



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss M Marrufo

AND

Respondent

Bournemouth Christchurch
and Poole Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AS A HYBRID HEARING

– In person at Southampton
and by video (CVP)

ON

25 to 28 October 2021

EMPLOYMENT JUDGE Gray

MEMBERS – Mr N Knight and Ms J Killick

Representation

For the Claimant:

In person

For the Respondent:

Ms Gilbert (Counsel)

RESERVED JUDGMENT ON LIABILITY ONLY

The unanimous judgment of the tribunal is that:

- The complaints of harassment related to disability (allegation 9(f)(ii)), for breach of the duty to make reasonable adjustments, victimisation (allegation 15(b)(ii)) and for holiday pay, are dismissed on withdrawal.
- The complaints of direct sex discrimination, harassment related to disability and sex (the remaining allegations), victimisation (the remaining allegations) and for wrongful dismissal, all fail and are dismissed.

REASONS

BACKGROUND OF THE CLAIM AND THIS HEARING

1. This is a case concerning complaints of direct sex discrimination, harassment related to sex and disability, for breach of the duty to make reasonable adjustments, victimisation, for holiday pay and wrongful dismissal.
2. In short, the Claimant has a disability, a hearing impairment, and claims that she was harassed, discriminated against and victimised. The matters complained about are asserted to arise from shortly after she started in July 2017 to the beginning of 2019. The Claimant also claims holiday pay and makes a breach of contract claim for notice pay following her immediate resignation by letter dated 4 May 2019.
3. The Respondent denies all the complaints of discrimination, denies that it breached the employment contract and asserts that all holiday pay due to the Claimant was paid.
4. This is a claim with a complicated administrative history. There have been five case management hearings, an appeal to the Employment Appeals Tribunal, and preliminary judgment on whether the Claimant was a disabled person or not, it having been determined that the Claimant was disabled at the material times by reason of a hearing impairment (see the judgment, 3 February 2020, page 128D of the agreed hearing bundle).
5. For reference at this hearing we were provided with:
 - a. A witness statement from the Claimant and her supporting witness (her mother).
 - b. Nine witness statements on behalf of the Respondent, noting that one of those, Anne Humphries, would not attend to give live evidence. The witnesses are:
 - i. Tina Watson = TW
 - ii. Marice Oliver = MO
 - iii. David Vitty = DV
 - iv. Deborah Bowyer = DB
 - v. Jo Vey = JV
 - vi. Donna Jefferies = DJ

- vii. Wendy Stuart = WS
 - viii. Jayne Browning = JB
 - ix. Anne Humphries = AH.
- c. An agreed bundle indexing 738 pages.
 - d. An agreed chronology.
 - e. An opening note from Respondent's Counsel.
 - f. A combined set of documents from the Claimant, which had a slightly different version of her witness statement attached. In respect of the further copy of the Claimant's witness statement it was agreed with the parties that it would not be the one we are referred to, instead the Claimant confirmed that she submitted her original witness statement that she had exchanged with the Respondent. The Claimant confirmed that the main document within the extra documents she provided us with, was her written submissions that she would rely upon at the close of the hearing.
 - g. We were then provided with closing written submissions from Respondent's Counsel at the close of the hearing.
6. It was confirmed that this hearing was to determine liability only and the hearing timetable was discussed.
 7. Although this hearing was listed for 5 days, it was confirmed that the panel could not sit on the currently listed fifth day (29 October 2021), which had been designated for deliberation and potentially judgment.
 8. Upon discussing this with the parties both sides were keen for the matter to be concluded so far as they were concerned with evidence and submissions completed at the close of day four. The Claimant confirmed that she did not want to ask questions of DJ, JB or WS, and Respondent's Counsel anticipated she may not have questions for the Claimant's supporting witness.
 9. On the agreement that evidence and submissions could be concluded by close of day four (with the rest of day one taken for reading) it was agreed that we would then reserve our decision, listing a fifth day for deliberation as soon as possible, and ideally within the following week. It was then possible for this to be listed for Friday 5th November 2021, at which the panel met to deliberate and reached this unanimous Judgment.
 10. The Claimant had requested reasonable adjustments to the hearing to assist with her hearing impairment, which was to sit on the right when facing the panel and to keep background noise to a minimum. This was accommodated and assisted by the Respondent's witnesses all attending by video (CVP), rather

than being in attendance in the Court room. Through the course of the hearing breaks were agreed and taken as needed.

11. At the start of the hearing the Claimant requested that she be able to cross examine the Respondent's witnesses without having to look at them on screen or for her to be seen on screen. The Claimant said that this was to assist her stress levels. The Respondent did not object to this request, so it was accommodated, but the Respondent wanted the following points recorded:
 - a. It is not a reasonable adjustment it is an application for special measures;
 - b. The application has been made late in the day without notice and it could have been made at any point in the last 2 years at which point it could have been dealt with properly;
 - c. The basis of the application is inconsistent with Claimant's initial requirement that the hearing took place in person. The Claimant had asserted if the Respondent was permitted to give evidence remotely then a member of the Respondent's legal team would be nearby prompting answers. This concern is inconsistent with the Claimant's position now in that she does not want to look at the witness;
 - d. The Respondent does not believe it is a reasonable adjustment but will not object as it does not want to delay the hearing.
12. Before giving her witness evidence on the second day of hearing the Claimant requested that she be allowed to read her witness statement out loud.
13. The Claimant's reasons for requesting this were discussed and she explained that she wanted to refamiliarize herself with the content (although the Claimant had been encouraged to re-read her witness statement the night before she explained that she had felt too stressed to do so). With this explanation it was agreed that the Claimant could take the time she needed to re-read her witness statement to herself as that would be less stressful than reading it out loud.
14. The Claimant then requested to read her witness statement out loud because she thought the Respondent's witnesses would not have read it. It was observed that this was a different point, and that the Tribunal had read her statement and statements were normally taken as read. The Claimant confirmed that she did not have evidence to support her assertion about the Respondent's witnesses not having read her statement so in order to progress matters she would now reread her statement to herself and then be ready for oral evidence.
15. The Claimant was given the time she needed to reread her statement and confirmed when she was ready to proceed.

16. The agreed issues for determination at this hearing are set out below (as taken from pages 128 B7 to 128 B12 of the agreed bundle). About these during the course of the hearing:

- a. It was confirmed in respect of the time limit issues that the claim form was presented on 18 February 2019 (page 4 of the agreed bundle). The dates of the ACAS certificate were 10 January 2019 to 18 January 2019 (page 1). Therefore, complaints on or after 11 October 2018 would be in time. The Claimant confirmed before evidence commenced that for the allegations she makes that are said to be from July/August 2017 to October 2018, she asserted that they continued to around the time she submitted her formal grievance, so the end of October 2018. For the specific allegation of disability related harassment against DB (allegation 9(a)) the Claimant confirmed that she relies upon it being just and equitable to extend time. Allegation 8(a) - harassment on the grounds of sex, and the complaints of wrongful dismissal and for holiday pay were added by amendment by order dated the 14 October 2019.
- b. The Claimant withdrew her allegations 9(f)(ii) and 15(b)(ii) of harassment and victimisation, the complaint for breach of the duty to make reasonable adjustments (the question of knowledge no longer therefore needs to be determined), and for holiday pay, which it was agreed could all be dismissed upon withdrawal. We note here that the Claimant was given time for reflection before confirming she withdrew these complaints. There were other allegations (9(c) and 15(c)) that the Claimant had said she wanted to withdraw when giving her oral evidence but on reflection confirmed she did not want to do so and requested the Tribunal to determine them;
- c. It was identified during the Claimant's oral evidence that allegations 9(f)(i) and 15(b)(i) relate to October 2018. The Claimant in closing oral submissions then referred us to her issue 52 of the "Scott Schedule" (at page 300 of the bundle), to confirm that it was asserted to be about the actions of TW around the October 2018 formal grievance.

THE AGREED ISSUES:

Disability

1. Was C a disabled person, by reason of her partial deafness, at the relevant time for the purposes of section 6 of the Equality Act 2010?
2. If yes, did or ought R to have known that she was a disabled person at the relevant time?
3. The issue of disability as a result of depression/anxiety has fallen away.

