Case Number: 3302176/2020
3303126/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms C Rayner	**v**	East of England Ambulance Service

Heard at: Cambridge

On: 31 January 2022 and 1, 2, 3, 4, 7 and 8 February 2022
In Chambers: 9 February and 17 March 2022

Before: Employment Judge Tynan

Members: Mrs A Carvell and Mrs H Gunnell

Appearances
For the Claimant: Mr D Brown, Counsel
For the Respondent: Ms J Smeaton, Counsel

JUDGMENT

1. The Respondent discriminated against the Claimant contrary to section 21 of the Equality Act 2010 by failing to comply with its duty to make reasonable adjustments, in terms of the first requirement in section 20(3) of the Act, as set out in paragraph 183 of the Tribunal's Reasons below ("**Claim A**").

2. The Respondent discriminated against the Claimant contrary to section 15 of the Equality Act 2010 by:

   (a) not facilitating a sustainable return to work for the Claimant between September 2019 and February 2020 ("**Claim B**");
   (b) by inviting her on 26 September 2019 to attend a final formal meeting on 14 October 2019 at which the termination of her employment was stated to be a possible outcome ("**Claim C**");
   (c) by moving her to nil pay on or around 3 October 2019 after 12 months' absence from work ("**Claim D**"); and
   (d) by deciding on or around 25 November 2019 not to reinstate or extend her sick pay ("**Claim E**"),

the Respondent having failed to show that this treatment was a proportionate means of achieving a legitimate aim.

3. The Claimant's complaint of harassment pursuant to section 26 of the Equality Act 2010 succeeds in so far as:

   (a) the Respondent invited her on 26 September 2019 to attend a final formal meeting on 14 October 2019 at which the termination of her employment was stated to be a possible outcome ("**Claim F**");
   (b) Mr Squibb of the Respondent stated in a letter to the Claimant dated 23 December 2019 that she had not engaged with the Respondent regarding her ongoing sickness absence ("**Claim G**"); and
   (c) Ms Bromley of the Respondent said to the Claimant during a telephone call on 15 September 2020 that making tea on the station was not an option ("**Claim H**").

4. The Claimant's complaint of victimisation pursuant to section 27 of the Equality Act 2010 succeeds in so far as:

   (a) the Respondent declined to permit Mr Roberts of the Respondent to continue to manage the Claimant's ongoing absence and planned return to the workplace in September 2020 after he returned to his substantive post as LOM in or around July 2020 ("**Claim I**"); and
   (b) the Respondent decided on or around 25 November 2019 not to reinstate or extend her sick pay ("**Claim J**").

5. The Claimant's remaining complaints that she was discriminated against contrary to the Equality Act 2010 and that the Respondent made unlawful deductions from her wages contrary to section 13 of the Employment Rights Act 1996 are not well founded and are dismissed.

6. Pursuant to Section 123 of the Equality Act 2010, the Tribunal determines that it would be just and equitable to extend time to enable the Claimant to bring Claims H and I under the Equality Act 2010, notwithstanding they were notified to Acas under Early Conciliation outside the primary time limit for notifying, and subsequently bringing, such complaints.

REASONS

7. The Claimant has brought two claims against the Respondent. Her first claim was presented to the Employment Tribunals on 31 January 2020, following Acas Early Conciliation between 18 November 2019 and 1 January 2020. Her second claim was presented to the Employment Tribunals on 17 March 2021, following Acas Early Conciliation between 7 January and 18 February 2021.

8. There was an agreed Cast List, Chronology and List of Factual and Legal Issues. The latter document cross-referenced the Claimant's Grounds of Complaint and the Tribunal therefore invited Counsel to update the List to incorporate the relevant allegations in the Grounds of Complaint. In the event there was insufficient time available to them to agree an updated single List. We have worked with Ms Smeaton's updated List, though have held in mind that her summary of the corresponding provisions in the Grounds of Complaint are not necessarily agreed by the Respondent.

9. There were a significant number of documents in the case, comprised in three lever arch files and a further Claimant's Supplementary Bundle. At various points during the Hearing additional documents were added to the Bundle. The Tribunal's task would have been made easier if there had been greater focus and a more proportionate approach to the documents in the trial preparations.

10. The Claimant gave evidence over three days. We shortened the Hearing days and increased the number and length of breaks in order to accommodate the Claimant's situation. She had made a 49 page witness statement. Whilst she was fundamentally a truthful witness, we have not approached her evidence (or indeed the evidence of the Respondent's witnesses) uncritically. We have borne in mind the growing judicial recognition that when a witness is doing their best to recount events as they recall them, even when these events are presented with confidence, their evidence may not always be a reliable guide to what happened. In Gestmin SGSP S.A. v Credit Suisse (UK) Limited and Anr [2013] EWHC3560 (comm), Mr Justice Leggatt (as he was then) made observations about the distorting effects of litigation on the reliability of oral evidence and stressed the importance of contemporaneous documents when making findings of fact. Memory can be unreliable when it comes to recalling past beliefs because there is the risk that past beliefs may be revised to make them more consistent with the present beliefs, particularly when there are competing accounts of meetings and conversations. It is often more reliable to base findings on inferences drawn from contemporaneous documents and known or probable facts. We have approached our fact finding task with this in mind.

11. We are also mindful in this case that the Claimant has experienced significant long term mental ill-health. She has a history of depressive episodes and a long standing anxiety disorder. We are satisfied that these adversely impacted both her concentration and her ability to recollect events when giving evidence at Tribunal, and we have made allowance for this. Equally, however, we consider that her anxiety disorder in particular has impacted her perception of certain events. Specifically, we consider that the Claimant's current views as to the potential barriers to a successful return to the workplace have informed her recollection as to the barriers in this regard that existed in January / February 2019, October 2019 and March 2020. We return to this when we examine events at those times.

12. The Claimant's friend, Stacey Williams, made a statement and gave evidence on her behalf. Her evidence relates to a telephone conversation between the Claimant and Joanne Bromley on 15 September 2020.

13. On behalf of the Respondent, we received witness statements and heard evidence from:

    a. Ms Claire Thwaites, Assistant General Manager and the Claimant's Line Manager from October 2018;
    b. Mr Luke Squibb, General Manager for North and Central Cambridgeshire - between November 2019 and July 2021 Mr Squibb was Acting Head of Operations;
    c. Mr James Norman, General Manager for Service Delivery in South Cambridgeshire - Mr Norman was briefly involved in relation to the Claimant in early 2020 when it was proposed that he would look into her first grievance;
    d. Ms Rachel Avery, Leading Operations Manager ("LOM") for Central Cambridgeshire - Ms Avery has performed a welfare role in relation to the Claimant as a result of her ongoing absence from the Trust;
    e. Mr Sylvester Mathias, Interim HR Manager who provided much of the HR advice and support in relation to the Claimant from 4 November 2019; and
    f. Ms Joanne Bromley, Duty Tactical Commander, who at the time relevant to her involvement in these proceedings, namely the period July to November 2020, was interim Assistant General Manager for Central Cambridgeshire.

Findings of Fact

14. We set out our primary findings of fact below. For convenience we have addressed the claimed PCPs in the Law and Conclusions section of our Judgment.

15. The Claimant commenced employment with the Respondent on 4 January 1988 and accordingly has 31 years' service with the Respondent. She commenced work as an EMT (Emergency Medical Technician) and subsequently worked for the Respondent as a Paramedic between 1993 and 2000, returning to work as an EMT on a part time basis from 2000.

<u>The Claimant's history of ill-health</u>

16. The agreed Chronology documents that the Claimant was first absent from work with depression in 1999, that she was absent with work related stress and anxiety in 2002, and absent with stress and depression in 2003. The next identified episode of depression was in 2012, some nine years later. However, it seems that the Claimant was impacted by ongoing mental health issues as reasonable adjustments were made to the Claimant's working arrangements in 2009 to provide continuity in terms of working with colleagues. That adjustment was reinstated in 2012 and 2013. In 2016, the Claimant was absent from work with a recurrent major

depressive episode. Once again, the same continuity adjustment was reinstated. The Claimant was then absent from work with work related stress / depression and a recurrent major depressive episode in the following two years, namely 2017 and 2018.

17. The agreed chronology therefore indicates that since 2016 the Claimant has experienced recurring depressive episodes on a more regular basis.

18. On 16 August 2018, the Claimant was diagnosed with cancer. On 5 September 2018, the Claimant commenced a period of sickness absence. She underwent a lumpectomy on 18 September 2018. She has hypertension; in an Impact Statement at pages 1132 to 1134 of the Hearing Bundle the Claimant explains that it arises from both her stress/anxiety and from her cancer medication.

19. The Claimant was diagnosed with diabetes in November 2019.

<u>The terms and conditions, and policies and procedures applicable to the Claimant's employment</u>

20. The Claimant's terms and conditions of employment are governed by Agenda for Change.

21. The Respondent's Policies and Procedures, including the provisions of Agenda for Change relating to sickness absence, are contained in Section 2 of the Bundle. They include:

<u>GRIEVANCE POLICY</u>

1. Policy Statement

1.2 The Trust aims to create a harmonious working environment and to maintain good working relationships. It is recognised however that there may be occasions when staff feel aggrieved and wish to seek redress. This procedure aims to resolve grievances informally, whenever this is possible in order to promote, maintain, and / or restore positive and harmonious employee relations in the workplace.

5. Standard Procedure

5.1 An individual member of staff who has a concern, problem or complaint about a matter affecting their employment should raise the problem in the first instance with their immediate line manager, or another manager if the grievance is against their line manager. In circumstances where this may not be appropriate employees should contact their trade union representative or the Human Resources Department. In order to enable the manager to fully understand the issue(s) being raised, the employee would be expected to provide as much information relating to the grievance at

the time of raising it, including copies of any witness statements on which they intend to rely. This will allow for a more timely review of the details and to provide a suitable response.

5.3 It is expected that both the manager and the employee will approach this informal resolution attempt in a positive manner with the intention and a clear willingness to find resolution to the grievance and avoid any need for formal grievance mechanisms.

5.4 The informal route should aim to be completed within 14 calendar days, taking into account duty commitments and involvement of other individuals, i.e. a trained mediator.

Stage 2 – Formal Grievance Meeting

5.6 Where, despite best efforts, an employee's grievance remains unresolved after informal resolution attempts or the matter is considered sufficiently serious to warrant informal resolution attempts being inappropriate (see Section 4.2), the employee will be permitted to request that the matter be dealt with formally by submitting it in writing to their immediate line manager in writing using the Grievance Registration Form (Appendix B). In circumstances where this may not be appropriate employees should contact their trade union representative or the Human Resources Department.

DISABILITY POLICY

5.0 Reasonable Adjustments

*5.4.6 Redeployment as a temporary or permanent adjustment. Staff who have or may be developing a disability, and are unable to carry out their substantive role, must be considered for redeployment. This can be a temporary measure, with no financial detriment, to help support them through periods where they need additional support, such as alternative duties. The Trust has agreed to support employees by applying a period of pay protection to those individuals who are identified as subject to permanent redeployment as a result of a disability (*as defined under the Equality Act 2010). The period of pay protection will be in line with the Trust's Change Management, Redeployment and Redundancy Policy. *Only a judicial body can make a definitive judgement over someone meeting the definition of having a disability, as defined by the Equality Act 2010, although for the purpose of pay protection and redeployment, the Trust will accept the opinion of any health care professional, such as a General Practitioner or Occupational Health advisor.*

6.0 Sickness management

6.1 NHS Employers (Guidelines on prevention and management of sickness absence, updated 2013) gives guidance on sickness absence policies and the Equality Act stating, 'It will often be appropriate to manage disability absence differently from other types of absence', *and that* **'recording the reasons for absence should assist that process'.** *It also advises that although* 'employees are not automatically obliged to disregard all disability-related sickness absences, **they must disregard some or all of the absences by way of an adjustment if this is reasonable',** *and that* **'if an employer takes action against a disabled worker for disability related sickness absence, this may amount to discrimination arising from disability'.**

6.2 Managers conducting return to work interviews should carefully consider whether the staff member has a disability under the Equality Act 2010, or be developing a disability. Reasonable adjustments should be explored to assist the employee to remain or re-enter the workplace and maintain attendance with ongoing support.

6.3 Sickness absence related to disabilities must be recorded as such where the Trust knows, or can reasonably be expected to know, that the employee has a disability.

6.4 Disregarding sickness relating to disability is best practise and in some cases a legal requirement. For example, an employee experiencing side effects from chemotherapy should have their sickness disregarded for the purposes of applying any sanctions, this would be seen as a reasonable adjustment.

7.0 Medical Evidence

7.1 Evidence of a disability could be from the employee, their GP, consultant or physiotherapist.

SICKNESS POLICY

10.0 Sickness Benefits (including Injury Allowance, Contractual Sick Pay)

10.2 The Trust will also have discretion to extend the period of sick pay on full or half pay beyond the scale set out nationally. An approach regarding this can be made by the employee, line manager, employee representative or HR. The decision to extend will be on the authorisation of the Deputy Director or equivalent of the employee's directorate and the Head of HR. The outcome can be appealed if unsuccessful, and would need to be submitted to the Director of People and Culture and relevant Director of the

employee within 7 calendar days of being advised of the decision not to extend pay. This timeframe is set to ensure any appeal submitted is considered at the earliest opportunity. The Trust recognises that exceptional circumstances may apply and this timeframe may need to be extended. Circumstance might include:

- *Where there is the expectation of return to work in the short term and an extension would materially support a return and / or assist recovery; particular consideration should be given to those employees without full sick pay entitlements;*

- *In any other circumstance that the employer deems reasonable (e.g. terminal or progressive illness with a poor and / or debilitating prognosis).*

18. Process for Managing Sickness Absence

18.2 Managing sickness absence requires sensitivity, consideration and support in relation to individual circumstances, an awareness of legal obligations and an understanding of the context in which the employee is working. This is particularly important in the case of those employees who may already have or have recently developed a disability. In such cases, there is a legal obligation for the Trust to consider what reasonable adjustments can be made in the workplace to enable the employee to attend work. Managers and employees should also refer to the Trust's Disability Policy.

20. Formal Health Review Meetings

20.5 The invitation to attend a formal meeting will be in writing providing at least 14 calendar days' notice. The employee will be advised of their right to be accompanied by a fellow Trust worker or Trade Union Representative (either being of the employee's choice). In exceptional circumstances and where there is agreement between all parties the notice for holding a meeting can be reduced. The employee will also be advised of their right to present independent medical evidence or any other supporting information. This should be submitted at the earliest opportunity, where possible at least 4 calendar days prior to the meeting.

20.9 At any second or subsequent formal meetings, the manager will send a copy of the employee's absence record, and copies of any additional return to work contacts. This is to ensure that the employee and manager have the same shared information. The employee will be informed that records of relevant meetings, the Sickness Absence Management Policy, and any other relevant documentation previously referred to will be available for reference at the meeting. The employee may request copies in advance if required.

