



EMPLOYMENT TRIBUNALS

Claimant

Mr Michael Fuller

v

Respondent

ACASA Limited (1)
Apex Prime Care Limited (2)

Heard at: Reading by CVP

On: 7, 8, 10 and 11 February
2022 and in private on
3 March 2022

Before: Employment Judge Hawksworth
Ms J Stewart
Mrs F Tankard

Appearances

For the Claimant: Mr M Shepherd (counsel)

For the Respondent: Mr A Richardson (counsel)

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. The claimant's complaints of direct discrimination because of sex, sexual orientation and disability fail and are dismissed.
2. The claimant's complaints of harassment related to sex, sexual orientation and disability fail and are dismissed.
3. The claimant's complaints of victimisation fail and are dismissed.
4. The claimant's complaints of protected disclosure detriment fail and are dismissed.
5. The remedy hearing has been vacated (cancelled).

REASONS

Claim, hearings and evidence

1. The respondents are providers of healthcare services. The claimant was employed by the first respondent from 15 August 2016. The first respondent's business transferred to the second respondent in 2020. It is agreed that the Transfer of Undertakings (Protection of Employment) Regulations applied to that transfer, and that the claimant's employment transferred to the second respondent.
2. In a claim form presented on 6 February 2020 after a period of Acas early conciliation from 25 November 2019 to 8 January 2020, the claimant made complaints of direct discrimination, harassment, victimisation and protected disclosure detriment. The first respondent presented its response on 10 March 2020 and defended the claim.
3. There was a preliminary hearing before Employment Judge Warren on 16 December 2020 at which the issues were identified and case management orders were made for the parties to prepare for the final hearing. The second respondent was added. Both the transferor and the transferee companies were included as respondents to the claim as a 'belt and braces' approach. In these reasons where we refer to the 'respondent' we mean the company that was the claimant's employer at the time, that is the first respondent prior to the transfer, and the second respondent after the transfer.
4. The second respondent's ET3 was presented on 1 February 2021. The second respondent also defends the claim.
5. The claimant resigned on 1 March 2021. This was after his claim was presented; his claim does not include any complaints about his dismissal.
6. The final hearing took place by video hearing (CVP). The original time allocation of five days was reduced to four for judicial resourcing reasons.
7. There was an agreed hearing bundle with 460 pages. We are grateful to the parties for the carefully prepared bundle in which the page numbers of the pdf copy matched the paper copy pages. This assisted considerably with the conduct of the hearing.
8. The claimant's counsel had prepared a chronology and cast list. The respondent's counsel prepared a skeleton argument. After preliminary matters had been dealt with, we took the first morning of the hearing for reading.
9. All the witnesses had exchanged witness statements. On the first and second days of the hearing, we heard witness evidence from the claimant and his witness Wendy Anderson (his former line manager). We heard evidence from the following witnesses for the respondent on the following days:

- 9.1 Hazel Roberts, one of the respondent's area managers, on 8 and 10 February 2022;
 - 9.2 Yvonne Devereux, an HR consultant retained by the respondent, on 10 February 2022;
 - 9.3 Sarah Guilfoyle, an operations manager employed by a sister company of the first respondent, on 11 February 2022.
10. Both parties' representatives made written and oral closing submissions.
 11. Judgment was reserved. The tribunal met in chambers on 3 March 2022. The employment judge apologises for the delay in promulgation of this judgment. This reflects the number of issues the tribunal had to decide in this case, and the current volume of work in the tribunal more generally.

The Issues

12. The claimant makes complaints of direct discrimination and harassment because of sex, sexual orientation and disability. He also makes complaints victimisation and protected disclosure detriment (also known as 'whistleblowing' detriment). Finally, he complains of failure to make reasonable adjustments,
13. The issues for us to decide were set out in an agreed list of issues which was at pages 82 to 92 of the bundle. At the start of the hearing before us, the claimant's counsel confirmed that one of the allegations (Mrs Robinson saying to the claimant, 'That's just your anxiety') was withdrawn by the claimant. This issue was issue 2.1.17, 3.1.18, 4.3.15 and 5.4.11 in the list of issues.
14. The claimant now makes 36 allegations of wrongdoing. Most of the factual allegations are said to amount to more than one type of discrimination, and to have been because of more than one protected characteristic. These overlaps led to a lot of repetition in the list of issues. At the start of the hearing the claimant's counsel prepared a helpful table which summarised each of the 36 factual allegations of discrimination, harassment, victimisation and whistleblowing, and explained what type or types of discrimination each is said to be. A copy of that table is included in the appendix.
15. In respect of each of the 36 allegations set out in the table, we have to decide whether it happened as alleged, and if so, whether it amounted to direct discrimination, harassment, victimisation or protected disclosure detriment. The direct discrimination and harassment complaints are on the basis of sex, sexual orientation and (for some) disability. Overall, there are more than 250 separate complaints for us to consider. During the discussions about the issues at the start of the hearing, Mr Shepherd said that the thrust of the claimant's claim is sex and sexual orientation discrimination, and in the alternative, victimisation.
16. In addition to the issues set out in the table, there are other issues for us to decide, as follows.

17. Disability: We have to decide whether the claimant was disabled by depression and/or anxiety. The issues for us on disability as identified at the preliminary hearing are:
 - 17.1 Does the impairment have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
 - 17.2 If so, is that effect long term? In particular, when did it start and:
 - 17.2.1 has the impairment lasted for at least 12 months?
 - 17.2.2 is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?
 - 17.3 Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
 - 17.4 If so, did the respondent know the claimant was so disabled (or ought it reasonably have been expected to know)?
18. Reasonable adjustments: In respect of the complaint of reasonable adjustments, the issues for us were identified at the preliminary hearing as:
 - 18.1 Did the respondent apply the following provision, criterion and/or practice ('the provision') generally, namely investigating purported sexual relations between colleagues.
 - 18.2 Does the above amount to a PCP?
 - 18.3 The claimant relies upon the following "substantial disadvantages" in relation to a relevant matter in comparison with persons who are not disabled:
 - 18.3.1 Feeling unsafe during the process
 - 18.3.2 Not being able to engage fully with the process
 - 18.4 Was the claimant put at any of the alleged substantial disadvantages?
 - 18.5 If so, whether it was reasonable for the respondent to take any of the following alleged "steps" to avoid the alleged disadvantage(s):
 - 18.5.1 Not investigating the claimant for purported sexual relations between colleagues;
 - 18.5.2 Supporting the claimant throughout the investigation process
 - 18.6 Whether the Respondent did not know and could not reasonably be expected to know that the Claimant had the alleged disability or disabilities and was likely to be placed at the alleged substantial disadvantage by his anxiety or depression as set out above;