Direct sex discrimination:

4. C relies upon a hypothetical comparator.
5. Did R subject C to the following treatment?
 - a. Between August 2017 and October 2018 Deborah Bowyer made derogatory comments about C arriving late for work because she had to drop her daughter off at school (C is a single mother).
6. If yes, was the treatment less favourable?
7. Was C treated less favourably because of her sex?

Harassment on the Grounds of Sex

8. Did the Respondent engage in conduct as follows:
 - a. Between August 2017 and October 2018 Deborah Bowyer made derogatory comments about C arriving late for work because she had to drop her daughter off at school (C is a single mother).
 - b. Was that unwanted conduct
 - c. Was the conduct related to sex?
 - d. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? If not, did the conduct have the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Harassment (disability)

9. Did R subject C to the following conduct?:
 - a. On or around mid July 2017 Deborah Bowyer made derogatory remarks that C should not have applied for her position if her deafness meant she was unable to do her job.
 - b. Between July 2017 and October 2018 C's colleagues deliberately talked over C when she was using the phone and her noise reducing headset, preventing it from being effective.
 - c. In February 2018 C's team leader Tina Watson did not stop the harassment and asked C if she had mental health problems and referred her for counselling because she did not believe C.

d. Between February 2018 and June 2018 Deborah Bowyer, Tina Watson and Michelle conducted a vendetta against Colleague X to try and get her sacked because of her disability, by:

- i. Reporting her for trivial issues and exaggerating them;
- ii. Making comments about X's Donald Trump stress ball;
- iii. Making comments about X's appearance
- iv. Hiding team food from X and telling her she must not borrow tea bags, and should bring her own;
- v. Making cruel comments about doughnuts and X breathing over doughnuts;
- vi. Making comments about X every day before she arrived and after she left;
- vii. Tina breached X's confidentiality by advising C about incidents regarding X in her 1:1.
- viii. Team member comments that X was not part of their team.

e. In February 2018 Tina Watson deliberately treated the grievance as an informal grievance.

f. In February 2018 Tina Watson conducted a flawed and unreasonable investigation of the grievance by:

- i. Disclosing details of the allegations to Debora Bowyer in advance of her interview,
- ii. Interviewing individuals about which C complained in one room at the same time;
- iii. Failing to follow policies and procedures, including failing to note anything.

g. In October 2018 Tina Watson lied during the investigation to cover up facts and revealed details of the allegations to Ms Bowyer in advance.

h. On 29 January 2019 Deborah Bowyer blocked the entrance to the car park when C sought to enter it.

10. If yes, was the conduct unwanted?

11. Was the conduct related to disability?

12. Did the conduct have the purpose or effect of (i) violating the C's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the C?

Victimisation:

13. C relies upon the following protected acts:

a. In or around February 2018, C raised a grievance verbally with Tina Watson that she was being harassed on the grounds of her disability and/or sex.

b. In October 2018 C raised a formal grievance.

14. R accepts that these were protected acts, with the caveat that R does not accept that allegations in the October 2018 grievance, relating to the treatment of Colleague X, were made in good faith. Nevertheless, other elements of that grievance were made in good faith, therefore it is a protected act.

15. Was C subjected to the following conduct:

a. In February 2018 Tina Watson deliberately treated the grievance as an informal grievance instead of a formal grievance.

b. Tina Watson conducted a flawed and unreasonable investigation of the grievance by:

i. Disclosing details of the allegations to Debora Bower in advance of her interview,

ii. Interviewed individuals about which C complained in one room at the same time,

iii. Failed to follow policies and procedures.

c. In February 2018 C's team leader Tina Watson did not stop the harassment and asked C if she had mental health problems and referred her for counselling because she did not believe C.

d. Between February 2018 and June 2018 Deborah Bowyer, Tina Watson and Michelle conducted a vendetta against Colleague X to try and get her sacked because of her disability, as set out at 9.d above.

e. In October 2018 Tina Watson lied during the investigation to cover up facts and revealed details of the allegations to Ms Bowyer in advance.

f. After October 2018 did Marice Oliver, Anne Humphries and David Vitty fail to conduct the investigation and appeal of her grievance properly by:

- i. Failing to comply with ACAS code of conduct;
- ii. Not questioning all the witnesses; and
- iii. Not gathering evidence.

g. On 29 January 2019 Deborah Bowyer and Wendy Stewart blocked the entrance to the car park when C sought to enter it.

16. If yes, did the conduct amount to a detriment?

17. If yes, was the reason for the conduct that C had done the protected acts?

Failure to make reasonable adjustments:

18. The PCP relied upon is the requirement to fulfil the function of her job role, including the need to speak to members of the public and stakeholders on the phone. (R accepts this PCP was in place and was applied to C)

19. Was the PCP applied to all including C?

20. Was C placed at a substantial disadvantage by the application of the PCP to her?

21. If yes, what adjustments would it have been reasonable to make / would those adjustments have alleviated the substantial disadvantage?

a. C says R ought to have provided a noise reducing headset (which was provided in late July 2017) and / or a quiet room from which to undertake the calls, which should have been provided in or around August [2017].

22. Did R fail to make reasonable adjustments?

Wrongful dismissal (notice pay)

23. Did C resign without notice?

24. If yes, had R breached C's contract by reducing her to half pay whilst on sick leave, and by failing to notify her?

25. If yes, was this a sufficiently serious breach entitling C to treat herself as dismissed without notice?

26. Has C received all pay to which she is contractually entitled?

Holiday Pay

27. Was C entitled holiday pay at a higher rate between 1 April 2019 and 3 May 2019?

28. How much holiday entitlement had accrued at the date of termination.

29. If yes, has C been paid the holiday pay to which she was entitled?

Jurisdiction

30. Are any of the claims out of time?

31. If yes, should time be extended either on a just and equitable or reasonably practicable basis as appropriate?

THE FACTS

17. Our fact find focuses on the issues left to determine following the withdrawal of the complaints of harassment related to disability (allegation 9(f)(ii)), for breach of the duty to make reasonable adjustments, victimisation (allegation 15(b)(ii)) and for holiday pay by the Claimant.

18. We heard live evidence from the Claimant, TW, DB, MO and DV. The Claimant's supporting witness, and the Respondent's witnesses JV, DJ, WS and JB were accepted unchallenged.

19. The statement of AH on behalf of the Respondent was contested by the Claimant, and as AH did not attend to give live evidence, her statement is given less weight than the statements of those witnesses, either put to challenge or accepted as unchallenged.

20. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering and listening to the factual and legal submissions made by and on behalf of the respective parties.

21. The Respondent is a local authority.

22. The Claimant says she worked in the Business Support team in the Adult Social Service long term conditions team from 10 July 2017 (see bundle page 323A), and this is not in dispute. In her statement the Claimant says she was employed to the 3 May 2019. However, with reference to page 596, the Claimant's resignation letter is dated 4 May 2019, which the Respondent accepts as an immediate resignation, so the last day of service would appear to actually be the 4 May 2019.