20.11 During the meeting the manager may consider:

- *Whether there is anything practicable the organisation can do, such as workstation adaptation, which would allow the employee to perform their current job with or without modifications;*
- *Alternative duties;*
- *The nature, likely length and effect of the illness;*
- *Whether there has been a recent improvement in the employee's attendance record;*
- *Whether the employee had an informal / formal meeting within the previous 12 month period;*
- *Health and Wellbeing support;*
- *A return to work;*
- *Redeployment (temporary and / or permanent);*
- *Reasonable adjustments and / or equality issues;*
- *Ill-health retirement (occupational health advice should be sought on the likelihood of obtaining a successful ill-health retirement application);*
- *Dismissal on the grounds of capability;*
- *Any relevant policies.*

24. Final Review Meeting

24.1 At any point during the above process if it is perceived that an employee is unlikely to return to their substantive role or be able to achieve an acceptable attendance record, a final review meeting will be held with the employee. For long term sickness absence the final review meeting will take place at an appropriate point and prior to entering a period of twelve months continuous sickness absence, a member of the Human Resources Department will be present.

24.2 The purpose of the final review meeting is to reach a decision on the appropriate way forward, the outcome of which may be a return to substantive employment, redeployment or proceeding to a capability hearing which can result in a termination of contract.

24.3 Reasonable adjustments will have already been considered before this stage.

The Claimant's 2018/19 sickness absence

22. Within a few days of her lumpectomy in September 2018, the Claimant informed her then Line Manger, Adam Cooper, that she wished to return to work as soon as possible. He informed her that Occupational Health advice would be required and that it would be sensible for any Occupation Health appointment to be deferred until the Claimant had seen her Consultant and been certified fit by the Consultant to return to work. Whilst the Claimant has expressed concern in her witness statement as to how this aspect of her absence was handled (albeit she does not pursue any concerns as a formal complaint within these proceedings), we do not consider that the referral was delayed unreasonably. On the contrary, it seems to us that the Respondent acted in accordance with its duty of care to the Claimant, by adopting a cautious approach in terms of her return to work in circumstances where she had recently been diagnosed with breast cancer and had undergone a lumpectomy.

23. On 1 October 2018, the Claimant was certified as potentially fit to undertake amended / light duties with effect from 1 October 2018 through to 1 November 2018. The Claimant informed Mr Cooper that her GP had recommended a return on alternative work duties ("AWDs") on the basis that this would assist in her recovery.

24. A telephone Occupational Health appointment was arranged for 11 October 2018. Ideally, the Respondent might have arranged the appointment for 1 October 2018, but we do not consider that it delayed unreasonably in making the necessary arrangements. We certainly do not consider that this short delay evidences a discriminatory mindset on the part of Mr Cooper or anyone else at the Respondent. We consider that the Claimant has come to view the fact she did not return to work in September 2018 through the distorting lens of this litigation, with the result that she now perceives how she was treated differently to how she was in fact treated, and perceived herself to have been treated, at the time. The contemporaneous documents in the Hearing Bundle evidence that the Respondent was understanding of and sensitive to the Claimant's situation in September / October 2018 and fully supportive of her recovery and return to work. The Claimant suggests that the Respondent effectively impeded her return to work on 1 October 2018; in fact her Fit Note was re-issued on 15 October 2018 certifying her unfit to work between 1 October and 1 November 2018. Whilst we can understand why she might have secured an amended Fit Note to cover the period 1 October 2018 to 11 October 2018 if she had felt the Respondent was preventing her return to work, this fails to explain why her GP certified her as unfit to work beyond 11 October 2018. We find no evidence that this was because the Respondent was hindering her return. On the contrary, we find that it was supportive of her return to work on AWDs. We have concluded that whilst the Claimant had been keen to return to work, and the Respondent, her GP and the Respondent's Occupational Health advisors were all supportive of this, in reality she remained unwell and unfit to work, and that

this was recognised by her in consultation with her GP on 15 October 2018 when the decision was taken to issue her with an amended Fit Note.

25. In October 2018, Ms Thwaites took over as the Claimant's Line Manager. They initially enjoyed a positive relationship and the Claimant perceived Ms Thwaites to be supportive. They had an informal long term sickness absence meeting on 17 October 2018 (the record of which is at page 397 of the Hearing Bundle).

26. On 29 October 2018, the Claimant was certified unfit to work between 29 October 2018 and 26 November 2018. She was undergoing radiotherapy and it was noted that the aim was for her to return to work on AWDs post radiotherapy. A further informal sickness absence meeting was scheduled for 27 November 2018, but in the event it was postponed until after the radiotherapy had finished. The Claimant thereafter remained certified as unfit to work until the end of the year.

The Claimant's return to work in January 2019

27. The Claimant and her Union Representative, Andy Salter met with Ms Thwaites on 17 December 2018. Regrettably, the meeting was not minuted and the outcome not documented. At paragraph 20 of her witness statement the Claimant refers to Ms Thwaites as having put in place a *"prescriptive"* return to work plan. However, that label is at odds with an email dated 31 December 2018 at page 414 of the Hearing Bundle, in which Ms Thwaites said,

> *"We can take things slowly and at your own pace …"*

A later email at page 425 also evidences flexibility beyond the initial proposed four week phased return to work.

28. On 26 December 2018, the Claimant moved to half pay. The Claimant effectively criticises this at paragraph 21 of her witness statement, stating,

> *"Despite all delay being from the Respondent"*

The criticism is unfounded as there was no delay on the part of the Respondent. The reason for the reduction in the Claimant's pay was that between 23 May 2018 and 3 July 2018, she had been absent from work due to a combination of abdominal pain, fatigue and a recurrent major depressive episode. She had then been continuously absent from 5 September 2018 following her cancer diagnosis. Under Agenda for Change she had therefore exhausted her right to full pay.

29. The Claimant returned to work on AWDs on 2 January 2019 on full pay. She attended a return to work meeting with Ms Thwaites and agreed a target of reviewing this to see if she could resume her substantive duties.

30. One of the Claimant's complaints in these proceedings is that she requested a further reduction to her working hours and/or an extension to her reduced hours of working in late January / February 2019, but that her request in this regard was declined. The contemporaneous documentation does not support her complaint. We have already referred to pages 414 and 425 of the Hearing Bundle. The extensive documentation in the Hearing Bundle evidences that the Claimant has been able to express her concerns from time to time; if she had concerns in January/February 2019, specifically had she believed the Respondent was unreasonably refusing an adjustment to her working arrangements following her return to work, we consider that she would have escalated these either herself or through Mr Salter (who had raised a Time Off In Lieu issue on her behalf in September 2018). Instead, we find that the Claimant's primary 'concern' when she returned to work in January 2019 was to avoid any loss of earnings given she had exhausted her right to full sick pay. We find that she was in full agreement with the proposed phased return to work plan.

31. After two weeks / four days back at work, the Claimant took a week / two days' annual leave. We find that this led to the planned phased return to work being delayed by one week. When the Claimant returned to work on 21 January 2019 following her leave, she found that she was struggling. She wrote to Ms Thwaites in an email,

> *"I've really struggled today… reality hits. Going to come in tomorrow and see how I feel. I am thinking that it may be a good idea to use up some leave and not come in for a couple of weeks. I am bits tonight, and exhausted. Don't want to give in, but I think I might have to."* (Page 419)

32. The Claimant took the following week as further annual leave. As well as her own difficulties, her mother-in-law's health had taken a turn for the worse. Ms Thwaites' email of 28 January 2019 evidences that she was supportive of the Claimant at this time, consistent with her comment to the Claimant on 31 December 2018 that she would take matters at the Claimant's pace. The Claimant indicated that she was intending to secure medication from her consultant.

33. Ms Thwaites and the Claimant exchanged further messages on 1 February 2019. These evidence that Ms Thwaites was concerned for the Claimant and supportive of her during what was evidently a very challenging period in her life. She suggested that the Claimant might want to take a further couple of weeks as annual leave. We regard this as a supportive suggestion on her part rather than in any way indicative that she was seeking to prevent or obstruct the Claimant's planned return. The Claimant took up Ms Thwaites' suggestion so that she was on annual leave the weeks commencing 4 and 11 February 2019, further delaying the phased return to work.

34. The Claimant returned to work on 18 and 19 February 2019. She was seemingly late into work on 18 February 2019 as she had a medical appointment at 9am. Ms Thwaites responded positively to the news that the Claimant would be returning to work, but also to the fact she may be late into work, writing in an email,

> *"Great news, no problems at all".*

35. Ms Thwaites met with the Claimant on 18 February 2019. In an email that evening, the Claimant thanked Ms Thwaites for the meeting (further evidence that she was not concerned with the way her situation was being managed by Ms Thwaites). In the same email she also referred to difficulties experienced with the carers who were caring for her mother-in-law.

36. On 24 February 2019, the Claimant reported that she would be unable to attend work the following day. The documented reason for absence was,

> *"anxiety / stress / depression / other psychiatric illnesses"*

37. In a subsequent Fit Note dated 28 February 2019, the Claimant's GP certified her unfit for work on the basis of,

> *"breast cancer with ongoing treatment"*

38. There is no indication in either of these two contemporaneous documents that the Claimant's ill health and absence from the workplace were in any way work related. On the contrary, the text messages and emails at this time evidence that any stressors were non work related. In the event, it would be over a year before the Claimant would return to work and, even then, only briefly.

<u>Management of the Claimant's 2019 sickness absence</u>

39. On 22 March 2019, the Claimant was invited to attend an informal meeting with Ms Thwaites to discuss her sickness absence. The meeting was to be held on 29 March 2019. This was in accordance with the provisions of paragraph 18.6 of the Respondent's Sickness Absence Management Policy.

40. The record of that meeting documents as follows,

> *"Consideration to returning to work-*
>
> *Unable to return to work due to remaining symptomatic.*
>
> *Acopia-*
>
> *Stress and anxiety completing daily living, unpredictable symptoms."*

41. It was anticipated that the Claimant would undergo surgery on 8 May 2019, though in the event her surgery was delayed. In the meantime the Claimant was referred for an Occupational Health assessment. The resulting Report is at page 440 of the Hearing Bundle and summarises the Claimant's current issues in the following terms,

> *"…currently absent with depression, anxiety and stress. The lowered mood is following her diagnosis and treatment for breast cancer last year and the stress is related to family ill health issues".*

This further confirms that work related stressors were not affecting the Claimant at this time. The Occupational Health Nurse, Clare Pickard advised,

> *"Carolynne is unfit for work at this time due to her severe signs of depression, anxiety and concentration issues."*

The concentration issues were said to be at a level of severity as to make the Claimant unsafe to practice.

42. The first formal meeting under the Respondent's Sickness Absence Management Policy took place on 4 June 2019. Ms Thwaites' handwritten notes of the meeting document that stress and anxiety were identified as potential barriers to a return to work, although the Claimant remained unfit to return to work in any event.

43. Immediately following the meeting, the Claimant was referred for a further Occupational Health assessment. The referral included a range of standard questions, including whether there were any modifications / adjustments that might alleviate the Claimant's condition or aide rehabilitation

44. On 25 June 2019, the Claimant was invited to attend a second formal meeting to be held on 23 July 2019. In the event, the meeting was postponed.

45. The Claimant was seen by Ms Pickard again on 3 July 2019. She reported that returning to work would be beneficial for her wellbeing and that this was her aim. Whilst this was understandable, we find that she was not then immediately fit to return to work. Ms Pickard's advice was as follows,

> *"Carolynne remains unfit for work due to her severe levels of depression and anxiety. She is due a medication change and this is expected to reduce her symptoms and allow for a return to work. She would benefit for a referral back to Occupational Health in 4 to 6 weeks' time for a review of her progress and possible return to work advice. Carolynne is likely at that time to require a phased*

return to her hours as well as some adjusted duties. I am unable to estimate recurrence at this time."

46. Around this time the Claimant indicated some dissatisfaction with Ms Pickard (subsequently confirmed in the minutes of a meeting on 1 August 2019 referred to below). The Claimant had, by this time, been having regular sessions with a psychologist organised through Maggie's and, we find, contrasted what she perceived to be the psychologist's greater knowledge, experience and understanding of the psychological impacts of living with cancer, with what she saw as Ms Pickard's lower level, more generic, knowledge and understanding.

47. On 9 July 2019, the Claimant emailed Ms Thwaites to suggest a meeting on or after 26 July 2019 in order to introduce Ms Thwaites to her new Union Representative, Sarah-Jayne Parsons. That meeting took place on 1 August 2019. There is some dispute between the parties as to what was discussed. Ms Parson's notes of the meeting were only disclosed to the Respondent in the course of these proceedings. They record that issues around her return to work were then impacting her. Ms Parsons did not attend Tribunal to give evidence as to the matters that were discussed. However, what is not in dispute, given Ms Thwaites' own notes of the meeting (page 474), is that the Claimant's health issues were summarised as stress and anxiety following her diagnosis and treatment, rather than the cancer itself or any post-surgery issues. Ms Thwaites additionally noted that both the Claimant's psychologist and GP were supportive of the potential for a return to work on AWDs. However, we accept Ms Thwaites' evidence and the Respondent's contention, supported by the Occupational Health notes, that the Claimant was not then fit to return to work as she was still experiencing significant levels of anxiety and was waiting to see whether her anxiety levels would reduce as a result of new medication she had been prescribed. It was identified that this may take some weeks.

48. Following the meeting on 1 August 2019, there was a slight delay of 7 working days whilst a further referral was made to Occupational Health. In the meantime, in an email dated 20 August 2019, Julie Connell, Interim HR Locality Manager, was expressing the view to HR colleagues,

"We don't believe she will be able to return to her substantive role and we will be looking at [redeployment]" (page 526)

We find that a view was taking hold within the Respondent, or at least within its HR team, that the Claimant was unfit to return to her substantive role and was very unlikely to be able to return to it in the future, with the result that the focus instead was turning to how she might be redeployed within the organisation.

49. On 27 August 2019**,** the Claimant was certified unfit for work for a further period of two months with effect from 23 August 2019. However, in a separate email to Ms Thwaites, the Claimant advised that her GP would sign her back to work as soon as things were *"sorted"* with Occupational

Health and a return to work was planned (page 487). Whilst the Claimant's case is that any discussion of redeployment or a return to her substantive role created a pressured situation for her, which in turn exacerbated her anxiety, in her email she asked whether perhaps she should have asked for a fit note that certified her *"fit for work if on phased or amended duties"*. We find that she was essentially content to engage in a discussion as to the basis upon which she might return. The following day, the Respondent's Occupational Health Nurse Advisor, Alison Morrow assessed the Claimant as fit for work on AWDs with effect from 30 September 2019. Ms Thwaites emailed the Claimant a copy of the Report on 2 September 2019, describing it as "sensible" and noting the proposal that the Claimant would be re-referred to Occupational Health in 4 – 6 weeks,

> *"…to discuss progress around your ability to maintain on your substantive role"* (page 489

50. Whilst Ms Thwaites' email was innocuous, the Report (or the assessment that had resulted in the Report) seems to mark the beginning of difficulties in the parties' working relationship. The Claimant asserts, without justification, at paragraphs 45 and 47 of her witness statement that the Respondent had been ignoring what she had been telling it and that it was making her return to her substantive post more unlikely due its "conduct, behaviour and attitude". It is apparent from the Claimant's evidence at Tribunal that she was unhappy with Ms Morrow's reference to it being hoped that within the following 4 weeks her medication,

> *"will reach the therapeutic level and have a positive effect on her symptoms"* (of anxiety).

We are clear that Ms Morrow was not offering any view as to what was a therapeutic level of medication for the Claimant, a matter she left to the professional judgement of those treating the Claimant. Furthermore, Ms Morrow's comments were consistent with Ms Pickard's earlier comments about a planned change in medication.