19. Protected acts: In relation to the complaints of victimisation, we need to decide whether the claimant did a protected act or acts. The claimant says he did protected acts on the following occasions:
 - 19.1 informal grievance at supervision meetings (on 29 December 2018 and 10 August 2018)
 - 19.2 annual appraisal March 2019
 - 19.3 grievance 8/9 April 2019
 - 19.4 email of 17 May 2019
 - 19.5 grievance meetings (30 April 2019, 29 May 2019)
 - 19.6 grievance hearing 2 August 2019
 - 19.7 email 5 August 2019
 - 19.8 appeal 23 August 2019
 - 19.9 appeal hearing of 2 October 2019
20. At the preliminary hearing the claimant said he also relied on his notification to ACAS on 25 November 2019 but his counsel confirmed at the start of the hearing before us that he no longer relies on that as a protected act or protected disclosure.
21. Protected disclosures: In relation to the complaint of protected disclosure detriment, the claimant says he made protected disclosures on the following occasions:
 - 21.1 grievance of 8/9 April 2019
 - 21.2 email on 17 May 2019
 - 21.3 grievance hearing 2 August 2019
 - 21.4 appeal 23 August 2019
 - 21.5 appeal hearing of 2 October 2019
22. For each of these occasions, we have to consider whether the claimant made a disclosure of information which, in the claimant's reasonable belief was made in the public interest and tended to show at least one of the following:
 - 22.1 that a criminal offence had been committed, was being committed or was likely to be committed (the claimant relies on disclosure of information about Mrs Roberts snatching and throwing paper at the claimant which he says amounted to an assault);
 - 22.2 that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject (the claimant relies on disclosure of information about a failure to comply with data protection requirements);
 - 22.3 that information tending to show any matter falling within any one of the prescribed grounds under section 43B of the Equality Act 2010 has been, is being or is likely to be deliberately concealed (the claimant relies on disclosure of information about information being concealed during the investigation of his grievance).

23. The treatment said by the claimant to be less favourable treatment (section 13), unwanted conduct (section 26) and/or detrimental treatment (section 27 and whistleblowing detriment) is the treatment set out in the table in the appendix.
24. Time limits: Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal must decide:
 - 24.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 24.2 If not, was there conduct extending over a period?
 - 24.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 24.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 24.4.1 Why were the complaints not made to the Tribunal in time?
 - 24.4.2 In any event, is it just and equitable in all the circumstances to extend time?
25. Was the protected disclosure detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal must decide:
 - 25.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) act complained of?
 - 25.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
 - 25.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 25.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
26. Finally, the claimant confirmed that he was not pursuing a claim for unpaid holiday pay.

Findings of fact

27. We make the following findings of fact based on the evidence we heard and read. Page references are to the agreed bundle.
28. We heard a lot of evidence during the hearing, and we do not attempt to include everything here. We include here the facts which we have found

most useful to assist us to decide the relevant issues. We have kept our findings in chronological order as far as possible.

29. The claimant began working for the respondent on 15 August 2016. He was a team leader in Place Court which is a supported housing site. Place Court has 52 flats for older adults who live independently, supported by carers visiting as needed. The claimant assisted the manager of Place Court with the running of the home, including management of the carers. The claimant and Wendy Robinson, his line manager, regarded the claimant as the site's deputy manager.

The claimant's health condition

30. The claimant has had anxiety and depression since 2011. He set out the impact of that condition on his day to day activities in an impact statement (page 373). The respondent accepted the claimant's evidence in that statement.
31. The claimant was prescribed medication for anxiety and depression. The history of the condition was that at times his mental health improved and he did not need to take medication, then at other times his condition worsened and he had to go back on medication. Sometimes he was prescribed an increased dosage. Stress made his condition worse.
32. The respondent was aware of the claimant's medical condition. The claimant disclosed 'difficulties with nerves/anxiety' in his job application form (page 146). He was certified sick by his GP with anxiety in August 2016, early in his employment with the respondent (page 439). Mrs Robinson, the claimant's line manager, was aware of his mental health condition and discussed it with him from time to time.
33. The claimant's mental health deteriorated in June/July 2018 as a result of issues at work. His mental health condition had an effect on his day to day activities. He struggled to sleep. He had poor appetite and lost weight. He was constantly on edge and found it difficult to focus on anything. He did not want to be around anybody. At work he was tearful and he often went to the bathroom to cry.

Theft in 2017

34. In Autumn 2017 there was a theft in Place Court and the police and the county council investigated. A county council officer spoke to the respondent's director Oliver Alexander about the incident. During the conversation, the county council officer mentioned that she had been told by the police about a historic incident regarding the claimant and a relative of his.
35. The respondent had previously obtained an enhanced check for the claimant from the Disclosure and Barring Service (DBS), and this had not revealed any matters of concern. However, check had not flagged up any incident regarding the claimant and his relative. On around 1 September 2017 Michelle Coles, the respondent's operations manager, spoke to the claimant about the historic incident. Ms Coles was satisfied that no further

steps needed to be taken about it. The claimant was unhappy that the respondent had spoken to him about the historic incident. He thought that having an enhanced DBS check should have been sufficient. Oliver Alexander later apologised to the claimant that it had been raised with him.

36. As part of the investigation into the theft, the police spoke to the respondent about its policy for searching employees (page 326). The policy required employees to complete authorisation forms prior to any search by the respondent. The police advised the respondent that they should obtain signed authorisation forms from all employees and keep them on file to ensure that they had authorisation to carry out searches if required, in case there was any theft in future.

Comments by Mrs Roberts

37. Hazel Roberts was the area manager for the respondent's area which included Place Court, where the claimant worked.
38. The claimant said that in around July 2018 Mrs Roberts made a number of comments about him, including calling him gay. (The claimant is heterosexual.) Mrs Roberts denied making these comments. Our findings on these allegations are as follows:

38.1 We find that Mrs Roberts said that the claimant was '50% of a man' because he drove an automatic car. We make this finding because the claimant's evidence about this comment was clear and consistent, and Mrs Robinson's evidence on this point supported the claimant's account. We find that this was an ill-judged joke by Mrs Roberts about automatic cars and that it was not said with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The claimant did not complain about this comment until 2 August 2019. When asked in April 2019 and August 2019 as part of the informal and formal grievance process to identify his complaints about Mrs Roberts, he did not refer to it. We find that this comment did not have the effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

38.2 We find that Mrs Roberts said that the claimant used too much fragrance. The claimant kept sprays in the office to use after taking a cigarette break. Spraying fragrance in the office could result in a temporarily intense or overpowering smell, and it is consistent with the evidence that we heard about this for Mrs Roberts to have complained when the claimant did this.