23. The Claimant is a disabled person, by reason of a hearing impairment, at the relevant time for the purposes of section 6 of the Equality Act 2010 (see Judgment 3 February 2020, page 128D). With the withdrawal of the failure in the duty to make reasonable adjustments complaint the question of the Respondent's knowledge about this is no longer relevant.
24. It is accepted that the Respondent dealt with the Claimant's need for noise reducing headphones (we were referred to workplace assessments at pages 323g and 323J). In oral evidence the Claimant accepted that moving her to a quiet room in August 2017 would not have been reasonable, as she needed to be able to interact with her colleagues while learning the role. The complaint of failure in the duty to make reasonable adjustments was therefore withdrawn by the Claimant.
25. Chronologically we then move to the Claimant's first allegation of harassment which is said to be related to disability, namely ... **On or around mid-July 2017 Deborah Bowyer made derogatory remarks that C should not have applied for her position if her deafness meant she was unable to do her job.**
26. The Claimant addresses this allegation in paragraph 2 of her witness statement ... "Within the first of second week of employment at the end of the working day she [DB] made that highly derogatory remark that I should not have applied for the job if I could not do it (referring to my disability) (A3, i.11) (p.441, p.507). I burst into tears in the office, I was shocked I came from an Occupational Health background and advised her that the business needs to make reasonable adjustments (A18). Tina was present during this outburst and noticed I was obviously upset by the comments."
27. The Claimant's supporting witness Margaret Maruffo (the Claimant's mother) does state in her witness statement that she recalls the Claimant mentioning this comment to her (see paragraph 7), although we observe that her mother did not directly witness any such comment.
28. What DB says about this allegation is at paragraph 12 of her witness statement "Regarding paragraph 9.a. [128V] I say that no comments were made like alleged, at all, by me or anyone I heard. I just would not say that. If someone has a disability it is supported at our workplace. C says that Tina was there when I am supposed to have said this [458] and that she was "stood right there" which I calculate that must have been very early on in July 2017. I know my manager and if she had heard anything like that she would have taken action."
29. What TW says at paragraph 30 of her witness statement is she did not hear it or anything like it.

30. This allegation was put to DB in cross examination and she did not agree that she had made such a comment. DB also confirmed in cross examination that she had no issues with the Claimant, she did not agree that they had never got on from day one, nor agree that she had made a lot of offensive hostile comments to the Claimant in the office.
31. It is the Claimant's evidence that TW was present when the comment was made. During cross examination, the Claimant said for the first time in oral evidence that the text she refers to in paragraph 2 of her witness statement included an apology from TW that she had understood related to the comment made by DB. To explain the absence of this detail in her written witness statement the Claimant said that she could not include everything in her witness statement. However, this would be a matter of a few additional words, so it is surprising it is not included.
32. This was all denied by TW. She confirmed in cross examination that she did not recall DB making such a comment and the communication that TW had with the Claimant at this time was in relation to sorting the headset.
33. TW described how the only incident she recalled was on a Friday somebody texting her (not DB) saying that the Claimant had arrived upset because she was finding it difficult to hear the calls, and TW followed up with the Claimant having a conversation about the headset and sending a text to the Claimant saying don't worry that will be sorted.
34. There is clearly a dispute of fact here, so we need to consider which account is proven on the balance of probability.
35. We observe that there is no reference made to this allegation by the Claimant in the notes relating to her informal grievance (see page 451).
36. The first documentary reference to the matter is in the complaint by the Claimant raised on 30 October 2018. This is 15 months after the alleged comment is alleged to have been made.
37. There were opportunities before this for the Claimant to raise this matter, for example as part of her informal grievance at the end of January 2018 or in any of her various 1:1s that followed. The Claimant explained in cross examination that the reason for this was it was too soon as she had just started at the Respondent and 1:1s were not the right forum. The Claimant also acknowledged that there were no issues when the Respondent turned its attention on colleague X (around February 2018).
38. There is a time limit jurisdictional issue raised about this alleged comment (it being in July 2017 and the claim not being lodged until 18 February 2019), and the Claimant submits it would be just and equitable for us to exercise our

discretion to extend time. The Claimant's evidence about why she did not submit her claim before she did is that she wanted the internal process to address matters first (see paragraph 7 of her witness statement). This was by her raising her grievance on 30 October 2018. However, by then the comment was 15 months out of date when the grievance was raised.

39. Considering all these factors we accept the account of DB and TW which is consistent and reflects the contemporaneous documents. Therefore, we do not find that the Claimant has proven on the balance of probability that the comment she alleges happened.
40. Chronologically we then move to the Claimant's second allegation of harassment which is said to be related to disability, namely ... **Between July 2017 and October 2018 C's colleagues deliberately talked over C when she was using the phone and her noise reducing headset, preventing it from being effective.**
41. The Claimant addresses this allegation in paragraph 3 of her witness statement ... "Throughout my employment Debs, Michelle and Tina (sometimes Wendy) would shout at me whilst I was talking on the telephone to service users making the headset ineffective (A4, i.12), (p.441)."
42. What DB says about this allegation is at paragraph 13 of her witness statement... "Regarding paragraph 9.b. [128V] I deny that this happened at all. If it gets a bit noisy we put our hands up if on the phone or go "shhhhh" because the noise level can grow if there are several conversations going on. The allegation that I "deliberately talked over" C when she was using the phone is false the accusation I did so "deliberately" to create a hostile environment is not true."
43. TW says at paragraph 32 of her witness statement that it did not happen.
44. In cross examination DB was asked about paragraph 4 of her witness statement where DB states the Claimant did not always use the headset. DB confirmed that this was because sometimes the Claimant removed her headset to have a conversation with another colleague so answered the phone before putting her headset on. DB confirmed that she could not recall people shouting over to the Claimant to ask questions. DB did not accept that she shouted over the Claimant.
45. TW confirmed in cross examination that there was never anybody shouting over when the Claimant was on phone, occasionally someone would indicate if they had spoken to the caller earlier and need to refer to it, but not shouting over when on the phones. TW explained that it was a busy office environment, people working in the office, a busy and noisy office and people did raise voices, but nobody ever shouted like the Claimant suggests. TW confirmed that she

did not accept the Claimant's account of Wendy shouting at the Claimant, which TW investigated as part of the informal grievance and no one else she interviewed supported.

46. TW confirmed in cross examination that if there was a culture in the office of people shouting then as herself and DB were two desks away, if anyone was shouting she would have said something and other team members would have said something as well if it got too loud. TW confirmed that if there had been shouting in the office it would have been addressed at the time.
47. This issue was not put to WS by the Claimant.
48. The Claimant asserted before evidence that for this allegation it is conduct extending over a period lasting until she submitted her formal grievance in October 2018.
49. The Claimant's evidence on this point though was not consistent with this assertion. We were referred to page 25 of the bundle which is a timeline produced by the Claimant around the time of her formal grievance appeal and this matter is referred to by her as being sometime in July 2017 that talking over commences. There is then no further reference to it save for the specific incident on the 30 January 2018 (which was the subject of the informal grievance). We were not presented with any positive evidence that this alleged conduct does continue to the end of October 2018. The Claimant confirmed in cross examination when asked if she was bullied because of her hearing impairment that she did not believe she was bullied because she was a disabled person, she believed she was targeted as being a different person in the team. The Claimant was not clear it did continue when asked about it in cross examination confirming that there was a period from around February 2018 when they were picking on colleague X and that she was relieved they were not picking on her.
50. Considering all these factors we accept the account of DB and TW which is consistent and reflects the contemporaneous documents. Therefore, we do not find that the Claimant has proven on the balance of probability that this happened as the Claimant alleges.
51. To then consider the next allegation of harassment, which is said to be related to disability, namely ... **In February 2018 C's team leader Tina Watson did not stop the harassment and asked C if she had mental health problems and referred her for counselling because she did not believe C.**
52. The Claimant addresses this allegation in paragraph 5 of her witness statement. The Claimant explains how TW reacted towards her when she set out her concerns... "Tina asked me if I had mental health problems when I told her and I felt utterly shocked that she asked me this as if referring I must be insane to

report bullying (A5, i.32) (p.26, p.459, p.500),” We note that this is not what the transcripts provided from TW’s handwritten notes record about what was said at the meetings between the Claimant and TW at that time (see pages 451, 454 and 455). TW confirmed that the handwritten versions of the notes were made by her (TW) at the time.