51. By 17 October 2019, the Claimant was stating that Occupational Health was delaying her return to work,

> *"with incomplete and unsafe advice".*

We do not agree. We find that Ms Morrow identified a return to work date of 30 September 2019 on the basis of her professional assessment that it was anticipated the Claimant's level of anxiety would then be at a level that would potentially enable a sustained return to work. The question of what the Claimant might do on her return to work is a separate issue to which we shall return.

52. On 16 September 2019, the Claimant emailed Ms Thwaites stating that she had just had a psychiatrist's appointment. She wrote,

> *"She'd like OH to contact her regarding how my return to work needs to be managed. Says OH should be consulting her anyway and not making decisions about what they consider therapeutic doses unless they are mental health specialists."*

We find that the latter comment reflected a misunderstanding on the part of the psychiatrist based upon what she had been told by the Claimant.

53. The Claimant went on to identify the psychiatrist as Dr Cathy Walsh based at Addenbrooke's Hospital in Cambridge. We find that the Claimant's anxiety levels were understandably elevated ahead of her planned return to work on 30 September 2019 and that she became anxious about the prospect of a return without Occupational Health first having input from the mental health professionals who were supporting her in her recovery. Whilst it was an entirely reasonable request for her to make, we make no criticism of the Respondent or its Occupational Health Advisors for not having sought their input sooner.

54. On 16 September 2019, Ms Thwaites emailed Ms Connell and observed that the Claimant's suggestion that they secure input from her medical team seemed a sensible one.

55. Separately, on 13 September 2019, the Claimant emailed Ms Thwaites with details of a workshop for managers on cancer and the workplace, suggesting that it may assist her understanding in relation to timescales, support etc. We do not know whether they discussed the matter further, though it is accepted by Ms Thwaites that she did not follow the matter up.

<u>The Claimant's email of 22 September 2019</u>

56. The Claimant continued to take the initiative. In an email to Ms Thwaites dated 22 September 2019, she confirmed that her psychologist at Maggie's had written a Report,

> *"…stating that I should not be put in a position where I have to make choices about my future. I am not currently in a position to do that (I have consistently been very clear about that)."* (pages 502 to 504)

57. Whether or not the Claimant had been clear (which is not supported by the available contemporaneous documents and something the Respondent would dispute) is beside the point; her email was very clear as to her view by that date. Further, (and again, it is essentially besides the point whether she was mistaken as to what had previously been discussed or agreed in this regard) her email started with her expressing concern that she would only have 12 weeks in which to make a decision about permanent redeployment or a return to her substantive role. Her belief

that she was under a time constraint may have been as a result of misinformation or a misunderstanding during the meeting on 1 August 2019.

58. The Claimant also expressed concern in her email of 22 September 2019, about what she referred to as Ms Morrow's recommended

> *"…rapid increase in hours to my full 16 hours per week. This does not give me time to adjust, or take into account the fatigue that I have".*

Whether or not that is what Ms Morrow intended, it is understandable why the Claimant interpreted Ms Morrow's Report in that way; Ms Morrow had referred in the Report to a short phased return of hours commencing with 50% in the first two weeks and then building these up over a 4 – 6 week period.

59. In her email of 22 September 2019, the Claimant went on to refer to the fact that she was in receipt of Employment Support Allowance. She wrote,

> *"**The proposal for a safe return to work, therefore, is to return to work for 8 hours a week, and take the other 8 as continuing sick leave. This way I will not be placed under pressure to make decisions about my future until I am able, or to increase my hours before I am physically and mentally able to do so safely…**"*

She highlighted this proposal in bold type. The Claimant did not immediately indicate whether the proposed 8 hours would be spent on AWDs, in a redeployed role, or in her substantive position, though later in her email she wrote,

> *"This does mean that temporary redeployment into a suitable role could be offered, in which to get me back to work for some considerable time, until all avenues of my substantive role have been considered, and deemed appropriate or not."*

60. In summary, we find that the Claimant was experiencing elevated anxiety ahead of her intended return to work, exacerbated both by her mistaken belief that she may have to make long term decisions within a fixed period and by her lack of confidence in the Respondent's Occupational Health Advisors, which in turn was further exacerbated by a misunderstanding as to what the Advisor was saying. This led the Claimant to become concerned as to whether she could safely return to work and to perceive that she was being pressured to make decisions, which in turn led her medical professionals to advocate the Claimant being given space to settle back into the workplace before any consideration was given to discussion of her substantive role.

Mr Squibb's involvement

61. In the meantime and although the Claimant was unaware of this at the time, Mr Squibb had initiated a Management Review of long term sickness absences. In an email to Ms Connell and Ms Thwaites dated 17 September 2019, he wrote in relation to the Claimant,

> *"Need to progress redeployment"* (page 497)

62. Superficially, that would seem to accord with the Claimant's comments just a few days later on 22 September 2019. However, we find that Mr Squibb did not have in mind redeployment as a temporary measure, rather as a permanent change given Ms Connell's expressed view on 20 August 2019 that the Claimant was unlikely to be able to return to her substantive role. We note in particular Mr Squibb's expressed concern at the outset of his email that staff sickness had increased and in concluding his email that he wrote,

> *"Can I please be updated on all of these cases by the end of the week? Our sickness has rocketed again recently and there appears to be quite a few currently off that really need progressing through the process".*

In his desire to progress staff through the process, we find Mr Squibb lost sight of the person, in this case a very long serving employee with potentially complex mental health needs.

Dr Shravat's letter

63. On 24 September 2019, the Claimant forwarded to Ms Thwaites a letter from Dr Aneesh Shravat, a Chartered Psychologist at the Maggie's Centre in Cambridge. The letter is seemingly dated 2 September 2019, though this may be a typing error. Dr Shravat wrote,

> *"A return to work plan that is able to take into account her need for a phased return and to find a role in which she can feel safe and build her confidence will be a significant contributory factor to helping Mrs Rayner manager her post treatment challenges. It would be beneficial for Mrs Rayner if she is not pressured to make decisions and is given space to explore appropriate working environments in which she is able to successfully manage the post treatment risks associated with her cancer treatment."* (pages 506 and 507)

64. In the Claimant's covering email to Ms Thwaites, she asked whether Occupational Health were contacting Dr Walsh, as she had previously requested they do, a request to which Ms Thwaites seems not to have responded and which we find was never followed up by the Respondent.

The invitation to a Final Formal Health Review Meeting and subsequent events

65. On 26 September 2019, the Claimant was invited to attend a Final Formal Health Review Meeting to discuss her sickness absence. Although Mr Brown suggested to Ms Thwaites that she was process driven in her approach, we find that the pressure to progress the matter in fact came from Mr Squibb albeit, as with other aspects of the matter, Ms Thwaites was essentially left to take forward an ill-considered plan of action for managing the Claimant's ongoing absence. We accept Ms Thwaites' evidence that the meeting invite was based on a template. Whilst the letter stated that all options would be considered, it identified as one potential outcome that the Claimant's employment could be terminated on grounds of incapability. The Claimant was also reminded of her right to representation at the meeting, adding to the overall sense of formality. We find that even someone without anxiety would have understood from the letter that their continued employment was potentially at risk and, further, reasonably inferred from the fact that it was billed as a final formal meeting, that decisions might be taken at or immediately following the meeting. If this was not the Respondent's intention and it did not wish the letter to lend that impression, it would have been a simple matter for Ms Thwaites to have edited it accordingly.

66. The Respondent's approach seems to us to have been at odds with the provisions of Section 20 of the Respondent's Sickness Absence Management Policy (page 228 onwards) which envisages that alternative duties, redeployment (whether temporary and / or permanent) and reasonable adjustments and equality issues will all be considered during the earlier formal meeting stages of the process.

67. We are in no doubt that the letter of 26 September 2019 was a defining moment for the Claimant, leading her to believe that her voice was not being heard and that the Respondent was not concerned to hear the views of the mental health professionals involved in her care.

68. On 1 October 2019, Ms Thwaites was in contact with Ms Connell by email regarding the terms of a further Occupational Health referral. Her email makes no explicit mention of a potential return to work on AWDs, though it is possible these remained an option in so far as AWDs may have been within the ambit of workplace adjustments to facilitate the Claimant undertaking her substantive role. However, in comments on the Claimant's email of 22 September 2019, Ms Thwaites wrote,

> *"My concerns to this reducing hours then increasing when able to do so, I am not confident that these hours will ever increase".* (page 511)

As with Mr Squibb, and indeed we think most likely taking her cue from him, Ms Thwaites' focus shifted to redeployment on the basis the Claimant was unlikely to return to her role.

69. The date of the Final Formal Health Review meeting was fixed for 14 October 2019 to facilitate Ms Parson's attendance. In the meantime the Claimant took annual leave in order to avoid moving onto nil pay. Ms Thwaites was having weekly welfare calls with the Claimant and the notes of these calls at this time do not evidence any particular concerns on the part of the Claimant when they spoke on 30 September 2019, though they do clearly evidence the Claimant's dissatisfaction with Occupational Health during an earlier call on 25 September 2019. However, perhaps on advice from Ms Parsons, by 11 October 2019 the Claimant was expressing concern as to the direction of travel. She wrote,

> *"My mental health is severely affected in respect of the implications of letter inviting me to the meeting, and as you are aware, my specialist has informed you that I am not in a position to make any long term decisions at present about my long term employment".* (pages 521 and 522)

70. Whilst we find that the Respondent's actions in sending the letter of 26 September 2019 served to reinforce in the Claimant's mind that she should not be put under any pressure to make any long term decisions, there is no evidence that her position or needs had changed since her email of 22 September 2019. We find that the pressure she experienced on receipt of the letter came from the suggestion in it that ill health retirement and / or termination of employment might be under consideration, rather than from any suggestion that the Respondent might wish to explore with her the basis upon which she might immediately return to work ie, on AWDs, on temporary redeployment or in her substantive role, albeit with adjustments. We do not consider that discussion of the practical arrangements for her return was necessarily 'off limits' at this time.

71. The Claimant's email of 11 October 2019 was sent at 4:47pm. It was a Friday afternoon. She was acting on advice and explained this in a text message to Ms Thwaites at 8:20am on Monday 14 October 2019, apologising that her email was *"late"*. We do not criticise the Claimant for any delay as it was outside her control, though nor do we criticise Ms Thwaites for only confirming a few minutes before the meeting was due to start that it would not go ahead but instead be rearranged to another date. This angered the Claimant who had arrived at the Respondent's premises for the meeting. Her frustrations, whilst understandable, were ultimately unavoidable; the Respondent had effectively had two hours or so that morning in which to consider the Claimant's request for the meeting to be postponed. Ms Thwaites endeavoured to send a supportive response to the Claimant, acknowledging in it that the previous Occupational Health Report,

> *"maybe didn't provide us with the advice needed"*

before going on to state,

> *"this meeting is not to make any final decisions around your employment, it is however, how we can work with and support you in a return to work which is what I believed your goal was."* (page 521).

She also committed to questioning the Occupational Health advice previously received, though did not confirm that the Trust would follow up with Dr Walsh as the Claimant had requested.

The Claimant's request to the Respondent to extend her sick pay

72. On 17 October 2019, the Claimant raised the issue of her sick pay again and whether this might be extended in accordance with the discretion available to the Respondent under Agenda for Change. Ms Thwaites followed up the same day with Ms Connell, referencing their earlier exchanges from August 2019 when Ms Connell had been supportive of this (pages 523 and 526). Ms Connell in turn escalated the issue to Ms Carter; there is no documentation in the Bundle evidencing what, if any, action Ms Carter took on the matter. The Claimant followed up again on 25 October 2019, asserting that she met the criteria for her pay to continue and asking Ms Thwaites to chase HR. In an email to HR colleagues on 30 October 2019, Ms Thwaites stated that she was not aware of the sick pay issue having been reviewed. She went on to say,

> *"Julie did initially look at trying to get an extension of pay due to OH delay for a meeting, however some of the delay appears to be from CR as she does not feel capable of returning to AWDs either and has been given advice from OH there may be a possibility of returning to frontline duties which then set back CR mental health and wellbeing and was advised by her psychiatrist to remain off work as was not mentally well enough to return…"* (page 530)

73. We have considerable difficulty in understanding this emerging narrative of delay on the part of the Claimant. In pressing for the Respondent's Occupational Health advisors to consider Dr Shravat's letter and for Dr Walsh to be contacted, and in urging for the 14 October 2019 meeting to be rescheduled whilst this was done, the Claimant was not delaying, she was responding to what seems to have been accepted on the Respondent's side, or certainly by Ms Thwaites, as a need for Occupational Health to be more fully informed in the matter. It was also inaccurate for Ms Thwaites to suggest that the Claimant had been advised by her psychiatrist to remain off work as she was not mentally well enough to return; what the Claimant had in fact said on 11 October 2019 was, as Dr Shravat had also stated in her September 2019 letter, that she was not in a position to make any long term decisions. That is very different.

74. On 1 November 2019, the Claimant submitted a *"discrimination grievance"* dated 31 October 2019 in which she raised amongst other things the issue

of the Respondent's failure to exercise its discretion to extend her sick pay. The grievance was submitted to Mr Marshall who, alongside Ms Carter, had been asked by Ms Connell to consider an extension to the Claimant's sick pay on 20 August 2019. We return in due course to the remainder of the grievance and how it was handled by the Respondent. However, as regards the sick pay element, it seems that Ms Thwaites discussed this aspect with Mr Marshall and Mr Squibb on 8 November 2019. On 13 November 2019, Mr Mathias forwarded a copy of the Claimant's email of 17 October 2019 to Mr Squibb in which she had requested the continuation of sick pay. This prompted Mr Squibb to respond,

> *"CR has delayed her final formal by refusing to attend or discuss RTW / AWDs / redeployment so hasn't engaged in the process"* (page 552)

75. This was a further development in the narrative. Mr Squibb's comments were unfounded. We have already set out why the Claimant had not delayed. She had not refused to attend the meeting on 14 October 2019, was not refusing any discussion and it was quite wrong for Mr Squibb to say she was not engaging in the process.

76. On 25 November 2019, the Claimant raised the issue of her sick pay once more, this time with Mr Roberts, copying in Ms Thwaites. The matter was evidently escalated to Mr Squibb because later that day he emailed Mr Mathias to say,

> *"Pay not to be reinstated – rationale CR has been offered AWDs and is now choosing not to attend work to complete these. CR has not been engaging with meetings around redeployment opportunities across the Trust which would enable her to return to full pay if she RTW."* (page 565)

We cannot understand how Mr Squibb arrived at this conclusion, which represents a further development in the narrative and is unsupported by the available evidence. As we return to, he made other comments which betray his impatience to move the matter to some form of resolution in whatever form that might take.

77. The Claimant then chased for an update on 27 November 2019. Mr Squibb's decision had not then been shared with Ms Thwaites or Mr Roberts. Ms Thwaites followed the matter up with Mr Mathias and at the same time contacted the Claimant to let her know that she or Mr Roberts would be in contact with the Claimant the following week.

78. On 2 December 2019, Mr Mathias advised Mr Squibb that,

> *"a justification email would be required".*

79. By 3 December 2019, the Claimant was understandably increasingly stressed and exasperated by the lack of any substantive progress on the issue of her sick pay, particularly when Mr Roberts relayed his understanding gleaned from others that the lack of progress was,

> *"… due to an impending return to work, either back to full duties or at least to undertake AWDs".* (page 570)

Mr Roberts' comments overlook that over three months earlier it had been recognised that the issue essentially sat with the Respondent and its Occupational Health advisors.