38.3 We do not find that Mrs Roberts called the claimant gay. The claimant's evidence on this was not consistent and we find that it was an extrapolation by the claimant based on Mrs Roberts' comments about fragrance. The claimant did not say that Mrs Roberts had called him gay in his formal or informal grievance. He first raised it in his grievance appeal meeting in October 2019. When asked at that meeting 'Did [Mrs Roberts] say you are gay?', the claimant replied,

'She insinuated (page 252)'. In his witness statement in January 2022 he said that Mrs Roberts, 'said to me that I was gay because, in her opinion, I wore too much aftershave/perfume'. In his evidence to us, the claimant said that Mrs Roberts said 'You smell like a poof' or 'You must be gay because you spray yourself.' Mrs Robinson's evidence about this alleged comment was much less specific than in respect of the '50% of a man' comment. She said, 'There were other comments made based on the claimant's sex and sexual orientation and I was often in the office but did not really get involved'. We have to decide what we think is most likely to have happened. We find that the claimant's account in his grievance appeal is most likely to be accurate, because it was the most recent in time after the comments themselves. We find based on what the claimant said in the grievance appeal that he inferred from Mrs Roberts' comments about his fragrance that she was referencing sexual orientation, but that she did not actually use the word 'gay' or 'poof'.

The concern raised by the claimant's colleague

39. On 27 July 2018 an employee of the respondent who worked at Place Court came in on her day off to speak to Mrs Robinson. She was accompanied by her parent. Mrs Robinson asked the area manager, Hazel Roberts, to attend as well. In the meeting, the employee said that she had had a relationship with the claimant and that after it finished he 'blanked' her. The employee said that she did not want to make a formal complaint, but she wanted reassurance that it would not happen again.
40. The respondent did not have any written policy prohibiting sexual relationships between colleagues. Mrs Roberts completed one of the respondent's 'IIACC' forms (page 135). The form is to record any 'Incident, Accident, Complaint or Concern' and the steps taken in response. Because of the nature of the matter that had been raised, Mrs Roberts decided to record it as a 'concern' and to carry out an investigation.
41. The claimant was told on 27 July 2018 that the concern had been raised. He was not told the name of the person who had raised it. Mrs Roberts decided that to avoid the claimant being put in a vulnerable position, he should not have any one-to-one meetings with female carers while the investigation was going on.
42. In the course of her investigation, Mrs Roberts spoke to four other female members of the care team who had been named by the person who raised the concern as people who might have relevant information about the matter. She asked them whether the claimant had made any sexual advances towards them.
43. On 2 August 2018 Mrs Roberts had a meeting with the claimant. By this time, the claimant was aware of the name of the person who had raised the concern. The claimant denied that he had had a relationship with her. (We heard little evidence about whether the relationship did or did not take place, and it was not included on the list of issues for us to decide. It was not necessary for us to make a finding on this.)

44. Mrs Roberts told the claimant that the investigation into the concern was complete with no action required. She discussed professionalism and the code of conduct and advised the claimant about working within working hours, not giving out his personal phone number to staff and referring concerns to a team manager or area manager.
45. The claimant said in his claim that he felt unsafe during this process and that he was not able to fully engage with the process. The claimant did not explain to us in any detail why this was. He did not say this to the respondent at the time and he did not ask for any adjustments to the process. He had solicitors who were advising him at the time of the investigation.
46. At the end of the investigation, the claimant said that to protect his confidentiality he wanted the investigation paperwork to be kept away from Place Court. Mrs Roberts said that she would keep the documents at head office. She took the papers home overnight. She stored them in a locked suitcase which she kept in the boot of her car because, as an area manager, she was often required to transport documents between sites. Mrs Roberts did not (as was said later in the claimant's grievance appeal meeting) keep the documents at home with the intention of using them against the claimant. She took the documents into head office the following day for them to be kept there.

Authority to search form

47. The respondent decided that, as advised by the police, it would ask staff to sign an annual authority for the employer to search them, their bags and their cars if required. In about January/February 2019 the respondent asked staff to sign an authority for February 2019 to February 2020.
48. The claimant completed the form. He consented to a search of his person but not to a search of his car (page 164). He was unhappy about being asked to consent to a search of his car, as he did not believe that it was necessary. He was also unhappy about the suggestion that an unreasonable failure to allow a search could be considered a disciplinary matter. He noted his concerns on the form (page 165).
49. The respondent's request was for the claimant to confirm his agreement in principle for a search of his car if a search was justified in future. The respondent was not proposing to actually search the claimant's car at the time he was asked to complete the form, and no-one carried out any search of his car at any time.
50. At around the same time there was an incident between the claimant and Mrs Roberts at Place Court. The claimant returned from a staff meeting and Mrs Roberts asked him whether staff members at the meeting had signed the search policy document. The claimant told Mrs Roberts that they had not. Mrs Roberts snatched the document from the claimant and left the office, saying, 'I'll go and deal with it'. She was obviously annoyed and left the office so quickly that as she did so she collided with Mrs Robinson who was just coming in. A short time later Mrs Roberts returned to the office,

having obtained the staff signatures. She threw the document across the claimant's desk towards him.

The compliments folder

51. A folder was kept at the front desk in Place Court with feedback from service users and others, known as 'compliments' and 'concerns'. There was a factual dispute between the parties about what happened to a compliment which was made about the claimant.
52. The claimant said that in about February 2019 he saw a compliment about him in the folder. Later he found that it was no longer in the folder. He said that Mrs Robinson had told him that Mrs Roberts had shredded it. (In his grievance meeting (page 217) he said that Mrs Roberts had shredded seven compliments.)
53. In her grievance interview Mrs Robinson said she had not shredded a compliment but may have archived it (page 230). In her evidence to us, Mrs Robinson said that Mrs Roberts had not shredded any compliment. Archiving of the compliments folder was done by Mrs Robinson. Mrs Robinson said that it was most likely that the compliment was archived by her. We accept Mrs Robinson's evidence and find that Mrs Roberts did not shred any of the claimant's compliments.

Care plans

54. The respondent prepares care plans for its service users. Completion of care plans was part of the claimant's job role, and he produced very comprehensive plans. The claimant's care plans had been commended by the Care Quality Commission (the respondent's regulator) during an inspection.
55. Care plans were discussed at a site managers' meeting on 2 February 2019 which was attended by Mrs Roberts, Mrs Robinson and other managers (page 162). Mrs Roberts said that care plans should have bullet points and sections, so that they were easier for carers to read. Carers have to access key information quickly at the start of each care call and shorter care plans would help with this. It was agreed that a standard template would be used for care plans across the respondent's sites.
56. Existing care plans were revised using the standard template. When this was done, the previous care plan was overwritten, meaning that no copy of the earlier care plan was kept on the company's Dropbox (a cloud storage service).