53. The Claimant alleges that TW did not stop the harassment. It is not accepted by TW that the Claimant was subjected to harassment. As already referred the Claimant seems to accept that any alleged bullying of her stopped, certainly from when colleague X returned to work in February 2018 and as recorded in her 1:1 documents, which do not refer to any ongoing issues. The Claimant confirmed during cross examination that so far as she was concerned WS did rectify the behaviours she complained about and for a short time the behaviour was rectified. The Claimant suggested that the issue for her was not being given the option to go formal with her complaints, but she accepted that things were better after the informal process. Subsequently during cross examination the Claimant confirmed that WS was a nice person, and that they didn’t get on that day but moved on after that incident, she said she was offended that day but they moved on and did not have a problem after that as WS is nice person. From the Claimant’s own evidence therefore, it appears that the matters alleged in the informal grievance did stop, things are better so a formal grievance is not needed or raised at that stage by the Claimant.
54. About the counselling provided the Claimant accepted in cross examination that it was a good thing for her and not to her detriment.
55. What TW says about this allegation is at paragraph 36 of her witness statement ... “Paragraph (9.c.) refers to me personally. I have never asked Mandy if she had a mental health problem. That simply never happened. I was aware that Mandy’s neighbour had committed suicide at the beginning of January 2018 but I was not aware of the circumstances until the end of Jan 2018. Mandy confirms that she told Fiona Robinson and Sally, but I believe Mandy told me about him hanging himself and her hearing noises in their garage at a later date in conversation. Had I have known this earlier in January 2018 I believe I would have suggested counselling was available for her then. Similarly, given that Mandy had raised a grievance about bullying, I would have advised her that she had free access to counsellors. This would be standard in this scenario.”.
56. TW confirmed in cross examination that she never asked the Claimant if she had mental health problems and denied that her genuine motive for referring the Claimant to counselling was because she thought the Claimant was insane.
57. We accept the account of TW which reflects the contemporaneous documents. Therefore, we do not find that the Claimant has proven on the balance of probability that this happened as the Claimant alleges.

58. To then consider the next allegation of harassment, which is said to be related to disability, namely ... **Between February 2018 and June 2018 Deborah Bowyer, Tina Watson and Michelle conducted a vendetta against Colleague X to try and get her sacked because of her disability**, by:

- a. Reporting her for trivial issues and exaggerating them;
- b. Making comments about X's Donald Trump stress ball;
- c. Making comments about X's appearance;
- d. Hiding team food from X and telling her she must not borrow tea bags, and should bring her own;
- e. Making cruel comments about doughnuts and X breathing over doughnuts;
- f. Making comments about X every day before she arrived and after she left;
- g. Tina breached X's confidentiality by advising C about incidents regarding X in her 1:1;
- h. Team member comments that X was not part of their team.

59. The Claimant addresses this allegation in paragraph 6 of her witness statement ... "It was discussed at a team meeting that the team did not want her to return and a vendetta to get rid of colleague X commenced (A6, i.16) (p.26- 27). It was very cruel and at times disturbing and abusive (A6,iii, i17), (A6, v, A6, vi, i.36) (p.431-2) how they treated my colleague bearing in mind our department has a statutory duty to protect vulnerable people and this is one of it's main functions. During this period of time, I felt very unhappy at work because of the behaviour towards my vulnerable colleague but felt I could not speak out due to the last reaction I experienced when I reported the team's behaviour (p.336-p.340, p.431). At first, I was relieved it was not me they were picking on but as time progressed the behaviour towards colleague x escalated and so did colleague x's behaviour. I started having trouble sleeping my conscious felt troubled about the way X was being abused in the department that is meant to protect vulnerable adults. I was saddened when I heard them rejoicing in the office that X finally did something that got her suspended. I wasn't sure where to turn until Tina sent the email regarding colleague X (p.349) then I thought it over for a few days and decided to reply to get justice for me and x and to stop the behaviour of the team once and for all (p.349-350)!".

60. The Claimant confirmed in cross examination that the alleged vendetta against colleague X did not continue after X left on leave in July 2018. The Claimant

confirmed that she does not complain about it until October 2018 following TW's email dated 23 October 2018 (see page 349) which the Claimant says shows they were going to dismiss X. The Claimant accepted that the words in the email do not say that, confirming that it doesn't say dismiss X, but she asserts if you read between the lines, then she thought X was going to be dismissed. This is a common theme in some of the responses given by the Claimant in cross examination, where a document does not expressly support what she says, then she says it is necessary to "read between the lines". Evidentially it is for the person alleging that a document says or means something that is not expressly stated to prove this. The Claimant merely makes an assertion this is the case, rather than proving it as so on the balance of probability. We also note that this assertion is not supported by the email the Claimant writes in reply to TW dated 26 October 2018 (page 349) which says ... "I was wondering if I could talk to you about this because I feel [X] was bullied a little by the other members of staff."

61. The Claimant was asked why she did not raise a grievance when X was attending work. The Claimant confirmed that she did not feel X was well enough to be at work so when X was signed off, she (the Claimant) agreed with that.
62. We have also noted the descriptions of X given by the Claimant in her 1:1 for April 2018 (see page 338). The Claimant is recorded as saying the incidents with X are "interesting and sometimes amusing". The Claimant tells of a random conversation she had with X "re pulling pants down". The Claimant appears to be content to pass information on about X, just as she has done in these proceedings, without any input from X.
63. In cross examination the Claimant did not appear to suggest that these matters with X should not be managed, but that asking for input at 1:1s was the wrong way to do it, and X should be managed through a Performance Improvement Plan instead (during her cross examination of TW the Claimant asserted that the 1:1 format should not include a section about staffing). Further, the Claimant confirmed in cross examination that she was happy to give her teabags to X and confirmed that it was unreasonable for someone to not eat food someone had coughed or breathed over, and voice that. But these are the Claimant's views about how she would manage X, about her own property and the food she eats and does not consider how others may feel about it, including X.
64. From her answers in cross examination the Claimant appeared to be asserting that she had saved X from dismissal enabling her to leave by reason of redundancy instead. This is just an assertion by the Claimant though, and it can be asserted the other way, in that X was fairly managed and left happy by way of redundancy. In fact, the documents we have been presented support that position, not the other (see the exit interview notes with X at pages 618B and 618D).

65. TW addresses this allegation in paragraphs 37 to 41 of her witness statement.
66. TW describes how she was managing colleague X at work for a number of years and denies that there was any vendetta against X to get her sacked.
67. Factually it is not in dispute that TW knew X for a long time (TW says 18 years), whereas the Claimant only worked with X for a matter of months (between February and July 2018).
68. In her witness statement at paragraph 40 TW says ... "Overall X and I had a very good relationship and X liked and respected me as the manager of her day to day tasks and duties. There were times that she didn't like me though and called me various names but this was always when I had caught her doing something she shouldn't or spoke to her about it. I never thought less of X because I had to help her with boundaries as part of my managing role (and by doing so making reasonable adjustments to expected standards of behaviour and their consequences to a certain extent). 41. I know X better than anyone else and was one of the only managers that could manage her behaviour in the workplace over the last few years as her health deteriorated."
69. TW also states that the reporting of issues about X was "necessary in the interests of the health, safety and welfare of X and all staff. Nothing was exaggerated in so doing as far as I am aware and I witnessed many of the behaviours reported as well. I discussed this with C in her 1:2:1 for example on 16th April 2018 [338-339]."
70. In cross examination TW was asked by the Claimant why in her 1:1 on the 16th April, TW demanded information about X. TW replied that she did not, and that there is a box to be completed about staffing, and that was not ever used to gather or gain information against X. TW explained that she had a duty to make sure staff were well supported about X in the office, when she could be volatile and make staff uncomfortable. TW confirmed that it was her job to ensure safety. TW confirmed that she did prewarn the Claimant about X. She confirmed that her (TW's) motives were to manage X and her interactions with the teams and the way she (X) was perceived in the wider workplace.
71. DB addresses this matter in paragraph 14 of her witness statement ... "Paragraph 9.d. is hurtful and untrue. There was no vendetta against Colleague X to try to get her sacked because of her disability involving Tina, me and or Michelle. There are various slightly more specific allegations in the bundle documents and I would be willing to answer each and every one but the answer will be the same. This is not true. Colleague X was a valued colleague albeit she had many issues and behaviours which needed careful management. That was not my role but everyone in the team tried to help X with her work and pointing her towards more appropriate behaviour which did not disturb team members or service users and other visitors to the office." DB address matters

in specific detail in paragraph 16 of her witness statement and what she describes is consistent with TW.