80. On 8 December 2019, the Claimant asked Mr Roberts,

> *"Do you know if I am going to be paid at all?"* (page 577)

He responded the following day that the issue was still with HR,

> *"But I have made my point firmly and asked for a chase up".*

In a further email to Mr Roberts on 11 December 2019, she said,

> *"Still no pay".*

81. In the meantime, Mr Squibb had outlined his reasons for not extending the Claimant's sick pay in an email to Ms Carter which concluded,

> *"She is not engaging with the current process or advising what the barriers are for her RTW in any capacity and is not being supportive of the OH process".*

For all the reasons above, this was incorrect.

82. Ms Carter confirmed on 11 December 2019 that she was in agreement with Mr Squibb's decision.

83. Further emails ensued on 12 December 2019, including Mr Roberts escalating his concerns to Mr Mathias.

84. On 13 December 2019, the Claimant wrote to Ms Thwaites,

> *"Pay is essential. Anxiety is increased worrying about it and it does affect being able to cope with other demands in life."*

She went on to say,

> *"I have said to Ivan this needs to go right back to basics. I have been knocked back to post treatment anxieties and depression. Getting through the door, without any pressure, is the first step, and after talking it through with Aneesh [Shravat] on Weds, it makes*

sense to make this, and only this, the focus starting in January. This is the limit that I can cope with ATM.

So in terms of support, all I need is my pay. …" (Page 595)

85. The Claimant emailed Ms Thwaites again on 18 December 2019, complaining,

"… no one is telling me what the hell is going on with it".

It was a perfectly reasonable observation for her to make and, as Mr Roberts had, Ms Thwaites escalated the issue. Ms Thwaites expressed the view to Mr Squibb and Mr Mathias that the decision in relation to sick pay had impacted the Claimant's return to work and expressed concern,

"over delaying an already delayed process".

She proceeded to ask how it would be perceived if the matter escalated to an Employment Tribunal. The answer is that we perceive the Claimant to have been treated somewhat poorly in the matter.

The Claimant's First Grievance

86. We return to the main substance of the first grievance. It and the Claimant's subsequent grievances were significantly mismanaged by the Respondent. The Respondent's approach to dealing with the 31 October 2019 grievance in particular was ill thought through and, thereafter, poorly executed. Indeed, inexplicably, the grievance remains outstanding over two years later. Ms Smeaton reminded the Tribunal in closing that the Claimant remains employed by the Respondent and that there is no claim of constructive dismissal before the Tribunal; unfair or unreasonable treatment of an employee is not to be equated with discrimination and, in and of itself, does not provide the basis upon which adverse inferences may be drawn. Nevertheless, the Respondent's mismanagement of the Claimant's grievances has cast a long shadow in this case, undermining essential trust and confidence, as well as the prospects for a successful return to work in Autumn 2020 after a period when the Claimant had been obliged to shield during the first months of the Coronavirus pandemic.

87. The Claimant's first grievance coincided with Mr Mathias taking up a role as Interim HR Manager in place of Ms Connell. As noted already, Mr Mathias spoke with Mr Marshall and Mr Squibb on 8 November 2019, prompting Mr Squibb's unfounded comments about the Claimant having delayed and having failed to engage. In an email to Mr Squibb dated 7 November 2019, Mr Marshall (Head of Operations for Suffolk and North Essex) wrote,

"I have been talking with Karen Carter and looking at whether we can push this back and deal with this through the sickness policy, Karen is getting some advice today.

> *Could we get a call with Clare Thwaites to discuss some of the points, which I am sure Clare has been supportive etc., but don't want this to come across to Clare as questioning her ability, as I don't think that at all".* (page 541)

88. Neither Ms Carter, nor Mr Marshall gave evidence at the Final Hearing. That is unfortunate. It was left to their more junior colleagues to attend Tribunal to effectively explain and justify the decisions they took. In the case of Mr Mathias, he valiantly held to the line that if only the Claimant had met informally with him and Ms Thwaites, the events that came to pass would have been avoided and the Claimant would have been back at work since November 2018. We do not share Mr Mathias' optimistic view. We find from the outset that the internally communicated desire of senior managers within the Trust was that the organisation should push back on the Claimant's grievance, on the basis that they believed the grievance was unlikely to be well founded. Whatever Mr Marshall's views of the grievance and Ms Thwaites' abilities, we consider it was incumbent upon him to keep those views to himself so as not to influence the views of others who might have to adjudicate on the grievance which included explicit criticisms of Ms Thwaites.

89. Ms Carter also weighed into the discussion with what we regard as a punchy email dated 7 November 2019, asserting that,

> *"It isn't discriminatory to manage someone's sickness absence under the policy."* (page 543)

We do not accept that as an unqualified proposition.

90. In her email, Ms Carter also suggested that the Respondent did not have to accept the grievance as a formal grievance at that stage. Again, the matter was more nuanced than that under the terms of the Respondent's policy. Most troubling, was Ms Carter's concluding comment,

> *"Clare Thwaites to continue to manage the SAM process and hold the meeting to discuss the grievance, with HRM present – I have copied Sylvester in so he can support going forward."*

It is very difficult for us to understand why the Respondent decided, or was advised, to proceed in this way. Ms Thwaites was plainly precluded from dealing with the grievance given it included explicit criticisms of her and concerned the Respondent's management of the Claimant's sickness absence (which Ms Thwaites had been responsible for as the Claimant's Line Manager since at least October 2018). Equally inexplicably, Ms Thwaites was not provided with a copy of the grievance itself. We do not understand why Ms Carter or Mr Marshall came to the view that Ms Thwaites might be able to resolve the grievance, even informally, without knowing what the Claimant was aggrieved about. Indeed, we consider

that it was grossly unfair on Ms Thwaites to be put in such an invidious position.

91. We have noted already, Mr Squibb was in contact with Mr Mathias on 13 November 2019. His email concluded,

> *"Ideally to progress the final formal meeting and then come to a conclusion for her sickness case"* (page 552)

92. The same day, Mr Squibb emailed Ms Thwaites stating,

> *"I would suggest holding the final formal sickness meeting and then reviewing what concerns she has around disability at the meeting at the same time"* (page 554)

93. The effect of Mr Squibb's two emails was to bring pressure to bear on Mr Mathias and Ms Thwaites to progress the situation through to a final formal sickness meeting and to come to some final decision, whatever that may be, regardless of the fact the Claimant's grievance had been triggered by the Respondent's escalation of the Sickness Absence Management Policy process to a final formal meeting. We find Mr Squibb to have been rigid and unthinking in his approach.

94. On 18 November 2019, Mr Mathias belatedly followed up about securing input from the Claimant's medical advisors. However, the available emails evidence that he understood information might be required from the Claimant's GP, whereas in fact, as was well documented, the Claimant had specifically asked that the Respondent liaise with her psychiatrist and psychologist.

95. By 19 November 2019, Mr Mathias and Ms Thwaites were discussing the Claimant's request in her email of 22 September 2022 to return to work eight hours per week. Their exchange (page 587 of the Hearing Bundle) shows that they were without up to date advice as to the capacity in which the Claimant might return, i.e. whether this would be on AWDs as had been anticipated over a year earlier. Mr Mathias asked Ms Thwaites,

> *"Can we give her the option to work eight hrs first four weeks and thereafter 16 hrs for the next four weeks and this way we can build these hours".*

96. Whilst their exchange represents some movement in the right direction (albeit the Claimant would say it still evidences a rigid expectation that she would return to her contractual hours within a four week period), Mr Mathias and Ms Thwaites nevertheless persisted with Mr Squibb's "suggestion" of a further final meeting and sought to identify potential dates for it. In the course of their ongoing emails, Mr Mathias observed that the grievance would need to be resolved before the final formal meeting and went on to refer to a meeting, "to discuss her so called grievance". In a masterly understatement at Tribunal, Mr Mathias referred

to this as a, "poor choice of words" on his part. Instead, we think they betray his impatience with the situation. It is clear from Mr Mathias' email that he was concerned the grievance should not derail the final formal meeting. We find he was focused on driving the matter through to a conclusion in view of Mr Squibb's clear expectation that the process should be progressed.

97. On 22 November 2019, Ms Thwaites invited the Claimant to attend an informal grievance meeting on 29 November 2019. The Claimant responded to say that Ms Parsons was unavailable on that date and for two weeks thereafter. Ms Thwaites responded,

> *"For an informal meeting there is no need for a Union Rep as this discussion is to find ways to resolve the problem / concerns."*

She evidently wrote this on Mr Mathias' advice without, however, having regard to the provisions of Section 7.1 of the Respondent's Sickness Absence Management Policy which not only confirms the right to be accompanied by a Trade Union Representative at all stages of the process, but also obliges managers to bring this right to the attention of staff, something that did not happen here.

98. We find that Mr Mathias was seeking to dissuade the Claimant from exercising the rights available to her under the Policy in order to progress the meeting in accordance with Mr Squibb's communicated expectations.

99. The Claimant was certified unfit for work on 22 November 2019 until 5 January 2020. Though the sick note refers to breast cancer, we find that the ongoing work situation was by then impacting the Claimant's mental health. In a thoughtfully worded email to Ms Thwaites dated 24 November 2019, the Claimant set out her various concerns (page 562 and 563 of the Hearing Bundle), concluding that the grievance had not been progressed within 14 days in accordance with the documented policy around informal resolution. She also questioned Ms Thwaites involvement. She specifically requested adjustments, noting that she was experiencing high stress and anxiety. She went on to express the view,

> *"It has probably gone beyond informal anyway"*

and requested it may need the involvement of someone out of area. In our judgement she was right; we also agree with the Claimant's observation that she had fully co-operated throughout.

100. On 25 November 2019, Mr Squibb wrote to Mr Mathias,

> *"Sickness management – final formal needs to be held (I believe this is booked for the start of December??) prior to this CR needs to meet with CT to discuss what reasonable adjustments she feels should be considered as set out in her grievance.*

> *I am happy with this approach and am keen to progress this case forwards to either RTW, redeployment or capability as appropriate."* (page 565)

101. We find this was an instruction rather than guidance and was effectively reiterated in a further email dated 27 November 2019 (page 1054 of the Hearing Bundle) to which Mr Mathias responded stating that,

> *"This will add strength to our case".*

Mr Mathias' primary concern was how the Respondent's actions might be perceived in any legal dispute.

Mr Roberts' involvement and the Claimant's eventual return to work in 2020

102. Mr Roberts acted up into the AGM role with effect from 1 November 2019. His email exchanges with the Claimant from this time evidence his efforts to build trust with her over a number of weeks, coinciding with a deterioration in her interactions with Ms Thwaites, partly as a result of the Claimant's misunderstanding as to a strict 12 week time limit on any return to work on AWDs. When Ms Thwaites constructively suggested in an email dated 5 December 2019 that their emails were perhaps not conducive to resolving the situation, the Claimant responded in angry terms stating,

> *"It all adds up to making the workplace one which is not safe for me."*

Whatever criticisms might be made of the Respondent, Ms Thwaites was not seeking to mislead the Claimant on this issue.

103. Fortunately, Mr Roberts worked effectively to retrieve what was otherwise rapidly becoming an intractable situation. In a carefully worded intervention on 8 December 2019 (page 577) and an equally sensitively worded email on 12 December 2019 (page 584), he told the Claimant she could,

> *"… return on AWD with absolutely no expectation to return to full duties within 12 weeks, despite what you were told by OH. Clare is more than happy to put that in writing for your reassurance."*

104. This prompted the Claimant to say that she could only work on getting through the door at that time. As noted already at paragraph 78 above, she said the same to Ms Thwaites, citing the advice of her psychologist. We find this reflected a change from September and October 2019 when the Claimant had been sufficiently resilient to engage in a broader discussion as to what her return might look like. In the event, however, during a meeting with Mr Roberts on 19 December 2019, it was agreed that the Claimant would return to work between 8 – 10 hours per week with the remainder of her hours taken as sickness absence. We note, at

page 600 of the Hearing Bundle, that Mr Mathias referred to this as a flexible working request. During cross examination he seemed unable to appreciate the significant distinction between a change to working hours by reason of a reasonable adjustment and as a result of a flexible working request.

105. Regrettably, the decision already referred to in relation to sick pay communicated to the Claimant on 23 December 2019 set matters back. The Claimant was certified unfit for work by her GP on 6 January 2020 for a further period of one month. On 7 January 2020 the Claimant escalated her concerns in an email to the Respondent's Chief Executive Officer, Ms Hosein (pages 604 and 605). The focus of her email was the issue of her sick pay and Mr Squibb's given reasons for refusing to consider an extension to it.

106. On 13 January 2020, the Claimant was invited to attend a formal long term sickness absence meeting with Ms Thwaites and Mr Mathias to be held on 28 January 2020. The Claimant understandably questioned this given that she had been engaging with Mr Roberts in relation to her return to work. She highlighted the ongoing impact on her mental wellbeing. In all the circumstances we think it was a restrained communication (page 614 – 615).

107. There was a further unhelpful, ill-informed intervention from Mr Squibb around this time. In an email exchange following on from the Claimant's email to Ms Hosein, he continued to reference whether the Claimant's grievance might be accepted formally and referred incorrectly to the Claimant, *"… currently stalling progressing with a resolution to this"* (page 619). The Claimant was not stalling. She was unwell, partly as a result of what we conclude below was his victimisation of her.

108. Jessica Watts' email of 24 January 2020 (page 1628) evidences that she effected a *"reset"*, referring management of the Claimant's return to work back to Mr Roberts and Mr Mathias to manage on an informal basis. There was also a recommendation from Helen Adams in the Respondent's HR team to reinstate the Claimant's pay. Ms Watts also requested action in relation to the Claimant's grievance. It was subsequently confirmed by Mr Mathias that James Norman would schedule a meeting with the Claimant to hear her grievance informally. Again, Mr Mathias remained wedded to the idea that an informal resolution was still the way forward, notwithstanding the Claimant had by then escalated her concerns to the Trust's CEO.

109. Mr Squibb's final unhelpful intervention was on 31 January 2020 when in an email to Marcus Bailey timed at 7.04pm, he wrote,

> *"Can you please review the decision myself and Karen took not to extend CR's pay and advise if you support this? CR was expected to RTW on AWDs initially in September 2019 and then again on 6 January 2020 but continues to refuse to RTW despite reasonable*

adjustments and AWDs provided to support her in returning to the workplace." (page 1063)

Expressed in those terms, Mr Squibb was communicating that the Claimant was behaving unreasonably and that he was looking to Mr Bailey to support his decision even though he was notionally inviting him to review it. A few minutes earlier Mr Squibb had sent what we consider to have been an hostile and unpleasant email to the Claimant in which he asserted, without providing any justification, that there had been numerous occasions throughout her period of sickness that she had refused to engage with the sickness process. When the Claimant asked him to substantiate his comments by providing specific details he stonewalled her.

110. Whilst the emails in the bundle inevitably provide an incomplete record of his input to the matter, taken by themselves the emails do not support that Mr Squibb made any positive contribution to the management of the Claimant's situation in the period 17 September 2019 to 31 January 2020.

Mr Norman's brief involvement

111. The Claimant's Fit Note was extended on 6 February 2020 for a further period of one month. During her continued absence, Mr Norman was in contact with her with a view to progressing her grievance. Regrettably, a misunderstanding arose between them. Nevertheless, Mr Norman persisted and it seemed that the matter was back on track. However, when he chased the Claimant up for a date they might meet, she referred to a recent communication from Mr Squibb as having complicated matters (we find this was a reference to Mr Squibb's email of 31 January 2020 at page 635 of the Hearing Bundle referred to above). She asked Mr Norman to bear with her. He did not hear from her again. With the benefit of hindsight he might have chased her up once more, but we do not think it was unreasonable for him to consider that the matter rested with her and that she would be back in touch if and when she wished to progress her grievance.