The claimant's duties

57. The claimant was on sick leave for 6 days from 11 March 2019 to 17 March 2019 (page 280). A team leader from Campbell Place, another of the respondent's sites, covered for the claimant during this period of sick leave.
58. In the early part of 2019 the claimant had become concerned that the respondent was changing his duties. After his return from sick leave, he had

a meeting with Mrs Roberts on 18 March 2019 to discuss this (page 168). She reassured him that his role was not being reduced and he was not being demoted. Some actions were being taken to address areas at Place Court which had been identified as requiring improvement. The issues discussed were:

- 58.1 A carer was being trained in medication audits. Responsibility for medication audits was not being removed from the claimant, but training up another member of staff allowed cover for sickness and holidays. Further, having a person who worked directly with service users trained in this would allow clarification of day-to-day medication issues;
 - 58.2 Mrs Roberts asked that the claimant and Mrs Robinson carry out daily reviews of the care runs, and offer staff early finishes if fewer hours than planned were needed, to avoid paying staff for time when they were not needed;
 - 58.3 The claimant was unhappy about the care plan template. Mrs Roberts explained that the template included less detail than the claimant's plans. This was to make care plans easier for carers to read and to allow them to access information more quickly. She explained that it had been discussed in a local managers' meeting and that the template was a standard document used across the respondent's business. She said that this was not a criticism of the claimant's plans, but was an agreed change to bring the plans into line with the approach adopted in other the respondent's other sites;
 - 58.4 The claimant had been asked to work some night shifts to cover staff sickness and he was unhappy about this. The claimant was unable to work nights because he had caring responsibilities at home. He said that his contract referred to office hours, 9.00am to 5.00pm only. Mrs Roberts said that the reference to office hours was in respect of his salaried pay, and that the contract provided separate pay rates for day, night and weekend care calls outside office hours. The claimant said he did work as the on-call manager, but this only required him to source cover if needed, not to provide the cover himself. Mrs Roberts said that if cover could not be found, the person doing on-call would be expected to work themselves. The claimant said that he had never known this practice in his time working in care. Mrs Roberts said that she had always worked that way and was surprised he did not. Mrs Roberts said she would discuss the claimant's contract and job description with Ms Coles.
59. At the end of the meeting, Mrs Roberts set out action points. One of these was that Mrs Roberts would support the claimant to make changes to the care plans using the template, to bring them into line with the other sites.
 60. The claimant was frustrated and kept asking the same questions. To bring the meeting to a close, Mrs Roberts told the claimant, 'I'm the area manager and it will be done my way'. She said that a meeting with the claimant and Ms Coles could be arranged if the claimant wanted.

61. We do not find that Mrs Roberts said that she was the 'fucking area manager'. Mrs Roberts denied swearing. There were 'swear jars' at Place Court, but these belonged to the claimant and Mrs Robinson having been given to them by a staff member as a funny gift (page 240). The note of the meeting reflects a professional approach by Mrs Roberts, and we do not think it is likely that she would have used this swear word in a meeting of this nature. We accept her evidence that she did not use the phrase 'fucking area manager' at any other time.
62. In the event the claimant was not required by the respondent to cover the night shifts which had been discussed with him.

The claimant's sick leave and return to work

63. The claimant was certified sick from 19 March to 2 April 2019 (page 280 and 439).
64. While at a meeting at Campbell Place, Mrs Roberts told the site manager and the team leader that the claimant was on sick leave. She asked the Campbell Place team leader if she could provide cover for the claimant. During the discussion with the two Campbell Place employees, Mrs Roberts said, 'He's got another 28 days'.
65. The claimant was not present at this meeting but the '28 days' comment was reported back to him by Mrs Robinson. He saw it as a threat by Mrs Roberts to give him 4 weeks' notice of dismissal. Given the context in which it was said, we find that Mrs Roberts' comment was a reference to the claimant being off sick again. Although the claimant's sick note was for 14 days, not 28, we think it is more likely that Mrs Roberts was mistaken about the duration of the sick certificate, than that she was referring to notice of termination of the claimant's employment.
66. There was no evidence as to the effect the comment had on the claimant.
67. Shortly after returning to work on 3 April 2019, the claimant was on call on the weekend of 6/7 April 2019. There was a staff shortage because of sickness. The claimant checked during a phone call that staff were managing OK with reduced numbers. He was told that they were because one carer had agreed to stay on after her shift ended. On the basis of what the staff told him, the claimant decided that no extra help was needed. He told the staff to call him if they needed more help. He called Mrs Robinson to update her and she was happy with what had been agreed (page 230).
68. Later, Mrs Roberts spoke to Mrs Robinson on the phone. Mrs Roberts was not happy that the claimant had not gone in to work to provide cover for the member of staff who was sick. We find that she was annoyed because this was the issue she had discussed with the claimant on 18 March 2019 and on which they had disagreed. However, we do not find that Mrs Roberts said to Mrs Robinson that she wanted the claimant sacked for gross misconduct. We find that she discussed with Mrs Robinson whether the claimant's failure to attend work when on call amounted to gross misconduct. Mrs Robinson did not think it did amount to gross misconduct.

69. Mrs Robinson spoke to the claimant about the conversation she had had with Mrs Roberts. We find that in that conversation she mentioned that Mrs Roberts had questioned whether the claimant's conduct amounted to gross misconduct. We do not find that Mrs Robinson said to the claimant 'Hazel wants you sacked for gross misconduct'. We think it is likely that the claimant inferred this from the reference to gross misconduct.
70. Mrs Robinson spoke to the claimant about her conversation with Mrs Roberts before the claimant wrote his grievance letter, because he referred to in that letter.
71. No formal disciplinary process followed the incident.