72. DB in cross examination did not accept that the 1:1s were to gather evidence against X, but were to encourage people to communicate, asking about wellbeing in the team and if matters made some people uncomfortable. DB did not accept that anyone was cruel to X.
73. The documents we have been presented support what TW and DB say, not what the Claimant says. The exit interview notes with X are positive (see pages 618B and 618D). The email from TW does not support the Claimant is to be dismissed and the alleged letter of suspension of X dated 18 July 2018 (see page 603A), does not say that X is suspended, again the Claimant saying that to see this we have to “read between the lines”. The Claimant is merely asserting her view of matters which appears to be based on what she thought was right for X. There is no evidence presented to us that X’s confidentiality was breached, or that X felt the same way the Claimant did about herself.
74. We prefer the evidence of TW and DB on this matter and do not find that the Claimant has proven on the balance of probability that this happened as the Claimant alleges. There is nothing to support in our view either, that it would be reasonable for the alleged conduct to have had the effect on the Claimant she has described.
75. To then consider the next allegation of harassment, which is said to be related to disability, namely ... **In February 2018 Tina Watson deliberately treated the grievance as an informal grievance.**
76. In paragraph 5 of her witness statement the Claimant says ... “I texted Tina after the call and I advised her I felt bullied (p.335). I discussed what happened in the office that day and prior events I named Debs, Wendy and Michelle as a team bullying culture (p.422).”. The Claimant confirmed during cross examination that she opened the process informally.
77. TW’s evidence is that the Claimant raised an informal grievance and that is what she dealt with, as confirmed by the content of an email at pages 367 and 368 and by TW in cross examination. As was apparent from the oral evidence and as submitted by Respondent’s Counsel this allegation by the Claimant is principally based upon her misreading the e-mail sent by TW on 3 December 2018 in which she stated that the January 2018 grievance “was dealt with informally following no formal policy or procedure” (emphasis added). We accept this point that the Claimant failed to recognise that TW’s statement confirmed she had followed no formal policy, since the Claimant invoked the informal procedure, rather than no policy or procedure at all.

78. It is common fact that the Claimant raised an informal grievance, therefore we find that what happened is what the Claimant wanted (an informal grievance) so it cannot therefore be unwanted conduct or to her detriment.
79. To then consider the next allegation of harassment, which is said to be related to disability, namely ... **In February 2018 Tina Watson conducted a flawed and unreasonable investigation of the grievance by failing to follow policies and procedures, including failing to note anything.**
80. The Claimant deals with this allegation in paragraph 5 of her witness statement ... "Tina did a very poor investigation (p.663- p.664) and I later found out that Debs was not even investigated by Tina even although she was the person I named as the ringleader (A5, i.46) (p.18, p.357, p.367, p.397, p.422, p.451-455). I was given no right to appeal Tina's decision and I was unhappy about the outcome (p.337, p.479). I was sent to counselling which in the end I enjoyed going to because it was an hour away from the team."
81. About this issue it was confirmed by the Claimant in cross examination that it was the lack of a HR record of the informal process that is the issue for her. The Claimant agreed that this was not a requirement of the Respondent's policy, but she thought it would be what a reasonable employer would do.
82. TW was cross examined about this and said that she had kept notes on the Claimant's HR file she kept, and as the matter was informal, she would not escalate the matter to corporate HR.
83. In the cross examination of the Claimant and during her cross examination of TW, the Claimant appeared to accept that the notes made by TW (and then typed up by MO) that related to her (the Claimant) were accurate, save for the Claimant initially asserting that she had referred to DB as being the ringleader and that she (DB) should be investigated. The Claimant did not maintain this position when questioned further though as she then confirmed that what she is recorded as saying to TW at page 451, the allegation of 3 in click, were the words she used. She maintained though that she did definitely say that DB was the ringleader, but that she didn't say investigate DB, because she thought that was implied by her saying DB was the ringleader. Then subsequently in cross examination the Claimant was asked to confirm what was inaccurate in the notes at page 451 and she confirmed that the only thing she didn't know as recorded in the notes about the meeting between her and TW was whether TW had an email from Fiona as the notes refer. The Claimant confirmed that she didn't disagree with any of those notes as she did remember saying what was written there.
84. TW confirmed in oral evidence that Fiona was out on lunch when the alleged incident happened, so did not witness anything and that was why she was not interviewed. TW confirmed that her notes were made at the time of the

interviews and the typed versions contained in the hearing bundle are exact copies.

85. TW in cross examination when asked about the Claimant's assertion that the notes were not stored on the Claimant's HR file, explained that they were retained on the Claimant's HR file that TW held in her office. TW also confirmed in cross examination that she did keep AH updated that there was a complaint and an informal investigation (TW says they met on the 2 February 2018 to discuss it). This is not wholly consistent with paragraph 14 of AH's witness statement, but AH did not attend this hearing to be asked about this matter.
86. TW did not agree that she said to the Claimant that was the end of it, nor that the notes she made, as it was an informal investigation, needed to be given to the HR Corporate department as suggested by the Claimant.
87. We prefer the evidence of TW on this matter and do not find that the Claimant has proven on the balance of probability that this happened as the Claimant alleges.
88. To then consider the next allegation of harassment, which is said to be related to disability, namely (as now combined following the correction of the date by the Claimant) ... **In October 2018 Tina Watson conducted a flawed and unreasonable investigation of the grievance by ... Disclosing details of the allegations to Debora Bowyer in advance of her interview ... AND ... In October 2018 Tina Watson lied during the investigation to cover up facts and revealed details of the allegations to Ms Bowyer in advance.**
89. The Claimant deals with this allegation in paragraph 8 of her witness statement ... "The investigation was bias from the start (p.662- p.663, p.665, p.401-4) they shared full details of the complaint with Debs over 24 hours before at Tina's request (A8i, i.52), (p.365-6)."
90. DB says at paragraph 18 of her witness statement ... "Regarding paragraph (9.g.), I was not aware that a complaint had been made against me until I received an email from Marice Olivier on 3rd December 2018 inviting me to an interview on 5th December 2018. This was the first time I was aware of any issues that C may have had with me [364]. I was shocked and Tina Watson could see that and asked Marice to release some details so I would not be in the dark about the allegations against me [363A]. I think I got some notes the day before my meeting with Marice [149]. I was relieved and grateful because I was in a state of shock at first and very upset to know that I was accused of something but didn't know what, just that it was serious and there was a big investigation going on."
91. TW confirmed in cross examination about disclosing details to DB, where she was asked about the email at page 365 and why she was supporting DB, that

it was because the formal grievance the Claimant made was about the way X was being treated by the team including DB and her (TW). She explained that she was supporting DB as her line manager and that she couldn't support the Claimant as her line manager as the Claimant was claiming about the actions of her (TW). TW was asked if she agreed that she had therefore treated the Claimant unfairly as she had raised a grievance and TW confirmed that she had not as it was not her releasing the details to DB, but her asking MO to do it.

92. DB confirmed in cross examination that she was passed the information by MO, and it was sent only to her.
93. During cross examination the Claimant confirmed that her "fair" grievance policy would say that the person accused should have no knowledge of what they are about to be interviewed about. This is the Claimant's perspective on the matter and does appear to be counter to the laws of natural justice, where the accused should be made aware of the case they face.
94. The Claimant's accusation against TW about TW lying was confirmed by the Claimant to be that TW pretended that she did not know the full details of the Claimant's neighbour's suicide earlier than she says. The Claimant asserted that this went to TW's genuine motive for referring her to counselling. If it were as TW says over concern the effect of the Claimant's neighbour's suicide had on the Claimant, that would have been the time to refer her to counselling. As TW did not this supports that TW's true motive for referring the Claimant to counselling when she did, was she believed the Claimant was insane, rather than concern over how her neighbour's suicide may have affected her.
95. TW confirmed in cross examination about the allegation of lying that she had seen the text at page 334 (dated 4th January 2018) from the Claimant which says the Claimant was told by her neighbour that her neighbour's son (who was living with the neighbour) had committed suicide at the weekend. TW confirmed that a discussion was had at the 1:1 on the 23 February 2018 (see page 337). TW accepted that she knew the full position before the October 2018 grievance.
96. TW confirmed when asked about knowing about the full details earlier than the informal grievance that it was not correct and the Claimant had texted her on 4th, they then had a supervision meeting on 5th with no mention of it. The first mention in supervision being recorded in the February meeting as seen at page 337. TW did not accept that she referred the Claimant to counselling as they do not refer people, but that she suggested it may be beneficial and the Claimant decided to take up the offer. As we have already noted the Claimant did find it beneficial.
97. We accept the evidence of TW and DB here. The Claimant has not proven on the balance of probability the conduct she alleges.