112. What Mr Norman did not know was that the Claimant was in the course of preparing and submitting a second grievance in relation to the sick pay issue.

The Claimant's return to work in March 2020 and period of shielding as a result of the Coronavirus pandemic

113. The Claimant and Mr Roberts had meanwhile met on 17 February 2020. During their meeting Mr Roberts proposed a further informal meeting with himself, Ms Parsons and Mr Mathias to explore options for a return to work. That meeting went ahead on 4 March 2020 when it was agreed that the Claimant would return to work on AWDs as part of a phased return to work and that she would work eight hours per week initially, in two blocks of four hours. We note that it was documented that her unsocial

enhancement would be reinstated when she returned to 16 hours per week, to be mutually agreed. In other words, it was envisaged in the discussion on 4 March 2020 that the Claimant would return to her normal contractual hours of work. The outcome was documented in form HR2a at page 660 of the Hearing Bundle. It evidences that, handled sensitively, any discussion was not limited to simply getting the Claimant through the door, but could begin to touch upon the longer term.

114. Sadly, Mr Roberts' efforts were undone when, in March 2020, the Claimant commenced shielding during the initial weeks of the Coronavirus pandemic. In an email dated 16 March 2020 the Claimant stated that her diabetes meant that she was clinically vulnerable. A risk assessment completed by Mr Roberts additionally refers to the fact she was recovering from breast cancer, though a subsequent risk assessment completed by the Claimant in August 2020 documents that she did not have a shielding letter or, curiously, any underlying condition.

115. It is a trite observation that the initial weeks and months of the Coronavirus pandemic was an unprecedented time that created significant challenges for organisations, not least one such as the Respondent at the front line in terms of public health.

116. The Claimant initial focus on returning to work had been catching up on her mandatory training. On 20 March 2020, she and Mr Roberts spoke, when she asked whether there was something she might do from home. Mr Roberts was in contact with a colleague in Operational Support who expressed enthusiasm for the Claimant to provide support to its Ambulance Operations Centre in Bedford, though following further emails Mr Roberts reported that, having discussed the matter with the Claimant, the risks were felt to be too great, but that he would keep the situation under review with the Claimant. Subsequently, on 4 April 2020, the Claimant acknowledged in an email to Mr Matthias that there was little she could do to help from home (page 680).

117. Towards the end of May 2020, Mr Roberts was in contact with the Claimant and provided her with details of some online CPD courses. The Claimant believes she may have looked at the details of one of them, but her evidence at Tribunal indicated limited enthusiasm on her part. We note that on 4 April 2020 she had volunteered to Mr Matthias that she was not checking her emails very often. As we identify below, she did not take any further action on her mandatory training.

118. On 3 July 2020, Mr Matthias emailed Mr Roberts to see whether he had had a grievance conversation with the Claimant (page 689). He had been prompted to do so on 12 May 2020 by Sudha Pavan, Deputy Director of Workforce, when he had advised Ms Pavan that he had discussed the matter with Mr Roberts a couple of weeks earlier and asked him to speak with the Claimant during their weekly calls. Mr Mathias seems to have been tardy in following the matter up. His unchallenged evidence was that

he did not receive any response from Mr Roberts albeit there is no evidence he followed the matter up himself.

119. In July 2020, Ms Bromley stepped into the role of Interim AGM as Ms Thwaites was going on maternity leave. On Ms Bromley's appointment Mr Roberts returned to his substantive LOM role, a lower grade role. Mr Matthias briefed Ms Bromley about the Claimant's case, amongst others, though we find, perhaps inevitably given the ongoing lockdown and involved history to the matter, that it was relatively high level briefing.

120. In the meantime, Ms Avery met with the Claimant at her home on 14 July 2020 to conduct her annual appraisal (at the time called a 'Compassionate Conversation'). As part of this conversation they discussed completion of the Claimant's mandatory Workbook which entails various e-Learning courses and takes several hours to complete. The Claimant described feelings of being overwhelmed at the thought of completing her Workbook. As part of the Compassionate Conversation an action plan was identified for the Claimant to complete the Workbook in stages; namely two courses a week until the Workbook was completed. This was confirmed in a signed Personal Development Plan (pages 690 – 697). There is no suggestion in the Plan that the Claimant was seeking, or capable of taking on, additional work at this time, on the contrary she was struggling with the Workbook as it was. The Plan refers to non-work related difficulties in the Claimant's family life impacting her resilience.

121. During the meeting on 14 July 2020, Ms Avery informed the Claimant that Ms Bromley wanted to meet her. The Claimant's evidence is that she understood this would be purely an introduction, an opportunity to say *'Hi',* though text messages between the Claimant and Ms Avery at the time give little or no indication as to the form any meeting might take or the matters that would be discussed.

122. On or around 24 July 2020, the Respondent contacted staff about the need for revised risk assessments; it was assessing staff in terms of their vulnerability for front line working. The Claimant completed an online risk assessment on 25 August 2020. Her score indicated that she was at an increased risk from Covid-19 by reason of age, diabetes, high blood pressure and working face to face with patients (pages 701 and 702). At Ms Bromley's request, Ms Avery completed a generic employee risk assessment follow up record with the Claimant on 5 September 2020. This notes that the Claimant was not well enough for her substantive role, but looking at temporary redeployment opportunities. Ms Avery further noted that the Claimant had consented to an Occupational Health referral,

"Once a temporary redeployment role has been identified".

That confirms to us that the Claimant was still expecting to have a conversation about redeployment.

123. There is an issue between the parties as to whether or not Ms Bromley had contacted the Claimant and referred her to Occupational Health in August 2020. However, it is not in dispute that Kevin Hamlyn, Leading Operations Manager – Central Cambridgeshire, was in contact with the Claimant on 22 August 2020 to discuss potential admin roles in Bedford. There was also the possibility for the Claimant to work from home with the Respondent's Recruitment Team. Mr Hamlyn emailed the Claimant a temporary redeployment vacancy list, together with a risk assessment form. He also asked her to let him know when she had completed her Workbook. We find that she had stopped working on this, since she reported on 25 August 2020 that her IT password had expired.

124. The Claimant complains that the Respondent failed to implement or facilitate working from home. There is no evidence that there was work for her to do or, if there had been work for her to do, that she would have been able to do it given the limited work she was able to do in her first days back at work in March 2020 and inability or lack of motivation over the following five months to check emails and progress her mandatory training. She expressed no interest in the recruitment position highlighted to her by Mr Hamlyn in August 2020. When she completed her risk assessment on 25 August 2020 she stated that she envisaged returning to work on AWDs once it was safe for her to do so. She envisaged a physical return to the workplace rather than working remotely. In all the circumstances, we conclude that the Claimant's offer of help to Mr Roberts at the outset of the pandemic was a well-intentioned expression of solidarity with colleagues at risk on the front line but that it did not reflect that the Claimant was in a position to take on additional work from home whilst shielding. We find that this state of affairs did not change throughout the period she was shielding.

<u>Ms Bromley's involvement, including the September 2020 telephone calls</u>

125. On 31 August 2020, the Claimant's period of shielding ended. The Claimant was telephoned by Ms Bromley on 2 September 2020. Ms Bromley thought she had telephoned the Claimant on 4 September 2020 as she was on leave on 2 September 2020 and thought it unlikely she had dealt with the matter if she was on leave. However, she could not be certain. Emails passing between the Claimant and Ms Avery on 3 September 2020 at pages 712 and 713 of the Hearing Bundle, confirm that the call took place on 2 September 2020. It prompted the Claimant to observe in an email to Ms Avery the following day,

> *"I'm starting to feel as if too many people are involved in getting me back. Ivan was managing my return pre-Covid, then that all went out the window!!! Had a panic attack on the phone with Jo yesterday. She is trying to be helpful, but sent my head into a spin!"*

126. In a further email on 3 September 2020 the Claimant asked Ms Avery not to say anything to Ms Bromley. She said she had not expected endless

questions, though equally acknowledged that she was having *"a low week".* She went on to say,

> *"I need to keep expectations low and not look too far ahead. Do you see yourself coming back front line is off limits right now!"*

In response, Ms Avery referred to Ms Bromley as *"very pro-active and productive"*, which prompted the Claimant to observe, *"she means well, but wow!".*

127. Whilst we find that the call on 2 September 2020 may have led the Claimant to experience elevated feelings of anxiety, we do not accept her evidence that she had an actual panic attack. We accept that Ms Bromley's reason for calling the Claimant was not simply to introduce herself, but to make her aware of opportunities for temporary redeployment, including work she could potentially do from home in circumstances where her period of shielding had come to an end and was therefore, on the face of it, safe to return to the workplace. During the call they discussed a Medical Records Administrator role, a role in Recruitment (which could be done remotely or at Bedford, and which we find was the same role that had been highlighted to the Claimant by Mr Hamlyn) and a Make Ready Operative (MRO) role which involved washing vehicles, restocking them and preparing them to go out. We do not uphold the Claimant's allegation she was pressured by Ms Bromley to make long term decisions during this call. We find that Ms Bromley endeavoured to understand what the Claimant was hoping to do going forward, including whether she hoped to return to front line duties at some point. We accept her evidence that her limited discussion with the Claimant in this regard was so that she could understand what options she needed to be looking at for the Claimant. The 'Talent / Maximising Potential Conversation' section of the Compassionate Conversation with Ms Avery on 14 July 2020 evidences a similar conversation, something Ms Bromley had reviewed on 15 July 2020 and was therefore aware of. The Claimant had raised no concerns in August 2020 when Mr Hamlyn had followed up with details of redeployment opportunities. We think it perfectly understandable therefore why Ms Bromley considered it appropriate to continue these discussions. Whilst Mr Robert's notes in form HR2a are more limited (page 660), he had had a similar discussion with the Claimant on 4 March 2020 and again on 12 March 2020. Whilst, inevitably, each individual had their own personal style and approach, we find that the discussion on 2 September 2020 was appropriate and supportive, Ms Bromley's main focus being the immediate issue of the Claimant's active return to the workplace, in particular temporary redeployment opportunities, as opposed to any longer term solution.

128. On 6 September 2020, Ms Avery conducted a Welfare Check with the Claimant, following which she emailed Mr Matthias and Ms Bromley (copying in the Claimant) as follows,

> *"*[She] *would like to know if it would be possible to return to Ivan being a SPOC for her as she is struggling with more people being involved and not feeling secure; she feels she had a positive and trustworthy relationship with Ivan and Sylvester and would like this to continue. Carolynne identified that she has difficulty talking about the future and this causes unsettled feelings and panic… Jo – this is not personal – but Carolynne feels we could be set back from starting to form new relationships given the complexity of her situation and her emotions towards things."*

Ms Avery went on to report that whilst the Claimant was initially anxious about the possibility of returning to work in a temporary redeployment role, she had become particularly interested, indeed "excited", about the MRO role in Cambridge. She suggested a meeting between the Claimant and Mr Matthias and Mr Roberts in order to progress the matter.

129. Ms Bromley did not feel this was appropriate. In her witness statement she cites the fact that Mr Roberts had returned to his substantive role as a LOM and no longer had the requisite authority to oversee any temporary redeployment or reasonable adjustments. She also asserts that this would have made the process very cumbersome.

130. We have difficulty in understanding Ms Bromley or the Respondent's objection to Mr Roberts' continued involvement. Even if Mr Roberts had returned to his substantive role as an LOM, he had practical experience of managing the situation over a period of many months. Indeed, by his efforts, he had been able to secure the Claimant's tentative return to work after over one year's absence.

131. There was some suggestion at Tribunal that Mr Roberts had become too personally involved in the Claimant's situation. He was absent from work on sick leave at the time of the Hearing and there was some suggestion that he had become ill as a result of the pressures of managing the situation. However, the evidence in this regard was limited. Issues were alluded to but we were not provided with further details.

132. In September 2020, Ms Bromley spoke with the Respondent's Occupational Health Advisors as she understood a referral had been made, but no advice had been forthcoming. She was informed that the Claimant had not engaged. In fact the documents at pages 732 to 739 of the Hearing Bundle evidence that Occupational Health may have been unable to contact the Claimant albeit that possibly only one attempt at contact had been made. That does not support a lack of engagement.

133. The Claimant and Ms Bromley had a further telephone discussion on 15 September 2020. The Tribunal has been unable to reach a consensus about this call. We all find that Ms Bromley embarked upon the call without a comprehensive understanding of the Claimant's health situation or the full history of the matter, including details of the Claimant's grievances. Further, we find that the Claimant's initial concerns in relation

to Ms Bromley had settled into a more rigid objection to her involvement. The majority (Employment Judge Tynan and Ms Carvell) find that the Claimant was difficult during the telephone call on 15 September 2020, but that although she tested Ms Bromley's patience and was rude to her, Ms Bromley handled the discussion appropriately and did not bring pressure to bear upon the Claimant to make long term decisions, rather she followed up appropriately in terms of the Claimant's Workbook and potential redeployment opportunities, and also asked appropriate questions of the Claimant when the Claimant disclosed that she had been in hospital. They are informed by the contents of a draft letter prepared by Ms Bromley following the conversation, albeit which was not sent, which supports Ms Bromley's account, whereas the Claimant's contemporaneous account (page 725 of the Hearing Bundle) does not fully accord with the account in her witness statement. They find that the Claimant's conduct during the call on 15 September 2020 was not evidence of a 'fight or flight' reaction, rather consistent with what she herself said in evidence is her tendency, "to tell it like it is". Ms Gunnell considers that as the call progressed the Claimant's conduct was consistent with a 'fight or flight' reaction and that Ms Bromley ought to have brought the call to an end rather than persist. The Tribunal are unanimous in finding that in the course of the conversation Ms Bromley said to the Claimant that making tea on the station was not an option and further that she, rather than Mr Roberts, would be managing the Claimant's return to the station.

134. Following their discussion on 15 September 2020, Ms Bromley followed up with the Respondent's Occupation Health Advisors and chased the matter again on 24 September 2020. This led to Ms Bromley receiving conflicting information from them and the Claimant as to whether or not the Occupational Health Advisors had been in contact with the Claimant. This led to a not entirely friendly exchange of emails on 25 / 26 September 2020. Ms Bromley was unaware at this time that the Claimant had submitted a grievance against her (the "third grievance").

135. In the meantime, the Claimant had informed Mr Matthias that she wished to explore the possibility of ill health retirement, clarifying on 19 September 2020 that this was only because she felt the Respondent would not be a safe workplace for her.

<u>The Claimant's ongoing absence from work and remaining issues in these proceedings</u>

136. On 1 October 2020, the Claimant sent a detailed email to John Syson, Interim Director of Workforce. She wrote,

> *"The status quo of Ivan working with me must be restored, and Jo needs to back off because she is interfering without fully understanding my situation".*

137. Mr Syson responded to say that he would speak with Mr Matthias with a view to getting the return to work discussions back on track. As he would not be in the Trust the following week, he offered to have a discussion with the Claimant on his return on 12 October 2020.

138. On 6 October 2020, Mr Matthias registered the Claimant on the Respondent's online redeployment system; it issues automated vacancy notifications to staff. The system is mainly intended for employees at risk of redundancy, and ensures they are alerted to potential redeployment opportunities through to the end of their notice period. We find that Mr Matthias registered the Claimant on the system as a supportive measure to ensure that potential redeployment opportunities were notified to the Claimant on a timely basis.