Change of desk and duties

72. The claimant originally shared an office with Mrs Robinson. On occasions he had to leave the room when she wanted to have a confidential conversation.
73. Before he went on sick leave in March 2019 the claimant told Mrs Robinson that he was planning to resign because he had another job offer. Mrs Robinson decided that when the claimant left she would recruit two senior carers to replace him, rather than fill the claimant's team leader position. During a discussion with Ms Coles at Place Court, Mrs Robinson told Ms Coles that the claimant was leaving and said that when the claimant left, she would move his desk to an office area outside her office as that would be better for privacy. Ms Coles decided not to wait and moved the claimant's desk and computer straightaway (page 229).
74. When the claimant returned from sick leave at the start of April 2019, he found that his desk and computer had been moved. He was very unhappy about this.
75. Mrs Robinson discussed the desk move with Mrs Roberts. The claimant said that Mrs Robinson told him that Mrs Roberts had said, 'He's not coming back in this fucking office', and 'Next stage he'll be in the car park'. We find that Mrs Roberts did not say this. The claimant accepted that he did not hear these comments directly. He said that Mrs Robinson told him that Mrs Roberts had made these two comments. However, Mrs Robinson did not refer to these comments in her evidence.
76. At the same time, there was also a change to the duties the claimant was expected to perform. The job description signed by the claimant in October 2018 said that carrying out care plan tasks was part of his role (paragraph 23, page 150). However, before his sick leave he was largely office based and only carried out a few care visits himself.
77. There had been some issues with carers' performance at Place Court (page 266). Mrs Roberts and Mrs Robinson decided that to address these issues, it would be helpful for the claimant (a highly experienced carer) to spend more time providing support and guidance to the care staff by being more actively involved with care visits 'on the floor'. They decided that ideally the

claimant would work alongside the carers for up to three days a week (page 229).

78. This was not a reduction in the claimant's role, but was an adjustment to the balance of where the claimant was expected to work. The change was viable because the claimant's office based work had reduced. The reduction in office hours was because there had been a general reduction in contracted care hours at Place Court and also because the introduction of the new care plan template meant that less of the claimant's time would be spent preparing care plans.
79. The claimant was unhappy about the requirement for him to work alongside the carers rather than in the office. He saw his role as primarily office based.

Pay review

80. At around this time, the respondent was carrying out a pay review across all of its sites. There was an increase in the national minimum wage, and staff who worked at Place Court as carers received a pay rise as a result.
81. Pay reviews for managers were carried out by Oliver Alexander. He considered each site against performance targets to decide whether managers should receive a pay rise. He decided that Place Court had not met its performance targets and therefore the team leader there, the claimant, should not receive a pay rise.
82. However the site manager at Place Court, Mrs Robinson, was awarded a pay rise because she had not had a pay rise for two years and her salary was lower than other site managers. We accept that she was given a pay rise to bring her salary into line with the respondent's other site managers.
83. The claimant was aware that Mrs Robinson and the carers received a pay rise while he did not, because they told him.

The claimant's grievance

84. On 2 April 2019 the claimant texted Diane Alexander, one of the respondent's directors, to raise concerns about Mrs Roberts. Ms Alexander replied to the claimant by email (page 172). She said that he should raise his concerns as a formal grievance. She attached a copy of the respondent's grievance procedure (page 173).
85. The timeframes set out in the respondent's grievance procedure are:
 - 85.1 Informal stage – response within 10 working days
 - 85.2 Formal stage 1 – notification of a meeting within 5 working days of the grievance, response within 10 working days of the meeting
 - 85.3 Formal stage 2 – response within 10 working days of the meeting.
86. Working days means Monday to Friday.

87. The notes to the procedure said:

“The timescales listed above will be adhered to wherever possible. Where there are good reasons, eg the need for further investigation or the lack of availability of witnesses or companions, each party can request that the other agrees to an extension of the permitted timescale.”

88. On 8 April 2019 the claimant sent a letting setting out his written grievance (page 175). He complained about bullying, invasion of privacy, victimisation, breaking confidentiality, defamation of character, demeaning behaviour and harassment, insulting behaviour, malicious intent and discrimination.

89. We pause here to consider some factual matters relating to this letter, as it was said by the claimant to be a protected disclosure (Protected Disclosure 1). In this letter the claimant referred to invasion of privacy and to breach of confidentiality in respect of paperwork relating to the IACC investigation in July 2018. We accept that the claimant believed that the information he disclosed tended to show that the respondent had failed to comply with its legal obligations under the General Data Protection Regulations. We return in our conclusions below to whether this was a reasonable belief.

90. The claimant believed his disclosure to be in the interests of other members of staff. He also complained about breaches of confidentiality by Mrs Roberts discussing other members of staff with Mrs Robinson in front of him.

91. The claimant also referred in his grievance letter to Mrs Roberts “snatching things out of my hand and then throwing at me on my desk” (page 176). This was a reference to the incident with the search forms after the staff meeting. We do not find that the claimant believed this to be a disclosure of information which tended to show that a criminal offence had been committed. It is not plausible to think that, by snatching paperwork from the claimant and then throwing it across a desk towards him, Mrs Roberts caused the claimant to apprehend immediate unlawful violence such that it amounted to an assault.

92. Returning to the chronology, Mrs Robinson replied on 11 April 2019 to say that she would arrange for the claimant’s grievance to be considered by an appropriate member of management (page 179). She said it may take a little time and she asked the claimant to bear with her. The respondent took some advice from its external HR consultant, Yvonne Devereux.

93. Mrs Robinson and the claimant discussed his grievance and next steps. He said that he had decided not to leave the respondent, and that he wanted his issues with Mrs Roberts to be sorted out locally so they could put them behind them and move on. Mrs Robinson understood the claimant to be saying that he wanted to stop his grievance. Mrs Robinson asked Ms Devereux if it was possible to retract a grievance letter (page 180). We find that there was a misunderstanding between the claimant and Mrs Robinson in that, in asking for things to be resolved locally, the claimant was asking

for his concerns to be addressed informally, but he did not want to completely stop his grievance.