98. To then consider the next allegation of harassment, which is said to be related to disability, namely **On 29 January 2019 Deborah Bowyer blocked the entrance to the car park when C sought to enter it.**
99. The Claimant deals with this allegation in paragraph 10 of her witness statement ... “Just before my appeal hearing with David Vitty on 29th January 2019 the car park incident occurred (A17, i.42). Debs smoking a cigarette and talking Wendy at the car park entrance, they saw me and Debs started shouting something, I could not hear what it was as I am partially deaf and traffic noise effects my ability to hear. Debs had tears in her eyes and Wendy held her back and she was shouting at Wendy, it was like she was going to verbally or physically attack me. I felt intimidated and scared so I took out my phone and turned my back on them and pretended to be on a call. After 15 minutes or so I turned round and they were gone. I felt shaken, distressed and anxious about walking up the stairwell to my car in case she was waiting there to attack me.”.
100. We note that the Claimant’s account does not say DB blocked the entrance to the car park when the Claimant sought to enter it.
101. What DB says about this is at paragraph 22 of her witness statement ... “I was having a cigarette on the way to my car and walking along with a colleague. We stopped at the bottom of the slope [Exhibit 1 p.737] so I could finish my cigarette before entering the car park and we were chatting for a few seconds when my colleague said ‘I think Mandy is walking towards us as I can see white boots out of the corner of my eye’. I never turned around to look, never made eye contact. I put my cigarette out and we went up the stairs at the main entrance towards my car. Then my colleague said ‘I think she’s gone round the back’. We carried on to my car and drove home. That is it.”.
102. In cross examination DB was asked to recount her recall of the alleged car park incident and confirmed that she went down to the car park, had a cigarette near the entrance, WS then said that the Claimant may be approaching as she could see white boots. DB confirmed that she didn’t turn around, didn’t look. DB denied that she was shouting anything over to the Claimant, denied that WS held her back and did not agree with the Claimant’s assertion that she would not back down from an argument.
103. WS deals with it at paragraphs 5 to 9 of her witness statement ...“5. When we arrived at the car park entrance [Exhibits 1&2] Debs extinguished her cigarette and whilst she was doing this, I noticed that someone was walking over from the Civic Centre wearing white boots. They were around the car barriers [Exhibits 1 and 2]. 6. I mentioned quite quietly to Debs that I thought the claimant was on her way over. At this point Debs and I went up the stairs to car park level B. 7. By this time the person was by barriers, I could then see it was the claimant. I think I said “I think she’s gone around to the back” to Debs

as we walked up. 8. No interaction between us and the person took place at all. I am sure that Debs did not even look over. 9. I had been accused of blocking the doorway. This is not even close to the truth.”

104. As we have already noted the Claimant herself has not presented witness evidence that the specifics of her allegation are what happened. Within the documents there are a number of different accounts produced by the Claimant, as can be seen with reference to the minutes of the appeal meeting on the 5th February 2019 (see page 510), which the Claimant says is the most contemporaneous to the incident, then her updated timeline (see page 30), then her account to the Tribunal (at page 39), then the version in her witness statement. The Claimant explained the difference in accounts is because she was not allowed to expand on the matter at the appeal meeting, and the notes made are not her notes, then that her short term memory was affected by the stress she was under at that time (and she refers to paragraphs 9 and 10 of her witness evidence in support of this assertion), although she confirmed that her memory is okay now as she is on medication.
105. The account of DB and WS is consistent, and the Claimant did not want to challenge the evidence of WS, we therefore accept the account of DB and WS as to what happened on the balance of probability, as the most accurate. The Claimant has not proven on the balance of probability the conduct she alleges.
106. Addressing the factual matters in relation to the Claimant’s complaints of direct sex discrimination and harassment related to sex that ... **Between August 2017 and October 2018 Deborah Bowyer made derogatory comments about C arriving late for work because she had to drop her daughter off at school (C is a single mother).**
107. The Claimant deals with this allegation in paragraph 4 of her witness statement ... “Some of the offensive remarks were about me being a single mother she seemed to have a stereotypically view about single mothers (p.440, p.458). I was often questioned about my status by Debs in the office in a humiliating and offensive way especially when I arrived later in the mornings as I had to do the school run (A2, i.7), (p.23). Debs would try and shame me in the form of asking me questions about my finances claiming I should be well off due as I was a single mother and as I could claim benefits. I was a target daily for offensive remarks and comments”.
108. From paragraph 12 of the witness statement of Margaret Maruffo ... “Mandy told me one day that she was feeling very unhappy and intimidated at work due to a colleague called Debs constantly making insulting remarks to her. She was considerably upset one particular day when the same member of staff made insulting comments about her being a single mum.”.

109. With reference to the notes made by TW at the time of the Claimant's informal grievance they do record the Claimant saying ... "Don't understand being a single parent" (see page 451) and ... "Don't understand single parent" (see page 454). There is no suggestion from this that derogatory comments about the Claimant being late are being made by DB.
110. DB says at paragraph 9 of her witness statement ... "Paragraph (5.a.) [128U] I did not make derogatory comments about C arriving late for work because she had to drop her daughter off at school or for any other reason. It was Mandy who was always flustering when she got in saying it was her daughter who made her late. We often suggested ways she could be more efficient in the mornings getting ready like getting children up and doing packed lunches the night before. There was nothing offensive and she joined in the conversations and did not ever appear to take offence."
111. The Claimant confirmed in cross examination when asked about what DB says in her witness statement that it was the tone of what DB said that made it offensive to her, she considered DB to be a hostile speaker.
112. The Claimant also agreed that what TW said in paragraph 26 was accurate, confirming that she (the Claimant) could never get to work on time, her daughter did mess about and she had to get her to Primary School.
113. DB did not accept when it was put to her in cross examination by the Claimant that the comments about the Claimant's daughter and the sensible suggestions made was a way to belittle the Claimant in front of others. When TW was asked if she targeted the Claimant because she is a single mother, TW confirmed that the Claimant was never targeted.
114. TW confirmed in oral evidence that she offered a flexible work pattern option for her team, not just the formal flexi, but flexibility for them to attend sports days and carol concerts etc, to give her team a good work life balance. We accept what TW says about this.
115. TW confirmed in cross examination that she was aware of conversations in general in relation to single mothers and accepted the Claimant was the only single mother in the team. TW did not accept though that it was aimed or directed at the Claimant confirming that it was general conversations about single mothers getting to work. TW confirmed that there were never any comments about the Claimant being late, this was not an issue as the flexi time system was in place, so the Claimant was never late due to flexi applying. TW confirmed that there were never comments about delay. TW explained that the Claimant would normally arrive around 8:45 or 8:50 and the only person that would make comments about being late was the Claimant. The Claimant asked what TW meant and TW confirmed that the Claimant would refer to her daughter's time. The Claimant did not challenge this. TW confirmed that no

comments were made about the Claimant being late and the conversations that did take place were how people managed their children when getting to work.

116. The Claimant asserted before evidence that for this allegation it is conduct extending over a period lasting until she submitted her formal grievance in October 2018. We were not presented with any positive evidence that this alleged conduct does continue to the end of October 2018. The Claimant was not clear it did continue when asked about it in cross examination confirming that there was a period from around February 2018 when they were picking on colleague X and that she was relieved they were not picking on her. We were also taken to the Claimant's own contemporaneous accounts, which as summarised by Respondent's Counsel in her closing written submissions record that ... "the team was supportive and always happy to help [323J - 323K]; and that "everything [was] ok" (April and September 1:1s), [339 & 344] and that "on the whole it [had] been a good year" (July end of year review) [341]". This does not evidence as the Claimant submits, and as noted by Respondent's Counsel ... "that the workplace was "toxic", "like a warzone" and that she "hated going to work when [she knew DB] would be working", is wholly inconsistent with those contemporaneous accounts."