139. On 8 October 2020, the Claimant commenced a period of sickness absence and self-certified. This was followed up by a fit note dated 23 October 2020 certifying the Claimant as unfit for work from 15 October 2020 to 14 November 2020, by reason of work related stress and anxiety.

140. There was a further Occupational Health Assessment in relation to the Claimant on 21 October 2020. The assessment was conducted by telephone. The Occupational Health Advisor, Angela Kirby, noted that the Claimant engaged well with the consultation, but became very distressed when starting to talk about her medical situation and return to work issues. The assessment was effectively curtailed due to the Claimant's level of distress with Ms Kirby noting that it was not possible to accurately determine the Claimant's return to work capabilities. It was identified that Ms Kirby would review the situation again on 30 November 2020.

141. Upon receipt of Ms Kirby's report, Ms Bromley sought further advice from Mr Matthias, following which she wrote to the Claimant inviting her to an informal meeting to discuss her sickness absence. She confirmed this could either be a Teams meeting or in person. There would have been no reason for the Claimant to believe that the meeting would be other than with Ms Bromley. In fact, Ms Bromley envisaged that the meeting would be conducted by Mr Roberts and Mr Matthias. It is regrettable that this was not made clear to the Claimant, as she contacted the Respondent's Occupational Health Advisors in a state of some distress following receipt of the letter. It was necessary for them to coach the Claimant in breathing techniques until she felt a little better.

142. On 3 November 2020, the Claimant spoke with Ms Avery and reported that she had had an anxiety attack on receiving Ms Bromley's email and letter. Ms Avery reported back to Ms Bromley that the Claimant felt that,

> *"any contact with you induces panic attacks"*

She went on to say,

> *"Carolynne has confirmed she has applied for ill health retirement and regardless of whether she gets it or not, she won't be returning to work for EEAST".*

This prompted Ms Bromley to ask,

> *"Is this resignation?"*

143. We find Ms Bromley was increasingly exasperated and hoped that the ongoing challenges of managing the situation might be resolved if the Claimant was signalling an intention to leave the Respondent's employment.

144. We find that the Claimant had resolved to have no further contact with Ms Bromley, notwithstanding Ms Bromley was her manager. In an email to Andrew Stone at 9.32am on 3 November 2020, the Claimant wrote,

> *"You tried to ring yesterday. I am not answering the phone if its work as I need to know who is calling and why. My understanding is that Jo has taken over, and I have made it very clear that she needs to stay out of things."*

We regard this as an unhelpful communication.

145. When that email came to Ms Bromley's attention, we find that she could barely contain her frustration and irritation with the situation. In an email to Mr Squibb sent at 7.27pm on 3 November 2020 she wrote,

> *"Luke*
>
> *I spoke to Sylvester tonight; he would like me to assign Rachel to her case as Welfare.*
>
> *I am concerned we are dealing with this differently to the other people I have on LTS.*
>
> *As she has said she won't be attending her informal sickness meeting tomorrow, but would if Ivan did it. Do we write to her and give her the chance of a second date or if she is unable to talk to us or actually engage with OH can we go straight to capability?*
>
> *She is unfit to do her role and if unable (and unwilling) to do her job as stated, so we just allow that?*
>
> *I honestly do believe this is getting out of hand and we are starting to not be in control with these staff.*
>
> *I have offered more than enough support and so have the LOM team; she has refused to engage with this support.*

I think enough is enough.

The Solicitor also makes promises, it will be a few days for the letter and it still isn't back.

Happy to be led and guided by you both.

Jo"

The comment in the second paragraph of Ms Bromley's email fails to recognise that the duty of adjustment in the Equality Act 2010 is based upon a tailored approach.

146. The planned informal sickness absence meeting on 4 November 2020 did not proceed as the Claimant did not attend it. We find that she had resolved not to attend the meeting on the basis she misunderstood that it would be chaired by Ms Bromley. In any event she was covered by a Fit Note at the time.

147. Ms Bromley was not alone in expressing herself in intemperate terms. On 6 November 2020, the Claimant was one of three individuals who collectively raised concerns in relation to Ms Bromley alleging that she was,

> *"manipulating, creating lies and disability discriminating against all those named plus at least one other that we are aware of who has their own complaint ongoing"*

148. Whatever the Claimant's perception of how Ms Bromley had conducted herself during their two telephone calls on 2 and 15 September 2020, there was no basis for the Claimant to accuse Ms Bromley of manipulation or creating lies. It was an unpleasant and unfounded allegation to level against her.

149. We do not propose, indeed we are not in a position, to make findings in relation to the grievances raised by the Claimant's work colleagues, though we do note that the other two individuals were the Claimant's Trade Union Representative and the Representative's husband, both of whom are friends with the Claimant outside of work.

150. On 9 November 2020, Mr Syson recommended to the Respondent's CEO and to Rachel Tremble, HR Advisor – Bedfordshire, that the email of 6 November 2020 should be handled as a Dignity at Work complaint. We consider that to have been a reasonable approach given the concerns in the email related to the Claimant's and her colleagues' dignity within the workplace. Moreover, it is unclear from the email of 6 November 2020 what it added in terms of the Claimant's existing grievance against Ms Bromley.

151. In response to a request for an update from Mr Syson, Mr Matthias confirmed on 9 November 2020 that during a discussion with Mr Squibb it had been decided that Mr Roberts would be asked to manage the Claimant's sickness absence on the basis she had been unwilling to engage with Ms Bromley. Mr Matthias referred to this as a reasonable adjustment and confirmed that Mr Roberts was due to speak to the Claimant that day to let her know that he would be managing her sickness absence.

152. Subsequently, on 13 November 2020, in a joint email with her colleagues, the Claimant stated that she felt that she had no alternative but to seek ill health retirement, citing Ms Bromley and Mr Squibb's ongoing involvement in her case. We were not told whether Mr Roberts had spoken to the Claimant by then to let her know that he would be managing her sickness absence. It is common ground that they met on 17 November 2020 for an informal long term sickness review meeting. The outcome of the meeting was confirmed in a letter from Mr Roberts dated 21 November 2020. Having summarised the difficulties faced by the Claimant, including what was referred to as a *"low threshold to the fight, flight or freeze reaction to stressors",* Mr Roberts referred to the prospect of not being able to return to front line duties as a cause of great sadness for the Claimant. We find this reflects their discussion on 17 November 2020 that the Claimant's recovery from her cancer, combined with her ongoing depression and anxiety, meant that she was no longer fit to return to her substantive role.

153. Mr Roberts went on to say,

> *"You feel that you have little choice but to retire from the Ambulance Service because of ill health and you now wish for this process to be initiated."*

That is slightly different to what the Claimant had said in her email to Mr Matthias in September 2020, though Mr Roberts' letter may have been seen and approved by the Claimant before it was issued.

154. The Claimant was certified as unfit to work between 14 November 2020 and 13 December 2020.

155. The Claimant had a further telephone Occupational Health Assessment with Kays Medical on 30 November 2020. This Assessment was undertaken by Catriona Lovell, Occupational Health Advisor. Ms Lovell assessed the Claimant as not currently fit to undertake her substantive role and noted that she would have a 'melt down' over small things. She identified that the relationship between management and the Claimant had broken down irreparably and that this was now preventing the Claimant's return to work, even if she was physically capable of undertaking alternative work.

156. Ms Lovell went on to note,

> *"Ms Rayner is on long term hormone therapy following her treatment for breast cancer. It is not certain how long the side effects of this may last, but for the foreseeable future she may struggle with poor concentration and fatigue which would be a barrier to her returning to work."* (page 119)

Aside therefore from irreparable working relationships, the Claimant's physical health, specifically impaired concentration and fatigue resulting from long term hormone therapy, was additionally precluding her return to work at that time and would continue to do so for the foreseeable future.

157. Mr Matthias discussed the Claimant's case with Mr Roberts on 2 December 2020. It seems to have been agreed between them that Mr Roberts would deal with the concerns raised by the Claimant and Mr and Mrs Parsons on 6 November 2020. Mr Matthias prepared a draft letter for Mr Roberts to send to the Claimant (pages 1116 and 1117). Mr Roberts expressed unhappiness with the letter, in particular a sentence in the letter in which Mr Roberts stated that he had carefully considered the concerns raised by the Claimant. Mr Roberts pointed out that he had not in fact had sight of any written complaint, but in any event went on to express concern that as the complaint related to more senior managers in his chain of command, they should be dealt with independently. He expressed concern that becoming involved in this matter and with the Claimant's other grievances might undermine the relationship established between himself and the Claimant over the last year or so. He may have shared the draft letter with the Claimant and discussed with her how he intended to deal with the matter.

158. By 14 December 2020, John Syson had taken the decision that the Claimant's outstanding concerns and grievances should be handled externally. He believed this would expedite matters but also provide essential reassurance for the Claimant, in the sense that any investigator would be at arms' length to the issues than a manager from elsewhere in the Trust.

159. From 6 October 2020, the Claimant had been receiving automated messages from EEAST Recruitment, with redeployment weekly reminders. The standard redeployment period of three months was due to end on 6 January 2021. On 30 December 2020 the Claimant received a message stating that she had seven days remaining as a redeployee. This was followed by the following message on 6 January 2021,

> *"Dear Carolynne Rayner*
>
> *Your redeployment period has now come to an end and your employment with us will cease on ."*

160. Although the Claimant contends that the messages amounted to harassment, in paragraph 139 of her witness statement, the Claimant states that she had not really taken any notice of them. When questioned

about this by Ms Smeaton, the Claimant said she had not looked at them and described them as something else that was pinging at her. We find that they did not cause her any particular concern at the time they were received by her.

161. The Claimant attended a formal health review meeting with Mr Roberts and Mr Andrews from the Respondent's HR department, on 6 January 2021. Mr Roberts wrote to the Claimant on 11 January 2021 summarising the meeting (pages 837 and 838). The Claimant identified that the fact her grievances remained unanswered left her with the view and feeling that the workplace was an unsafe environment for her to be in. She had not said this at their previous meeting. She went on to suggest that she should be stood down from duty whilst *"the grievance investigations was awaited".*

162. Mr Roberts' letter referred to the "very real" health risks of the Claimant developing lymphedema if she returned to her substantive role and to her expressed wish to pursue ill health retirement. Regrettably, although this was not then known, the application for ill health retirement had been refused. The Occupational Health Advisors to the NHS Pension Scheme, Medigold Health were of the view that the Claimant did not meet the necessary condition of permanent incapacity notwithstanding reports from an Occupational Physician and the Claimant's GP that the Claimant was unlikely to be fit for the full duties of her employment for the foreseeable future and that it would be difficult to see the Claimant returning to a stressful job. Medigold Health's view was informed by the fact that further treatment would be available to the Claimant to enable her to return to her duties and that the benefit of such further treatment was likely to be realised before normal pension age, then 15 years away. Otherwise, it is unclear what their professional view was as to the timeframe within which any return to the workplace might be achieved.

163. On 7 January 2021, Simon King, Head of Operations for Bedfordshire and Luton A&E, wrote to the Claimant to inform her that he had commissioned an investigation into the grievance registered by her on 17 February 2020. The Claimant remained certified as unfit for work; a retrospective Fit Note being issued on 8 January 2021 covering the period 14 December 2020 to 13 February 2021.

164. Mandy Wilson, an independent investigator contacted the Claimant on 21 January 2021, inviting her to a formal investigation meeting by Teams. The Claimant responded, copying in her Union Representative, requesting that a date and time can be fixed that best suited her Representative. She also sought clarification as to whether Ms Wilson was aware that she had two other outstanding grievances and whether she would be looking at these, or just the grievance of 17 February 2020.

165. Whilst that takes matters up to and indeed slightly beyond the issues we have to determine in these proceedings, we note that Ms Wilson reported on the Claimant's grievance on 28 June 2021, but that she did so having

only interviewed the Claimant. She did not speak to anyone at the Respondent to secure their account of events or to understand the Respondent's position. Her failure to do so is inexplicable in our view and, in our judgement, her report serves therefore as little more than a record of what the Claimant told her when they met on 22 March 2021. We cannot sensibly have regard to Ms Wilson's findings in arriving at our own findings in this case and indeed we were not actively invited by Mr Brown to do so.

The Law and Conclusions

166. For the reasons set out in our detailed findings above, the complaints identified as Issues 6.2.3 and 6.2.4(i) and (ii) (further cross referenced in Issues 5.2.8 and 7.4.9), and 7.4.6 in the List of Issues are not well founded, the Claimant having failed to establish the primary facts upon which her complaints are pursued. We address the Claimant's remaining complaints below.

Claimed disability by reason of diabetes

167. The Claimant has the burden of establishing, on the balance of probabilities, that she is disabled within the meaning in section 6 of the Equality Act 2010 - Morgan v Staffordshire University [2002] IRLR 190. The Respondent conceded disability by reason of cancer and mental health (anxiety, depression, stress), but does not admit (though does not actively deny) that she was a disabled person by reason of diabetes and/or hypertension. However, although the Claimant adopted her Impact Statement as her evidence, she was not cross-examined on it or about either condition.

168. The Claimant's diabetes and hypertension are noted in the March 2020 risk assessment and, as such, the Respondent was on notice of the conditions. At paragraph 121 of her witness statement she refers to a diabetic crisis in September 2020 that necessitated attending A&E, and that she was having difficulty managing her condition due to the stress and anxiety she was experiencing. She told Ms Bromley that she had attended A&E when they spoke on 15 September 2020, again further putting the Respondent on notice of the condition. We accept the unchallenged evidence in the Claimant's Impact Statement as to the effects of her diabetes and hypertension on her day to day activities and how she manages the conditions. She is right to describe them and her other conditions as co-morbid. Diabetes and hypertension are often lifelong conditions. In this case, the Claimant's depression and anxiety, as well as the medication for her cancer have impeded her ability to take steps to address the conditions. If the impairments had not already lasted 12 months when diagnosed, we consider that they were likely to last more than 12 months from the date they were diagnosed given her co-morbidities. As such we consider that the Claimant was disabled by reason of diabetes and hypertension, as well as by reason of depression, anxiety and cancer, by not later than November 2019 and accordingly that when she began shielding in March 2020 this was by reason of all four

impairments comprising her disability even if she identified her diabetes as the immediate reason.

S20/21 EqA Claims

169. Section 20 of EqA 2010 defines the duty to make adjustments as follows,

> 20 Duty to make adjustments
>
> (1) …
> (2) …
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
> (4) …
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

170. It is not necessary in this case for the Tribunal to have regard to the second statutory requirement.

The claimed PCPs

171. The claimed provisions, criteria and practices ("PCPs") are set out at paragraphs 4.2.1 to 4.2.11 of the List of Issues. These are the PCPs we must consider in determining the Claim. The Respondent accepts that consistent attendance at work is a requirement and that employees must work their contracted hours. These have operated throughout the Claimant's employment with the Respondent. As regards paragraphs 4.2.5 and 4.2.6, the Respondent accepts that there was an 'expectation' in relation to the matters identified, but not a 'requirement'. We note in Carerras v United First Partners Research Ltd EAT 0266/15 that the term "requirement" was said to be capable of incorporating an "expectation" or assumption", which might be sufficient to establish the existence of a practice. In our judgment they have certainly operated since the Claimant was diagnosed with cancer in 2018. The remaining claimed PCPs at paragraphs 4.2.3, 4.2.4, 4.2.7 – 4.2.9, 4.2.10 and 4.2.11 are disputed by the Respondent.