94. In any event, Ms Devereux advised that, given the nature of the issues raised by the claimant, there should still be a meeting to consider his concerns, even if not under the formal grievance procedure and Mrs Robinson wrote to the claimant on 18 April 2019 about the meeting (page 181). The meeting between the claimant and Ms Devereux took place on 30 April 2019. She asked the claimant to identify his main concerns. He identified five main concerns and Ms Devereux investigated these.
95. There were no notes of the meeting on 30 April 2019. The claimant said that at the meeting he told Ms Devereux that Mrs Roberts had said he was '50% of a man' and 'gay'. Ms Devereux said that he did not mention these complaints at the meeting with her. We find that the claimant did not raise these specific complaints with Ms Devereux. There was no record of them in the correspondence about the claimant's main concerns or Ms Devereux's outcome letter. The claimant did not mention them in his detailed response to Ms Devereux's letter which he sent on 17 May 2019 (page 197). We think that if the claimant had raised these points with Ms Devereux and they were then not referred to by her, he would have mentioned this omission in his email of 17 May 2019.
96. Ms Devereux sent the outcome of her investigations to the claimant in a letter dated 15 May 2019 which was emailed to the claimant on 16 May 2019 (page 186 and 189). In her letter Ms Devereux set out the respondent's explanations for the treatment the claimant complained of, including changes to his role, the move of his computer, pay issues and treatment by Mrs Roberts.
97. In relation to the change of the claimant's role, Ms Devereux accepted that there was evidence that the claimant had not been able to perform in role as team leader in the same that he used to. She identified that there had been changes to the way care plans were drawn up. She also said there had been misunderstandings about the claimant's role and responsibilities as a result of steps taken by the claimant's managers to restructure after the claimant's resignation, which he had told Mrs Robinson would be forthcoming. She said there was a genuine desire by all managers to work with the claimant to rectify this and suggested that a meeting should take place with the claimant and his line managers.
98. In relation to the pay issues, Ms Devereux had spoken to Ms Coles. The outcome letter said that pay was increased for carers but team leaders only received a pay rise if performance targets were met. Place Court had not met its key performance targets and this was the reason the claimant had not had a pay rise. She said that Ms Coles had investigated concerns the claimant had raised about underpayment, and Ms Coles would discuss these with the claimant when she was next in Place Court. Ms Devereux said Ms Coles would provide the claimant with a letter to clarify the pay issue for the claimant (page 187). She ended by saying that a copy of her outcome letter would be sent to Ms Coles for follow up purposes (page 188).

99. Ms Devereux's letter ended by saying:

“Should you wish to Appeal any of the points that are in this letter, you must do that directly with Michelle Coles, Operations Manager within 5 days of receipt of this letter.”

100. The reference to an appeal was an error by Ms Devereux, as the next stage was the first formal grievance stage, rather than the appeal stage.

101. Ms Coles did not provide a letter to the claimant clarifying the overpayment issue, as Ms Devereux had suggested she would. The claimant later raised concerns about Ms Coles dealing with his grievance, and another decision-maker was found. We found that it is likely that in these circumstances the commitment for her to provide a letter was overlooked.

102. The claimant emailed Ms Coles on 17 May 2019 regarding the next step in his grievance (page 197). He said that some of the incidents he had discussed with Ms Devereux were not dealt with in her reply. He set these out in six numbered paragraph which included pay issues, confidentiality concerns and bullying by Mrs Roberts. He pointed out that he was told that the meeting with Ms Devereux was not a formal meeting.

103. The email of 17 May 2019 is alleged by the claimant to be a protected disclosure (Protected Disclosure 2). For the same reasons as set out above in relation to Protected Disclosure 1, we find that in this email the claimant disclosed information relating to breach of confidentiality in respect of paperwork relating to the IACC investigation in July 2018 which he believed tended to show that the respondent had failed to comply with its legal obligations under the General Data Protection Regulations. We return in our conclusions below to whether this was a reasonable belief.

104. The claimant also believed his disclosure to be in the interests of other members of staff. He complained about breaches of confidentiality by Mrs Roberts discussing other members of staff with Mrs Robinson in front of him.

105. The claimant was signed off work on the same day as he sent this email, 17 May 2019. He was off sick from 17 May 2019 to 8 June 2019 with chicken pox and stress (page 202).

106. On 21 May 2019 Ms Coles wrote to the claimant to invite him to a formal grievance meeting (page 200). She also invited the claimant to specify exactly what he would like to discuss so that they were both completely clear. The first suggested meeting date was postponed because the claimant was on sick leave (page 29 May letter).

107. On 8 June 2019, on his return to work, the claimant was asked by Mrs Robinson to an attendance review meeting under the respondent's absence management procedure (page 201). The claimant had met the triggers under the policy (more than 10 working days in 12 months). This meeting took place on 12 June 2019. Mrs Robinson decided that stage one should not be enforced and no further action was required (page (202)). We do not find that being asked to attend this meeting had the purpose or effect of

violating the claimant's dignity, or of creating a of creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

108. The claimant's grievance meeting with Ms Coles was rescheduled for 27 June 2019. Ms Coles went to Place Court and met with the claimant and his union representative but the grievance meeting did not go ahead. The claimant's union representative said that it would be inappropriate for the grievance to be considered by Ms Coles, as she was named in one of the claimant's complaints. The respondent said it would appoint another manager instead.
109. The claimant went off sick on 28 June 2019 with stress at work. He did not return to work after this date (page 438).
110. The respondent appointed Sarah Guilfoyle to hear the claimant's grievance. Ms Guilfoyle is an operations manager at a sister company of the first respondent. The grievance meeting between the claimant and Ms Guilfoyle took place on 2 August 2019 (page 214 and 215). The claimant was accompanied by his union representative.
111. In the grievance meeting, the claimant said that Mrs Roberts had said he was 'only 50% of a man'. He also said that Mrs Roberts took the paperwork from her investigation in July 2018 and said that she was keeping it at home (page 216).
112. The claimant said he made a protected disclosure in the grievance meeting (Protected Disclosure 3). We accept that the claimant believed that the information he disclosed tended to show that the respondent had failed to comply with its legal obligations under the General Data Protection Regulations. We return in our conclusions below to whether this was a reasonable belief. The claimant also believed his disclosure to be in the interests of other members of staff. He complained about breaches of confidentiality by Mrs Roberts discussing other members of staff with Mrs Robinson in front of him.
113. The claimant also said in his grievance that Mrs Roberts "snatched paper from me" (page 215). For reasons set out above, we do not find that the claimant believed this to be a disclosure of information which tended to show that a criminal offence had been committed.
114. After the meeting Ms Guilfoyle emailed the claimant on 5 August 2019 with a list of 17 concerns which they had identified at the meeting (page 218). She said she would investigate these concerns, and asked the claimant to confirm whether any issues had been missed off. The claimant replied to ask for seven other concerns to be added to the list (page 218). The final list of 24 concerns did not include the allegation that Mrs Roberts had said the claimant was '50% of a man'.
115. Ms Guilfoyle said on 16 August 2019 that there would be a delay as Oliver Alexander was away (page 220). The claimant replied 'ok I shall await your reply (page 220).