117. About the comments in the documents being inconsistent with what the Claimant asserts the Claimant confirmed that she would say we need to read between the lines. This does not discharge her burden of proof and we accept what BD and TW say about this matter. We do not find that the Claimant has proven on the balance of probability the allegation she makes.

118. The Claimant also makes a **complaint of victimisation** and relies upon the following protected acts:

- a. In or around February 2018, the Claimant raised a grievance verbally with TW that she was being harassed on the grounds of her disability and/or sex (see pages 335 and 451); and
- b. In October 2018 the Claimant raised a formal grievance (see page 431)

119. The Respondent accepts that these were protected acts, with the caveat that it does not accept that the allegations in the October 2018 grievance, relating to the treatment of Colleague X, were made in good faith, although we note that DV in cross examination did not suggest that any of the matters the Claimant raised were raised in bad faith. In any event the Respondent does not seek to contest that the other elements of that grievance were not made in good faith; therefore, we find that the Claimant did do the asserted protected acts.

120. There is then an overlap of the alleged conduct that the Claimant relies upon as being detriments with the alleged unwanted conduct. That is:

- a. In February 2018 TW deliberately treated the grievance as an informal grievance instead of a formal grievance. As already noted, the Claimant does not say she raised a formal grievance, so treating it as an informal grievance is what the Claimant wanted, so the Claimant has not proven this to be a detriment to her.
 - b. TW conducted a flawed and unreasonable investigation of the grievance by failing to follow policies and procedures. We have not found TW did do this.
 - c. In February 2018 the Claimant's team leader TW did not stop the harassment and asked the Claimant if she had mental health problems and referred her for counselling because she did not believe the Claimant. We have not found TW did do this.
 - d. Between February 2018 and June 2018 DB, TW and Michelle conducted a vendetta against Colleague X to try and get her sacked because of her disability. We have not found this, and we would observe that we have not been presented evidence to support that even if this were so it was as a detriment to the Claimant because of her first protected act which itself made no connection with X.
 - e. TW conducted a flawed and unreasonable investigation of the grievance by (now said to be October 2018) by disclosing details of the allegations to DB in advance of her interview. Also, that in October 2018 TW lied during the investigation to cover up facts and revealed details of the allegations to DB in advance. We have not found TW did do this.
 - f. On 29 January 2019 DB and WS blocked the entrance to the car park when C sought to enter it. We have not found DB or WS did do this.
121. Allegations specific to the complaint of victimisation are that **after October 2018 did Marice Oliver, Anne Humphries and David Vitty fail to conduct the investigation and appeal of her grievance properly by:**
- c. Failing to comply with ACAS code of conduct;
 - d. Not questioning all the witnesses; and
 - e. Not gathering evidence.
122. MO in cross examination, with reference to MO's investigation notes, was questioned about the reference she made in her notes at the bottom of page 492 and the top of 493 of the bundle, to the member of the team she knew and it being surprising she would say something negative. It was confirmed that this related to Agnes and not Wendy as the Claimant had wrongly assumed.

MO confirmed that she did not know Wendy and confirmed that her comment about Agnes (which was referring to what TW's notes had recorded) was impartial as she (MO) had not interviewed Agnes as part of her investigation.

123. About TW's notes MO confirmed that she typed up the notes because TW had provided her with the handwritten notes, so for clarity she typed them up.
124. MO confirmed in cross examination that she did feel she had followed the ACAS code and dignity policy.
125. MO confirmed in cross examination that she did form an initial view as to who the relevant people to interview were, being TW, DB and Fiona, but she conducts fluid investigations so that she can respond to information as it comes up and if there is a need to investigate further people or she was asked to do so (in this case by the Claimant), she could and would. It is not in dispute that MO did question further people later in the process (see paragraph 23 of her witness statement).
126. We were referred to MO's interview notes of Fiona (see page 476) and Kieran (see page 373). MO maintained that the questions she asked of these witnesses were sufficient for the issues (with Fiona) and the witness (for Kieran). Having considered what the documents record as to questions and answers we agree with what MO asserts.
127. DV was challenged in cross examination about what his reason was to not decide the Claimant's grievance about X. He confirmed that the purpose of the appeal was whether the dignity at work hearing was conducted fairly and balanced, it was not the job of the appeal hearing to make a determination on the particular complaint concerning X. It was put to DV that he had failed to answer the grievance re colleague X, which DV did not accept, he stated that it was responded to and he was satisfied matters relating to X were dealt with outside the appeal process.
128. We note that the Claimant confirmed in cross examination, when asked to accept the Respondent would need to speak to colleague X, that no, colleague X does not need to be spoken to about the matters raised. As what the Claimant asserts is based on her assumptions about X, and she does not raise the matter with X's consent this would seem most unfair to X, that she be the subject of an investigation she has no input in.
129. DV was referred in cross examination to page 510 of the bundle (the notes from the appeal hearing) and paragraph 3.18, which refers to the complaint the Claimant makes about victimisation in the car park. It was put to DV that at that time it had only just happened and was a new incident, and if he agreed he said to the Claimant he was not going to bother to look at it. DV

confirmed that he did not say he was not going to bother to look at it but noted that it was outside of the appeal.

130. It was put to DV that he didn't investigate or gather evidence to victimise the Claimant. DV did not accept that. He explained that it was made clear at the outset of the appeal and indeed in the letter inviting the Claimant to the appeal that any new evidence that was not material to the original complaint would not be considered as part of the appeal hearing. DV did not accept that he had victimised the Claimant by not investigating that as part of the appeal hearing. He confirmed that the Claimant would have been able to raise the matter as a complaint, the appeal hearing was not the channel to do it. DV explained that the car park complaint was referring to a dirty look towards the Claimant and it was outside of the appeal hearing. It was something that the Claimant could have raised as a complaint after the appeal, and it would have been investigated.
131. The Claimant asked DV if he believed he did an investigation in compliance with the ACAS code. DV confirmed that he believes a thorough investigation was undertaken, and that his job in chairing the appeal hearing was to collect the evidence together and make a determination and he believed he did that properly. DV confirmed that it was extremely important that everyone who has a complaint about bullying and harassment has an opportunity for it to be investigated. DV confirmed that the Claimant had every opportunity to do that and he would have supported her to do so if she had chosen to do so after the appeal hearing.
132. DV confirmed that he understood that the original complaint made by the Claimant included an allegation that she was being shouted over when using her head set and that he believed that it was properly and adequately investigated by MO and presented in the dignity at work hearing.
133. The Claimant challenged DV that he had not addressed the shouting over allegation in his outcome letter. DV accepted that he didn't address specific points during the appeal hearing, as that was not the purpose of the appeal. He explained that the Claimant had made a series of complaints investigated by MO and heard by AH, his job, he said was to see if the process was fair and he did not intend to address all matters point by point. However, in respect of one issue where the Claimant did not feel that she had a workplace assessment, he thought it was helpful to explain in the reply that she did have an assessment and adjustments were made.
134. DV confirmed that the crux of the letter responding to appeal was to uphold the dignity at work that covered the whole of the Claimant's original complaint and it was never his intention to respond to every individual one. He explained that he took into consideration that accounts of the Claimant and AH,

based on the investigation by MO, and on the balance of probability he felt the original decision should be upheld.

135. We do not find on the balance of probability that the Claimant has proven that there was detriment towards her by MO or DV as she alleges, nor AH, as the Claimant has not asserted such a complaint in her witness evidence.

136. **Wrongful dismissal (notice pay)**

137. It is not in dispute that the Claimant resigned without notice. The Claimant confirmed in cross examination that she agrees she resigned without notice because, the Claimant says, they breached her terms and conditions.

138. The agreed list of issues confirms that the Claimant alleges that the Respondent breached her contract by reducing her to half pay whilst on sick leave, and by failing to notify her. The Claimant addresses this in paragraph 16 of her witness statement ... "The final straw was when they informed me two weeks after they had cut my wages to half pay without any prior consultation by letter and not having any sickness absence meetings (A19, i.49) (p.607- 608, p.674).".