172. What amounts to a PCP is not further defined within the Equality Act 2010, though the expression is to be construed broadly, avoiding an overly

technical approach. According to the EHCR's Employment Code it extends to any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. The existence or otherwise of a PCP is to be assessed objectively.

173. Our findings and conclusions are as follows. The Respondent required consistent attendance at work and that employees should work their full contracted hours. By 2018 the Respondent had ceased to operate a policy that any return to work on AWDs should be limited to a period of twelve weeks, even if, in practice, it continued to regard such arrangements as a time limited, as opposed to a long term or even permanent, solution. The PCP at paragraph 4.2.8 is not therefore established. As regards the related PCP at paragraph 4.2.3, we do not consider that the Respondent's policies, practices or arrangements more generally placed limits on the time period during which reduced hours of work would be accommodated even if, as detailed below, it had broad expectations as to the path that a return to work would follow. Similarly, we do not consider (paragraph 4.2.4 of the List of Issues) that the Respondent only allowed minor or modest reductions to working hours as part of return to work plans; the evidence in relation to the Claimant evidences to the contrary that there were significant reductions / agreed reductions to her working hours in January/February 2019, October 2019 and March 2020. In the circumstances, the claimed PCPs at paragraphs 4.2.3 and 4.2.4 are not established. We agree with Ms Smeaton that the PCPs identified at paragraphs 4.2.5 and 4.2.6 of the List of Issues are in the nature of an expectation, or aim, rather than a requirement. In sickness absence cases, we find that the Respondent's practice is to take a structured approach to the issue of return, with the aim and expectation of securing a return to full contractual hours within an identified period, unless it is or becomes clear that the employee can no longer sustain a return on their existing contracted hours and working pattern. We disagree with Ms Smeaton that there is no expectation that employees will make long term decisions after a period of time (paragraph 4.2.7); Mr Squibb's communications in particular evidence the Respondent's clear expectations in this regard, even if there was no prescribed period of time within which the Respondent expected a decision to be taken. We consider that this PCP has been in operation since before the Claimant's cancer diagnosis.

174. As regards the Respondent's Sickness Absence Management Policy, we agree with the Claimant that the Policy, and the Respondent's own interpretation and application of it, includes arranging a final review meeting with employees in cases of long term absence, giving consideration to terminating employment, and reducing employees' pay from full pay to half pay and then nil pay after a prescribed period of absence (paragraph 4.2.9 of the List of Issues). Version 6.0 of the Policy has been in force since 9 August 2018.

175. We do not uphold that there was a practice of not providing IT equipment to employees working less than full time hours. In the circumstances of

the pandemic the Respondent had difficulty in getting hold of IT equipment for people on temporary redeployments, a different issue.

176. We find that the Respondent's practice in relation to managing employees who are absent on sick leave is, and was, that they are contacted during their absence by an Assistant General Manager and a designated individual from the Respondent's HR team. In the Claimant's case, Ms Avery additionally remained in regular contact with the Claimant as her line manager in order to check on her welfare. We do not consider that these arrangements are to be equated with a practice of "various individuals contacting and/or communicating with employees". We believe the contended for PCP relates to the number of individuals who have been involved in managing the Claimant's case. However, that partly reflects the fact that the Claimant raised grievances against and declined to have contact with those who might otherwise have managed her absence i.e, Ms Thwaites, Mr Matthias and Ms Bromley, and that she has sought to involve others or took steps that have led others to become involved, for example Ms Hosein, Mr Norman and Ms Wilson. In all the circumstances, we do not uphold that there was a PCP as identified at paragraph 4.2.11 of the List of Issues.

The claimed disadvantages and the Respondent's knowledge of these

177. Subject to the Tribunal's conclusions in relation to the claimed PCPs, the Respondent accepted that the Claimant was potentially at a substantial disadvantage as set out at paragraphs 4.4 to 4.6 of the List of Issues. We remind ourselves that the duty to make reasonable adjustments is with a view to avoiding any PCPs from giving rise to those disadvantages.

178. From October 2018 the Respondent understood the Claimant's limitations in terms of being able to immediately return to her substantive role working her full contracted hours. In light of the difficulties experienced by the Claimant in maintaining consistent attendance in January/February 2019, we consider that it knew or could reasonably have been expected to know that the Claimant may be at a substantial disadvantage in terms of increasing her hours at predetermined levels. Otherwise, however, it was not until 22 September 2019 (or at the very latest 24 September 2019, when the Claimant provided it with a copy of Dr Shravat's report) that it knew or could reasonably have been expected to know that the Claimant was at a substantial disadvantage in terms of making long term decisions and subject to the substantial disadvantages set out in paragraphs 4.5.1, 4.5.2, 4.5.5 and 4.5.6 of the List of Issues.

Reasonable adjustments

179. Paragraph 4.8 of the List of Issues identifies a range of adjustments that the Claimant asserts might reasonably have been made in relation to her. The burden of proof does not, of course, ultimately lie with the Claimant. She need only identify in broad terms the nature of the adjustments that would address the disadvantages for the burden to shift to the Respondent

to show that the disadvantages would not be eliminated or reduced by the proposed adjustments or that they would not otherwise be reasonable adjustments to make.

180. One of the practical difficulties with a number of the Claimant's suggested adjustments is that they are expressed to be without limitation of time. We consider that to be unworkable and, ultimately therefore, unreasonable in so far as the Claimant might return to work on AWDs with no limitation of time as to how long that arrangement, or similarly a temporary redeployment, might last for. An employee's working arrangements are rarely set in stone, but the Respondent was reasonably entitled to some degree of certainty in terms of the Claimant's working pattern. AWDs and temporary redeployment are short term measures intended to support an employee either to return to their substantive role or to secure permanent redeployment into another position. They are, in and of themselves, reasonable adjustments, though we consider that where an employee is disadvantaged by them adjustments can and should reasonably be made to how they are applied or operated in practice.

181. As regards the Claimant's suggestion that working from home should have been implemented or facilitated from 16 March 2020 and, to this end, that she should have been provided with IT equipment, we have not upheld the claimed PCP at paragraph 4.2.10 of the List of Issues. In any event, home working and IT equipment would not have addressed any disadvantages experienced by the Claimant by reason that she was shielding. The identified work for her to do was to get up to date with emails and complete her Workbook, something she failed to do whilst shielding and which had nothing to do with a lack of available IT equipment. There was no other work she might have done or been fit to do from home.

182. In the judgment of the Tribunal, from 2018 until September 2019 the Respondent took such steps as it was reasonable for it to take to avoid the disadvantages experienced by the Claimant over that period by implementing a time-limited phased return to work on reduced hours on AWDs in January 2019 and subsequently planning for a broadly similar return on 30 September 2019, in both cases on the basis that the phased return might be extended and/or altered as necessary to support the Claimant in maintaining her return to work, and also by its willingness to consider redeploying the Claimant on either a temporary or permanent basis.

183. Thereafter, in particular acting upon the Claimant's email of 22 September 2019 and the advice referred to in it, the Respondent ought reasonably to have implemented, but failed in its duty to make, the following adjustments in respect of the Claimant's anticipated return to work on or after 30 September 2019 in order to seek to address the disadvantages then being caused to the Claimant by the relevant PCPs:

    (a) Permitting and/or arranging for the Claimant to return to work on AWDs on the basis that she would work 8 hours per week and that the remaining 8 hours of her normal contractual hours would be

treated as sick leave, such arrangements to remain in place if so required by the Claimant for a period of up to six months;

(b) Removing any expectation, in that period of six months as to what the long term solution might be in terms of the Claimant's job or her days and hours of work;

(c) Deferring any review of the arrangements and/or discussion as to the future until towards the end of the period of six months, unless the Claimant herself initiated discussion before then and, even then, respecting the Claimant's documented wishes if she expressed a preference to limit the ambit of any discussion, for example to temporary redeployment opportunities rather than the issue of her substantive role;

(d) Putting in place arrangements whereby a welfare officer would be appointed for the Claimant who would contact the Claimant informally at least fortnightly during the six month period referred to, to discuss her progress and thereby help contribute to an environment within which the Claimant might better formulate her own thoughts at her own pace regarding her future, such welfare officer to be at the level of a Leading Operations Manager or above but not directly involved in managing the Claimant; and

(e) Extending the Claimant's sick pay so that she continued to be paid half pay for an additional period of up to 13 weeks from the date it otherwise reduced to nil pay and making up her pay following her return to work to her full contracted 16 hours for a further period of up to 13 weeks to support her continued attendance and return.

(f) If the welfare officer and the Claimant were also in agreement with this, permitting the welfare officer to be present at any formal review meeting towards the end of the period of six months, and at any other progress discussions initiated by the Claimant.

In our judgement, these adjustments would have addressed Dr Shravat's recommendation that the Claimant should not be pressured to make decisions, but instead be given space to explore appropriate working environments in which she would be able to successfully manage the post treatment risks associated with her cancer treatment.

184. On or around 4 March 2020, and thereafter, the Respondent complied with its duty as set out in the first part of paragraph 183(a) above, namely it permitted and/or arranged for the Claimant to return to work on AWDs on the basis that she would work 8 hours per week and that the remaining 8 hours of her normal contractual hours would be treated as sick leave. However, it continued to fail to make the other reasonable adjustments identified by the Tribunal immediately above.

S15 EqA Claims

185. Section 15 of EqA 2010 provides,

> 15 Discrimination arising from disability

> (1) A person (A) discriminates against a disabled person (B) if-
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

The things arising in consequence of the Claimant's disability

186. The matters (the 'somethings') arising in consequence of the Claimant's disability are identified in paragraph 5.1 of the List of Issues and are as follows:

a. Surgery for cancer;
b. Time off work due to ill-health;
c. Stress, anxiety, depression, fatigue and other related or similar symptoms;
d. Inability to work her contracted hours;
e. Inability to return to her contracted duties/substantive role;
f. Inability to work more than 8 hours per week, alternatively difficulties associated with working more than 8 hours per week;
g. Inability to make (alternatively, difficulty making) long term decisions about her future employment;
h. Her requirement for longer or more flexible return to work without the requirement to increase at pre-determined levels and/or return to a specified role or determine a role;
i. The requirement to 'shield' in accordance with medical advice and/or Government guidance concerning the COVID-19 pandemic (and therefore not being able to attend the Respondent's premises);
j. Her vulnerability to COVID-19; and
k. Her hypertension.

187. In response to an invitation from the Tribunal in the course of the hearing, Ms Smeaton indicated that the above matters were not in dispute.

188. For convenience we deal with the automated messages (Issue 5.2.9) later.

The unfavourable treatment and reasons for it

189. As regards the alleged unfavourable treatment relied on by the Claimant and the reasons for it (adopting the numbering in the List of Issues):

5.2.1 For all the reasons set out in paragraph 177 above, we conclude that the Respondent did not facilitate a sustainable return to work for the Claimant between September 2019 and February 2020. That was unfavourable treatment and was because of the matters referred to in paragraphs 5.1.2 to 5.1.8 of the List of Issues.

5.2.2 The Claimant was undoubtedly treated unfavourably by being invited on 26 September 2019 to attend a final formal meeting on

14 October 2019 at which the termination of her employment was stated to be a possible outcome. That was because of the matters referred to in paragraphs 5.1.1 to 5.1.8 of the List of Issues.

5.2.3 The Claimant's pay was reduced to half pay because of the matters referred to in paragraphs 5.1.1 to 5.1.6 and 5.1.8 of the List of Issues. It was clearly unfavourable treatment.

5.2.4 Likewise the move to nil pay was unfavourable treatment of the Claimant for all the same reasons as above.

5.2.5 The Claimant's sick pay was not reinstated or extended because Mr Squibb believed that she was not engaging, including that she had failed to attend the final formal meeting on 14 October 2019. Her failure to do so was something arising in consequence of her disability, namely her inability to make, alternatively her difficulty making, long term decisions about her future employment.

5.2.7 The Respondent did not provide the Claimant with additional work whilst she was shielding between 9 March and 31 August 2020, but this was not unfavourable treatment in circumstances where the Claimant had only just returned to work following a lengthy period of absence, was on limited duties, redeployment had been identified as representing too great a risk for her, had ongoing difficulties in her family life and, critically, was struggling to complete the relatively limited tasks that had been assigned to her, namely getting up to date with emails and completion of her Workbook.

5.2.8 We have not upheld the bulk of the allegations in relation to Ms Bromley's alleged conduct on 2 and 15 September 2020. Given the majority finding that the Claimant's conduct on 15 September 2020 was not a fight or flight reaction, namely a manifestation of her mental health issues, Ms Bromley's interactions with and responses to the Claimant were not because of something arising in consequence of the Claimant's disability. We return below to the question of whether they were acts of harassment.

Justification

190. As to whether the Respondent's unfavourable treatment of the Claimant above was a proportionate means of achieving a legitimate aim, the Respondent has the burden of showing that the treatment in question was a proportionate means of achieving a legitimate aim. Once a legitimate aim is established, consideration of whether the employer acted proportionately in the matter requires an objective balance to be struck between the discriminatory impact of the PCP and the Respondent's reasonable needs.

191. We accept that the stated aims at paragraph 5.3 of the List of Issues are legitimate aims. However, essentially for all the reasons why we conclude

that the Respondent failed in its duty to make adjustments, we consider that the Respondent's treatment of the Claimant as set out at paragraphs 5.2.1 to 5.2.5 of the List of Issues was not proportionate to those aims. The discriminatory impact upon the Claimant outweighs the Respondent's aims and interests.

Harassment Claims

192. Section 26 of the Equality Act 2010 ("EqA") provides,

> (1) A person (A) harasses another (B) if-
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic; and
>
> (b) the conduct has the purpose or effect of-
>
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

193. In Richmond Pharmacology v Dhaliwal [2009] ICR724 it was observed,

> "A Respondent should not be held liable merely because his conduct has had the effect of producing a prescribed consequence: it should be *reasonable* that that consequence has occurred… overall the criterion is objective because what the Tribunal is required to consider is whether, if the Claimant has experienced those feelings or perceptions, and it was reasonable for her to do so. Plus if, for example the Tribunal believes that the Claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for the Claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the Tribunal as to what would important for it to have regard to all the relevant circumstances including the context of the conduct in question. One question that may be material is whether it should reasonably be apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the prescribed consequence): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt…
>
> (22) …dignity is not necessarily violated by what was said or done which was trivial or transitory, which should have been clear but any offence was unintended. But it is very important that employers and Tribunals are sensitive to the hurt which can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

194. In Land Registry v Grant [2011] ICR 1390,CA, Elias J said,

> "It is not importing intent into the concept of effect to say that intent would generally be relevant to assessing effect. It would also be relevant to deciding whether the response of the alleged victim is reasonable".

195. The conduct relied upon by the Claimant as being unwanted conduct is set out at paragraph 6.2 of the List of Issues. We have already indicated why Issues 6.2.3 and 6.2.4(i) and (ii) do not succeed. Our conclusions in relation to remaining Issues are as follows:

6.2.1 The Respondent's actions in writing to the Claimant on 26 September 2019 were unwanted and, though not intended, had the effect of creating an intimidating etc environment for the Claimant. In circumstances where the letter was not in accordance with the Respondent's documented Policy, which envisages that the bulk of the issues would be discussed during the formal stage of the process, we consider that it was reasonable for the Respondent's actions to have that effect upon the Claimant. The complaint therefore succeeds.

