendering his resignation

318 The Claimant's second claim form was issued after his resignation and describes his constructive unfair dismissal claim in the following terms, under the heading *victimisation/constructive dismissal/unauthorised deductions*

> "An application to amend my ET1 was submitted to the Tribunal on the evening 5 March 2018 the Respondents retaliated by cutting my salary to statutory sick pay with just two weeks' notice on 14 March 2019." [paragraph 18]
> Part of my request to amend was for Mr Conway to be added as a Respondent. It is my belief that this action was instigated by Mr Conway, carried out willingly by Ms Datta. Alternatively, Ms Datta took it upon herself to carry out the act on behalf of her colleague an employer. [Paragraph 19]
> The above amounted to a fundamental breach of contract and I felt as if I had no option other than to resign against my wishes. [Paragraph 20]

319 We have not found the actions relied upon by the Claimant to have been acts of victimisation by the Respondent. Nor do we find the Respondent to have breached the implied term of mutual trust and confidence. We have found that the Respondent had reasonable and proper cause for its actions. Reducing the Claimant's full pay to sick pay was in accordance with the Claimant's contract and was done only after having allowed him considerable periods of discretionary pay at full pay in excess of the contractual entitlement at a time when the Respondent was experiencing financial constraints.

320 We also considered the Claimant's letter of resignation dated 6 April 2019 in which

he states, “I have given the College numerous opportunities to act in a supportive way but it seems committed to pursuing a campaign of discrimination and victimisation against me” he provided a non-exhaustive list of examples including 19 matters which do not directly translate into the list of issues. The Claimant refers to “unashamed retaliation” in cutting his paid SSP in response to the request to amend his ET1 and cites the final straw as taking place on 3 April when he attended College to collect his personal belongings. We have not found that either of the matters quoted were acts of discrimination, harassment or victimisation. Nor do we find that they were capable of adding anything to the previous complaints referred to in the resignation letter.

321 We have not found any of the actions relied upon to have been discrimination whether direct discrimination, unfavourable treatment or a failure to make reasonable adjustments. Nor have we found the Respondent to have harassed or victimised the Claimant as alleged, or to have caused or induced others to discriminate against the Claimant. His claim for constructive dismissal fails.

322 The matters set out in paragraphs numbered 71 onwards of the list of issues relate to remedy and the Claimant's claim for damages for personal injury; we have not found any discrimination by the Respondent therefore we did not go on to address the question of remedy.

**Jurisdiction- time limit**

323 We have not found any individual acts of discrimination and we do not find any regime or ongoing state of affairs, there was no continuing act.

***The nature of the Claimant's complaints about his colleagues***

324 The Claimant set out in considerable detail in his witness statement and in his lengthy submissions numerous complaints about his treatment which went beyond those set out in the list of issues, which itself ran to the 14 pages. The Claimant appeared only to be prepared to look at events from his own point of view without acknowledging any other interpretation was possible, taking offence where none was intended. Whilst we acknowledge that the Claimant was unwell we have not found that his perception of events or comments was objectively reasonable. Nor did he acknowledge that his colleagues might have their own life challenges to deal with and might be facing stresses or strains about which he was unaware. At the same time as insisting that his colleagues ought to have been alive to possible indications that he might be suffering from mental health problems he appeared blind to the fact that they may themselves have suffered from any history of mental health problems in the past or have any experience in their own lives or families. During the course of the evidence the Claimant took exception to hearing Mr Conway describe the strain he had been under in responding to the Claimant’s detailed requests for information, including comparative salary figures, at a time when he was without a Bursar, the Claimant rose to his feet to insist that he had suffered much more than Mr Conway. Whilst this may be the case, and Mr Conway was not suggesting otherwise, it was illustrative that the Claimant appeared to not want to listen to Mr Conway’s evidence or acknowledge that his actions had had some personal impact on Mr Conway.

325 The Claimant maintained that the solution to getting him back to work would be to remove Mr Mayes, to avoid the Claimant having to carry on working with him, and if that meant dismissing Mr Mayes and replacing him with someone else then that was what the Claimant suggested to Mr Conway should have happened. This was even though his complaints against Mr Mayes had not been upheld by the Respondent and it had not found that he had discriminated against the Claimant in any way.

**Summary**

326 In respect of each or both ET1s:

(1) The claims for discrimination contrary to section 6,13,15,19, 20 and 21of the Equality Act 2010 fail and are dismissed;
(2) The claims of harassment contrary to section 26 of the Equality Act 2010 fail and are dismissed;
(3) The claims of victimisation contrary to s 27 of the Equality Act 2010 fail and are dismissed
(4) The claims of instructing, causing, inducing contraventions of the Act contrary to section 111 of the Equality Act 2010 fail and are dismissed.

Employment Judge C Lewis

19 February 2020