139. The Claimant's letter of resignation is at page 596 of the bundle and it refers to her expectation to 6 months full sick pay.

140. However, the Claimant accepted in cross examination that the Respondent could reduce her sick pay in the way they did (see page 675A) as she was in the second year of her employment, so the only breach she can rely upon from the agreed list of issues is the lack of notification. However, there was no evidence presented to support that such notification was a contractual requirement, that was then breached and that this amounted to a fundamental breach. Further, it is only part of the alleged breach the Claimant relied upon when she resigns immediately to then claim wrongful dismissal, and it is based on the Claimant's wrong assumption at the time that she was entitled to 6 months full sick pay.

The Law

The case authorities we were referred to:

141. We were referred to the following cases by the parties:
- a. BAE Systems (operations) Ltd v Konczak 2017
 - b. Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686 / [2003] IRLR 96 / [2003] ICR 530
 - c. Grant v HM Land Registry [2011] ICR 1390

- d. Richmond Pharmacology v Dhaliwal [2009] ICR 724.
- e. Newcastle City Council V Spires UK EAT/10/ZT
- f. Malik v Bank of Credit and Commerce International SA [1998] AC 20
- g. Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666, 672A / [1981] IRLR 347
- h. Galilee v Commissioner of Police for the Metropolis [2018] ICR 634
- i. Aziz v FDA [2010] EWCA Civ 304
- j. South Western Ambulance NHS Foundation Trust v King [2020] IRLR 68
- k. Madarassy v Nomura International PLC [2007] ICR 867
- l. R v Birmingham City Council ex parte Equal Opportunities Commission [1989] IRLR 173
- m. Home Office v Saunders [2006] ICR 318, EAT
- n. Essop v Home Office (UK Border Agency) and Naeem v Secretary of State for Justice [2017] IRLR 558
- o. O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615
- p. R (on the application of the European Roma Rights Centre) v Immigration Office of Prague Airport [2005] IRLR 115
- q. O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School [1996] IRLR 372
- r. Whitley v Thompson (EAT/1167/97)
- s. Moonsar v Fiveways Express Transport Ltd [2005] IRLR 9, EAT
- t. Weeks v College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT
- u. Pemberton v Inwood [2018] IRLR 542
- v. Hartley v Foreign and Commonwealth Office UKEAT/0033/15
- w. Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, EAT

- x. MOD v Jerimah [1979] IRLR 436
- y. St Helens Metropolitan Borough Council v Derbyshire [2007] IRLR 540
- z. Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285
- aa. Deer v University of Oxford [2015] IRLR 481
- bb. Nagarajan v London Regional Transport [1999] IRLR 572
- cc. HM Prison Service v Ibimidum [2008] IRLR 940 EAT
- dd. Page v Lord Chancellor [2021] IRLR 377
- ee. Western Excavating (ECC) Ltd v Sharp [1978] ICR 221
- ff. Lewis v Motorworld Garages Ltd [1985] IRLR 465
- gg. BCCI v Ali (No 2) [2000] ICR 1354
- hh. Abertawe Bro Morgannwg University Local Health Board v Morgan [2015] UKSC 57 (UKSC 2015/0320)
- ii. Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] IRLR 278

142. We take these cases as guidance and not in substitution for the provisions of the relevant statutes.

The complaints of discrimination

143. This is a claim alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 (“the EqA”).

144. The Claimant complains that the Respondent has contravened a provision of part 5 (work) of the EqA. The Claimant alleges direct discrimination, harassment and victimisation (the complaint of failure in the duty to make reasonable adjustments having been withdrawn).

145. The protected characteristics relied upon are sex and disability as set out in sections 4, 6 and 11 of the EqA.

146. For a claim of direct discrimination, under section 13(1) of the EqA, a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

147. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant

protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B. In deciding whether conduct has the effect referred to each of the following must be taken into account:

- a. the perception of B;
- b. the other circumstances of the case;
- c. whether it is reasonable for the conduct to have that effect.

148. The definition of victimisation is found in section 27 of the EqA. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA; doing any other thing for the purposes of or in connection with the EqA; and making an allegation (whether or not express) that A or another person has contravened the EqA. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

149. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However, this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.

150. With regard to the claim for direct discrimination, the claim will fail unless the Claimant has been treated less favourably on the ground of her sex than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The Claimant relies upon a hypothetical comparator so as well as needing to prove on the balance of probability that there was the less favourable treatment she alleges (as this is disputed by the Respondent) she also needs to prove some evidential basis upon which it could be said that the hypothetical comparator would not have suffered the same allegedly less favourable treatment as the Claimant.

151. For complaints of harassment, it is necessary for the Claimant to prove on the balance of probability that she was subjected to the unwanted conduct she alleges as it is all disputed by the Respondent.

152. For complaints of victimisation, it is necessary for the Claimant to prove on the balance of probability that she was subjected to the detriment she alleges (as these are all disputed by the Respondent), on the basis that in this case it is not in dispute she did protected acts.

153. As to the burden of proof for the complaints of discrimination with reference to **Madarassy v Nomura International PLC [2007] ICR 867** Mummery LJ

stated that: 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination' (paragraph 58).

Wrongful dismissal

154. The Claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.

155. The legal issues are set out in the list of issues in respect of this claim.

Time limits

156. Of relevance to the question of time limits for the complaints still pursued are:

- a. The provisions in relation to Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623); and
- b. Section 120 of the EqA 2010 which confers jurisdiction on claims to employment tribunals and section 123 of the EqA2010, where section 123(1) provides that the proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. Under section 123(3)(a) of the EqA conduct extending over a period is to be treated as done at the end of that period.

The Decision

157. For the complaints of direct sex discrimination, harassment related to sex and disability, and victimisation the Claimant has to prove on the balance of probability the less favourable treatment, the unwanted conduct and the detriments she alleges, as these are all disputed by the Respondent.

158. Based on the facts that we have found against each allegation; we prefer the evidence of the Respondent's witnesses to that of the Claimant. Therefore, the Claimant has not proven on the balance of probability what she alleges. We find that no facts have been established upon which the Tribunal could conclude (in the absence of an adequate explanation from the Respondent), that an act of discrimination has occurred. In these circumstances the Claimant's claims of direct discrimination, harassment and victimisation, fail and are hereby dismissed.

159. About the complaint of wrongful dismissal the Claimant accepted in cross examination that the Respondent could reduce her sick pay in the way

they did as she was in the second year of her employment, so the only breach she can rely upon from the agreed list of issues is the lack of notification. However, there was no evidence presented to support that such notification was a contractual requirement, that was then breached and that this amounted to a fundamental breach. Further, it is only part of the alleged breach the Claimant relied upon when she resigns immediately to then claim wrongful dismissal, and it is based on the Claimant's wrong assumption at the time that she was entitled to 6 months full sick pay.

160. Clearly reducing someone's contractual entitlement to six months full sick pay down to two months full sick pay without notification can be argued as a fundamental breach, but this is not what the Claimant has proven on the balance of probability. What has been proven is the Claimant was paid correctly in line with her contractual entitlements and has not identified a contractual requirement for notification that she is to be paid in that way.

161. We find that the Claimant has not proven the alleged breach, so she has received all the pay to which she is contractually entitled because she resigned with immediate effect.

162. Based on the findings of fact and the determinations we have made we do not need to consider the jurisdictional matters, save to observe that the Claimant provided limited evidence as to why she did not submit her claim before she did, did not raise evidence about why the amendments adding further complaints were not made until they were, and as we heard in oral submissions from Respondent's Counsel, the Respondent had real prejudice in that AH no longer works for the Respondent and did not attend to give live evidence.

163. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 16; the findings of fact made in relation to those issues are at paragraphs 21 to 140; a concise identification of the relevant law is at paragraphs 143 to 156; how that law has been applied to those findings in order to decide the issues is at paragraphs 157 to 162.

Employment Judge Gray
Date: 12 November 2021

Judgment sent to Parties: 15 November 2021

For the Tribunal Office