116. The claimant's email of 5 August 2019 did not include any allegation of a breach of the Equality Act. The additional points the claimant asked to be considered were about Mrs Roberts' bullying behaviour, pay and confidentiality/privacy issues.
117. As part of her investigation Ms Guilfoyle interviewed Mrs Roberts, Ms Cole, Oliver Alexander, Mrs Robinson and the site manager and team leader from Campbell Place. She did not ask Mrs Roberts about the allegation that she had said the claimant was '50% of a man'. We find that this was overlooked because it was not on the list of concerns which Ms Guilfoyle had agreed with the claimant would be investigated. In her interview, Mrs Robinson told Ms Guilfoyle that there was 'a big personality clash' between the claimant and Mrs Roberts (page 229). We accept this characterisation of the relationship between the claimant and Mrs Roberts.
118. On 20 August 2019 Ms Guilfoyle sent the claimant a letter with the outcome of her investigation into his grievance (page 237 and 238). A copy of the investigation report (page 239) was enclosed. Ms Guilfoyle decided that the grievance was partially upheld.
119. Ms Guilfoyle accepted that Mrs Roberts snatched paper from the claimant said 'I am the area manager', dealt with the on-call incident in an inappropriate way and spoke about other members of staff in front of the claimant. She also accepted that confidentiality had been breached by Mrs Robinson and Mrs Roberts in relation to the claimant's sickness absence. She also accepted that frustration had caused individuals to act inappropriately (page 242). It seems likely that this was a reference to the incident where Mrs Roberts snatched paper from the claimant. The claimant's other grievances were not upheld.
120. In relation to the pay review, Ms Guilfoyle set out a section of the pay review policy. It said,

"Pay remains affordable to the company based on the specific financial viability of the local government contract awarded for that part of the business. Where there are financial challenges in any specific area of the business, pay reviews may not result in pay increases especially within poorer performing units."

121. Ms Guilfoyle explained that there was no performance issue in relation to quality of care and support, but Place Court's contracted care hours had reduced. She received this information from Oliver Alexander, who made the decision on pay rises (page 227). We accept that this was the reason why the claimant did not receive a pay rise.

The claimant's grievance appeal

122. On 23 August 2019 the claimant's union representative submitted an appeal to Lawrence Alexander, a director of the first respondent, on the claimant's behalf (page 245). She said that she was on leave from 2 to 23 September 2019 so the appeal meeting could not take place then. The letter raises queries and concerns about Ms Guilfoyle's decision letter. It does not

mention that there has been no consideration of the comment '50% of a man'. There is no reference to any breach of the Equality Act (or anything else in connection with the Equality Act).

123. The letter is said by the claimant to be a protected disclosure (Protected Disclosure 4). In the letter, the claimant's union representative repeats the complaint made earlier, that confidentiality is always broken if files are taken home. This was a reference to the claimant's allegation that Mrs Roberts had taken files home.
124. The respondent wrote to the claimant and his union representative on 28 August 2019 and suggested two dates for the appeal meeting, 30 August 2019 and 23 September 2019 (page 247). These dates were not suitable for the claimant's union representative, and it was agreed that the appeal meeting would take place on 2 October 2019 (page 248).
125. The appeal hearing on 2 October 2019 was attended by Lawrence Alexander, the claimant, his union representative and a note-taker (page 249).
126. The claimant says that in the appeal hearing he made a protected disclosure (Protected Disclosure 5). Although the claimant's union representative referred to the claimant having made a whistleblowing disclosure about staff confidentiality, the claimant himself does not disclose information about confidentiality breaches in this meeting.
127. Lawrence Alexander wrote to the claimant on 8 October 2019 to say that the appeal outcome would take longer than initially thought (page 257). The appeal outcome was sent to the claimant on 18 October 2019 (page 258). In the decision letter, Lawrence Alexander said that one of the confidentiality issues (issue 4 in the grievance terms of reference) was changed to upheld because confidentiality had been breached. Other than this, the grievance outcome was unchanged.
128. In relation to an issue about an On-Call policy and the claimant's denial that he asked to withdraw his original grievance, Lawrence Alexander said in the appeal outcome letter:

"I also note that there are discrepancies between what you told me at the appeal and what the evidence presented to me suggests... In short I simply do not believe what you told me because the evidence I reviewed suggested otherwise."
129. The appeal outcome letter did not refer to the claimant's allegation that Mrs Roberts had said the claimant was '50% of a man' and/or gay. We find that Lawrence Alexander overlooked this, because it was not on the list of concerns which Ms Guilfoyle had agreed with the claimant she would be considering or the claimant's appeal letter. Lawrence Alexander asked the claimant's union representative to break down the points one at a time as he was working through the claimant's points when considering the appeal (page 249).

130. When the claimant's union representative emailed Lawrence Alexander commenting on the appeal outcome, she said that he was in control of a bullying organisation (page 261). He replied, asking her to provide him with the evidence of bullying immediately (page 260). The claimant replied to Lawrence Alexander. He did not refer to the '50% of a man' and/or gay comments.
131. After the grievance process concluded, the claimant was referred for an occupational health (OH) assessment (page 262). The OH doctor recommended a phased return to work. Mrs Robinson wrote to the claimant on 21 November 2019 about his return to work (page 264). They had a meeting on 25 November 2019 to discuss the return to work. Weekend working and the claimant's duties were discussed (page 266).
132. The claimant was not able to return to work and remained on sick leave until he resigned on 1 March 2021 (page 276).

The Law

Protected characteristics

133. Sex, sexual orientation and disability are protected characteristics under section 4 of the Equality Act 2010.

134. The definition of disability is in section 6 of the Equality Act:

“(1) A person (P) has a disability if:

a) P has a physical or mental impairment; and

b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

135. Schedule 1 to the Equality Act sets out additional detail concerning the determination of disability. In relation to long-term effects, paragraph 2 of schedule 1 provides:

“(1) The effect of an impairment is long-term if –

a) it has lasted for at least 12 months,

b) it is likely to last for at least 12 months, or

c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if the effect is likely to recur.”

136. When considering whether an effect is long-term, the question is whether there had been 12 months of adverse effect as at the date that the alleged discriminatory acts occurred (*Tesco Stores Ltd v Tennant* [2020] IRLR 363 EAT).

137. Paragraph 5 of schedule 1 deals with the effect of medical treatment. It says:

“(1) An impairment is to be treated as having a substantial effect on the ability of the person concerned to carry out normal day-to-day activities if –

a) measures are being taken to correct it, and,

b) but for that, it would be likely to have that effect.

(2) ‘Measures’ includes, in particular, medical treatment and the use of a prosthesis or other aid.”

138. This requires the tribunal to consider what the effect on the claimant’s ability to carry out day-to-day activities would have been but for the medical treatment he was receiving.

Direct discrimination

139. Section 13(1) of the Equality Act provides:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

140. Section 23 provides:

“(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.

(2) The circumstances relating to a case include a person's abilities if -
(a) on a comparison for the purposes of section 13, the protected characteristic is disability.”