6.2.2 Mr Squibb's statement in his letter of 23 December 2019 that the Claimant had not engaged was unfounded. It was unwanted conduct and, whether or not this was intended, it had the effect of creating an intimidating etc environment for the Claimant. We consider that it was reasonable for his conduct to have that effect upon the Claimant. The complaint therefore succeeds.

6.2.4(iii) and (iv)

The Tribunal accepts that the 'tea' comment was unwanted by the Claimant. The majority decision of the Tribunal (Ms Carvell dissenting) is that, although not intended to create an intimidating etc environment, the comment both had that effect and it was reasonable for it to do so notwithstanding the majority finding of the Tribunal that Ms Bromley's conduct during the call was otherwise entirely appropriate. Even though the Claimant may have been difficult, indeed rude, to Ms Bromley, the 'tea' comment was perceived by the Claimant as belittling of her disability and the significant barriers it presented in terms of the work she could do in the immediate period following any return to work. Ms Carvell considers that Ms Bromley was merely seeking to explain to the Claimant why she was keen to explore redeployment opportunities, even if she might have expressed herself more eloquently. Ms Carvell considers that it would be encouraging hypersensitivity on the part of the Claimant to conclude that she would reasonably have been offended by the comment in circumstances where she was being difficult and "telling it like it is". However, the majority view is that it was reasonable for the Claimant to take offence even if she was not entirely innocent in the matter.

The unanimous judgment of the Tribunal is that Ms Bromley made a factual statement when she informed the Claimant that Mr Roberts would no longer be managing her return to work. The Claimant may have been unhappy with the implications of Mr Roberts' return to his substantive role, but the mere fact this was communicated to her did not of itself reasonably give rise to the perception of a hostile etc working environment. We return to the question of whether it was an act of victimisation.

6.2.5 We do not consider that the automated messages were unwanted. Even if it could be said that the last two automated messages were unwanted, we think it would be encouraging hypersensitivity to conclude that they caused any real offence or led to the creation of an intimidating etc environment for the Claimant. She would or ought reasonably to have understood that the messages were primarily intended for those at risk of redundancy who might otherwise be leaving the organisation and, in her case, that they had been automatically generated and did not mean that her employment was about to terminate. On her own evidence she took little or no notice of the messages at the time.

6.2.6 Ms Bromley's letter to the Claimant dated 30 October 202 was not unwanted per se, it was the fact it emanated from Ms Bromley that meant it was experienced by the Claimant as unwanted. Ms Bromley was the AGM with responsibility for managing her sickness absence. Her letter might have been clearer that the planned meeting would be conducted by Mr Roberts and Mr Matthias, but if the Claimant was uncertain on the matter it was a simple enough matter for her to seek this clarification from Ms Bromley or Mr Matthias. Instead, her response to the letter was informed by her settled view that she should have no further interactions with Ms Bromley, who needed to "back off". That was not the Claimant's decision to take. In our judgment it was unreasonable for her to regard the letter as creating a hostile etc working environment for her.

Victimisation Claims

196. Section 27 of the EqA provides,

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because-
>
> (a) B does a protected act, or
> (b) A believes that B has done, or may do, a protected act.

197. Section 27(2) goes on to define the protected acts as including,

> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

198. The Claimant relies upon 15 matters (or 18 matters if the three grievances are regarded separately) as alleged protected acts, spanning the period 14 September 2018 to 31 January 2020 when she issued her first Employment Tribunal Claim. They are set out at paragraphs 7.1.1 to 7.1.15 of the List of Issues. In our judgment they all constitute protected acts as the Claimant plainly asserts in them that the Equality Act 2010 has been contravened. Her language is not ambiguous, rather she makes numerous assertions that she is being discriminated against on grounds of disability.

199. The alleged detriments to which the Claimant was subjected are set out at paragraph 7.4 of the List of Issues. We set out below both our conclusions as to whether the Claimant was subjected to those detriments and, where she was, the reasons for this.

200. In the context of whistleblowing, an organisation's failure to investigate, or excessive delays in investigating, a protected disclosure is capable of amounting to a detriment. In our judgment this is equally the case where an organisation fails or delays in investigating grievances that allege discrimination. However, section 27 will only be infringed if the protected act materially influences (in the sense of being more than a trivial influence) the employer's treatment of the employee. In the case of a failure to deal with a protected act or disclosure, simple incompetence in dealing with matters promptly may be an effective defence. However, where an employee who does a protected act is subject to a detriment without being at fault in any way, the Tribunals will need to look with a critical – indeed sceptical – eye to see whether the innocent explanation by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent employee necessarily provides at least a prima facie case that the action has been taken because of a protected act and it calls out for an explanation from the employer. Once an employer satisfies the Tribunal that it has acted for a particular reason, that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the Tribunal considers that the reason given is false (whether consciously or unconsciously) or that the Tribunal is being given something less than the whole story, that it may be legitimate to infer detriment in accordance with the principles in Igen Ltd. v Wong. That question is essentially one of fact for us. The issue is not whether that claimed non-discriminatory reason was a good reason but whether it was genuine.

    7.4.1 Ms Thwaites' wrote to the Claimant on 26 September 2019 because Mr Squibb had made clear his expectation that the process needed progressing in relation to the Claimant and others on long term sick leave. Her letter was not a response to the second protected act by the Claimant (we believe she was unaware of the first protected act), rather it was in compliance with what she understood to be a clear instruction to pro-actively manage the Claimant's ongoing absence with a view to redeploying her.

7.4.2 Mr Squibb's conclusion that the Claimant was not engaging was unfounded, but it reflected a false, albeit genuine, narrative that took hold in his mind because he failed to take sufficient care to establish the facts. It reflects incompetence rather than a response to any protected act.

7.4.3 By contrast, the Respondent has failed to address its rationale for refusing to extend or re-instate the Claimant's sick pay set out in Mr Squibb's letter dated 23 December 2019, specifically his statement that she had been invited to attend the final formal meeting, "but as a substitute you are raising concerns through e-mails". The principal emails to which he was referring was her email of 22 September 2019 and grievance of 1 November 2019, the latter of which he had shown his disdain for when he wrote in an email to Ms Thwaites on 7 November that it wasn't discriminatory to management someone's sickness absence under the policy. The comments in the second numbered paragraph of Mr Squibb's letter dated 23 December 2019 cry out for an innocent explanation, albeit which has not been forthcoming. The complaint therefore succeeds.

7.4.4 & 7.4.10

We do not repeat our detailed findings above regarding how the Claimant's grievances have been handled. It is often said that the road to hell is paved with good intentions. A significant number of people have become involved in the Claimant's case, a number of whom clearly acted with the best of intentions, but in the process no single person with the requisite experience and authority seems to have taken ownership of the matter to see it through to a conclusion. Various decisions were ill thought through and, too often, those who were left to implement those decisions lacked the requisite authority, confidence and experience to do so successfully. At times they were provided with an incomplete picture or insufficiently clear instructions, further compounding the situation. Whilst there are important lessons to be learned by the Trust's senior leadership, we are satisfied that the catalogue of errors set out in our findings above reflect management and organisational failings and weaknesses rather than a response to the fact the Claimant had done protected acts.

7.4.5 We have set out in some detail in our findings above how the Claimant's correspondence in relation to sick pay was handled. The issue became mired in the Respondent's internal processes. There was no particular delay each step of the way, though collectively it adds up to a protracted process in which the Respondent, or at least various of its senior managers, seem to have lost sight that there was a long serving employee with significant underlying health issues awaiting a decision about her

pay in the run up to Christmas. As above, we consider the overall delay was the product of management and organisational weaknesses rather than a response to the fact the Claimant had done protected acts.

7.4.7 We have already set out in detail the reasons why the Respondent did not implement or facilitate home working for the Claimant. These had nothing whatsoever to do with the fact she had done protected acts.

7.4.8 The Respondent has failed to adequately explain why Mr Roberts was not permitted to continue to manage the Claimant's ongoing absence whilst she was shielding or to manage her planned return to the workplace in September 2020, particularly given his efforts in this regard in late 2019 / early 2020 had managed to get her through the door. We can understand why normal line management might resume once the Claimant was back at the station, but there has been no clear or coherent explanation by the Respondent why Mr Roberts could not continue to manage the situation through to September 2020 or such later date as she could be managed and supported back to the workplace. Various explanations were put forward, but they were not consistent or weighty. In the absence of a satisfactory innocent explanation, we infer that the Respondent's failure to countenance this was because she had done protected acts.

7.4.9 The complaint in relation to Ms Bromley's 'tea' comment succeeds as a complaint of harassment. We do not consider that she made the comment because the Claimant had done protected acts, indeed it is unclear to what extent she was aware that the Claimant had done such acts. Ms Bromley's comment that Mr Roberts was no longer managing the situation was a statement of fact, it was made in response to comments by the Claimant rather than because she had done protected acts, even if the decision itself was an act of victimisation.

<u>Unauthorised Deductions from Wages</u>

201. The Claimant's case is pleaded at paragraphs 44 to 48 of the Grounds of Complaint in her Second Claim. In summary it is argued that under Agenda for Change she was entitled to reinstatement or extension of her sick pay in specified circumstances. We disagree. At most there is a discretion available to the Respondent to extend sick pay. We accept Ms Smeaton's contention that in a claim of unauthorised deductions from wages the Tribunal has no jurisdiction to determine whether any exercise of discretion was rational; any such complaint is a matter for the Civil Courts. We are satisfied that the Respondent gave consideration to whether to exercise the discretion available to it under Agenda for Change. We are critical of Mr Squibb's reasoning, but that does not mean that there was an actionable unauthorised deduction from the Claimant's wages. We

consider ourselves bound by the decisions of the Court of Appeal and EAT respectively in New Century Cleaning Co Ltd v Church 2000 IRLR 27 and Balfour Beatty Power Networks Ltd v Tucker and others EAT 182/01, as distinguishable from Tradition Securities and Futures SA v Mouradian 2009 EWCA Civ 60 in which a contractual discretion was exercised in the Claimant's favour, who was therefore able to pursue a claim in respect of a declared bonus.

202. Although not pleaded, the Claimant additionally seeks her full pay from April 2020 to date. This was originally put forward on the basis that the Claimant has received half pay since that date; in fact she has been paid at her full rate of pay, albeit for 8 hours' work as opposed to her 'normal' full 16 hours. When the Claimant commenced shielding she did not stop working, even if she struggled to check emails and complete her Workbook. She was not certified sick and there is no evidence before us that she was furloughed. In our judgement, she continued working, albeit from home. Her workload and hours did not increase throughout the period she was shielding from the agreed 8 hours in place since 12 March 2020. The Claimant did not request any increase in her hours. In our judgement the Claimant was paid the sums properly payable to her under her contract throughout her period of shielding by reference to the adjusted working arrangements in place throughout.

203. With effect from 1 September 2020 the Claimant was no longer required to shield but did not return to the station. Whilst we are unclear whether the Claimant was checking emails and completing her Workbook, we are satisfied that she was ready, willing and able to continue to undertake 8 hours' work per week for the Respondent. She never gave any indication that she wanted her hours to increase to 16 hours per week or that she would have been able to maintain attendance at work on that basis. As above, the Claimant was paid the sums properly payable to her under her contract by reference to the ongoing adjusted working arrangements in place.

204. With effect from 8 October 2020 the Claimant self-certified and from 15 October 2020 she was certified as unfit by her GP. Any claim that unauthorised deductions were made from the Claimant's wages after 8 October 2020 fails for the same reasons set out in paragraph 201 above; the Claimant had exhausted her contractual right to paid sick leave and the Respondent was declining to exercise discretion to extend her sick pay.

Time Limits

205. The primary time limit under s.123(1)(a) EqA within which proceedings must be brought (or at least notified to Acas under the Early Conciliation Scheme) is three months starting with the date of the act to which the complaint relates (or the end of the period where there has been conduct extending over a period), though the Tribunal retains the discretion to

allow a claim to be brought within such other period that it thinks just and equitable.

206. Claims A – G and J were raised in the first claim, and Claims H and I were raised in the second claim. Subject to there being any conduct continuing over a period, any acts complained of in the first claim which occurred before 19 August 2019 and any acts complained of in the second claim which occurred before 8 October 2020 are out of time.

207. Claims A – G and J have all been brought within the primary time limit for bringing the claims. As regards Claim A, in the absence of evidence that the Respondent actively decided against making the adjustments in question, pursuant s.123(4)(b) EqA, time runs from 30 September 2019, being the expiry of the period within which the Respondent might reasonably have been expected to have implemented the adjustments. All the other matters complained of in Claims A – G and J occurred after 19 August 2019. Claims H and I have been brought outside the primary time limit for bringing the claims. In the case of Claim H, namely Ms Bromley's comment to the Claimant on 15 September 2020, the claim was brought 23 days out of time. As regards Claim I, it is unclear precisely when the Respondent decided that Mr Roberts would no longer manage the Claimant's ongoing absence and planned return to the workplace. According to the Agreed Chronology, Mr Roberts returned to his LOM role some time in July 2020. By the time of the 14 July 2020 Compassionate Conversation, Ms Bromley was in post as AGM, though it was not until 15 September 2020 that the Claimant was informed that Mr Roberts would not manage her ongoing absence from the workplace and planned return. As with Claim H, Claim I is at least 23 days out of time.

208. The Claimant was advised throughout by her Trade Union. We did not hear evidence as to when the Claimant first sought legal advice. The fact that she had done twelve protected acts by 8 October 2020, when she contacted Acas for Early Conciliation, and the content of those protected acts, evidences a very good understanding by her of her rights and the Respondent's obligations under the Equality Act 2010. However, the Claimant has a long history of depression and anxiety, a more recent history of cancer and, even more recently she has been diagnosed with diabetes and hypertension. Her Disability Impact Statement provides an eloquent description of these co-morbidities and how they impact her normal day to day activities.

209. In deciding whether it would be just and equitable to extend time to permit Claims H and I to be pursued out of time, we bear in mind that the primary time limit is not something to be casually disregarded by a party or the Tribunal. However, there are also public policy considerations to weigh in the balance, namely society's interest in protecting the rights of those who may be particularly vulnerable and deserving of protection by reason of debilitating health conditions. The Claimant has raised three grievances in respect of her alleged treatment. As we have noted in our findings above, she has yet to receive an outcome to those grievances. Pending an

outcome she did not know what explanation might be provided by the Respondent in respect of her various concerns, specifically in relation to the complaints the Tribunal has upheld, and whether therefore the Respondent was willing to offer any acknowledgement or apology or redress in respect of them. There is no obvious prejudice to the Respondent in extending time, other than the inevitable prejudice of now being liable to provide a remedy to the Claimant in respect of its discriminatory treatment of her. To deny the Claimant an effective remedy beyond the findings and conclusion in this Judgment would represent a significant injustice to the Claimant and would produce the result that the Respondent would potentially benefit from its own incompetence or mismanagement in failing to determine and address her grievances. The delay has not had any impact upon the evidence in this case, or the Tribunal's ability to conduct a fair Hearing (DPP v Marshal [1998] IRLR 494). There is no presumption in favour of extending time; however, the Claimant has persuaded us that as an exception to the rule it would be just and equitable to extend time in her case.

210. This case will be listed for a remedy hearing. Notice of that hearing together with any case management orders will be notified to the parties separately.

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Employment Judge Tynan

Date: 19 April 2022

Sent to the parties on: 25 April 2022

For the Tribunal Office