Failure to make reasonable adjustments

141. The Equality Act imposes a duty on employers to make reasonable adjustments for disabled people. The duty comprises three requirements, in this case, the first requirement is relevant. This is set out in sub-section 20(3). In relation to an employer, A:

“(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.”

142. Paragraph 20(1)(b) of Part 3 of Schedule 8 of the Equality Act says that the duty to make reasonable adjustments does not arise if the employer:

“does not know and could not reasonably be expected to know –

...

(b) ...that an interested person has a disability and is likely to be placed at the disadvantage referred to...

Harassment

143. Under section 26 of the Equality Act, 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.”

144. Sex, sexual orientation and disability are relevant protected characteristics for the purposes of section 26.

145. Conduct amounts to harassment if it has the required purpose or, in the alternative, the required effect. In a claim founded on the effect of conduct, a lack of intent by the alleged harasser is not a defence, because the focus is on the effect of the conduct on the person who alleges harassment. However, in deciding whether conduct has the effect referred to, the tribunal must take into account:

“a) the perception of B;

b) the other circumstances of the case;

c) whether it is reasonable for the conduct to have that effect.”

146. There are therefore both objective and subjective elements to the test about effect, but overall the criterion is objective, the tribunal being required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for them to do so.

Victimisation

147. Victimisation is also prohibited under the Equality Act. Section 27 says:

“(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”

148. ‘Protected act’ is defined in section 27(2). It includes:

“(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

- (c) doing any other thing for the purposes of or in connection with this Act;*
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.”*

149. A relevant pay disclosure can also be a protected act. Section 77(3) of the Equality Act says:

- “(3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic.*
- (4) The following are to be treated as protected acts for the purposes of the relevant victimisation provision—*
 - (a) seeking a disclosure that would be a relevant pay disclosure;*
 - (b) making or seeking to make a relevant pay disclosure;*
 - (c) receiving information disclosed in a relevant pay disclosure.”*

Overlap between the different types of discrimination

150. Section 212(1) of the Equality Act provides that detriment does not include conduct which amounts to harassment. Therefore any conduct which amounts to harassment cannot also amount to a detriment for the purpose of a direct discrimination or victimisation claim.

151. This means that a finding of direct discrimination or victimisation cannot be made in respect of conduct which is held to be unlawful harassment.

Burden of proof in complaints under the Equality Act 2010

152. Sections 136(2) and (3) provide for a shifting burden of proof:

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

(3) This does not apply if A shows that A did not contravene the provision.”

153. This means that if there are facts from which the tribunal could properly and fairly conclude that there has been unlawful discrimination, the burden of proof shifts to the respondent.

154. The respondent would normally be expected to produce “cogent evidence” to discharge the burden of proof. If there is a prima facie case and the explanation for that treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

Time limit

155. The time limit for bringing a complaint of discrimination, harassment or victimisation is set out in section 123 of the Equality Act. A complaint may not be brought after the end of:

- “(a) the period of three months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable”.*

156. Conduct extending over a period (sometimes called a ‘continuing act’) is to be treated as done at the end of the period (section 123(3)).

Protected disclosure

157. Section 43A of the Employment Rights Act 1996 provides that a protected disclosure is:

157.1 a ‘qualifying disclosure’ (a disclosure of information that, in the reasonable belief of the worker making it, is made in the public interest and tends to show that one or more of six ‘relevant failures’ set out in section 43B has occurred, is occurring or is likely to occur);

157.2 which is made in accordance with one of six specified methods of disclosure set out in sections 43C to 43H.

158. In this case the claimant says that he made qualifying disclosures that he reasonably believed to be disclosures of information that were made in the public interest and tended to show the relevant failures set out in sub-sections 43(1)(a), 43(1)(b) and 43(1)(f), that is:

158.1 that a criminal offence has been committed, is being committed or is likely to be committed (sub-section 43(1)(b));

158.2 that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject (sub-section 43(1)(b)); and

158.3 that information tending to show any matter falling within any one of the prescribed grounds under section 43B of the Equality Act 2010 has been, is being or is likely to be deliberately concealed (the claimant relies on disclosure of information about information being concealed during the investigation of his grievance).

159. The claimant said that the information he disclosed tended to show:

159.1 that an assault had been committed contrary to section 39 of the Criminal Justice Act 1988 (the definition of assault being "where the defendant intentionally or recklessly causes the victim to apprehend immediate unlawful personal violence." (Fagan v MPC [1969] 1 QB 439));

159.2 that there had been a breach of article 9 of the General Data Protection Regulation, that is the personal data processing

provisions, specifically processing data concerning a natural person's sex life or sexual orientation without his consent (subsection 2(b) not being satisfied).

160. The assault referred to is the incident involving the snatching and throwing of search consent forms, and the data protection breach referred to is Mrs Roberts taking the 2018 investigation paperwork home overnight.
161. The method of disclosure relied on by the claimant is section 43C. This section provides that a qualifying disclosure is a protected disclosure if it is made to the worker's employer.
162. Reasonableness under section 43B(1) requires both that the worker has the relevant belief, and that their belief is reasonable. This involves a) considering the subjective belief of the worker and also b) applying an objective standard to the personal circumstances of the worker making the disclosure.
163. The context in which a disclosure is made is important. Two or more communications taken together can amount to a qualifying disclosure even if, taken on their own, the individual communications would not.

Protected disclosure detriment

164. Section 47B of the Employment Rights Act says:

"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

165. The test for whether a detriment was done 'on the ground that' the worker has made a protected disclosure is set out in *Fecitt and ors v NHS Manchester* [2012] IRLR 64. What needs to be considered is whether the protected disclosure materially (in the sense of more than trivially) influenced the employer's treatment of the worker.

Burden of proof in protected disclosure detriment

166. In a complaint of detriment, section 48(2) provides that it is for the employer to show the ground on which any act, or deliberate failure to act, was done. This means that where all of the other elements of a complaint of detriment are proved by the claimant, then the burden of proof will shift to the respondent. The claimant is required to show that there was a protected disclosure, and a detriment to which he was subjected by the respondent. At this point, the burden will shift to the respondent to show that the detriment was not done on the ground that the claimant had made a protected disclosure.

Conclusions

167. We have applied the legal principles to our findings of fact to reach our conclusions in respect of the issues we had to decide.

168. We have addressed the issues in the following order: we started by considering whether the claimant was disabled and whether he did protected acts or made protected disclosures. We have then considered each of the 36 allegations which are said to be direct discrimination, harassment, victimisation or protected disclosure detriment. We have next considered the complaint of failure to make reasonable adjustments. We have then stepped back and considered the claimant's claim in the round. Finally, we come to the question of time limits in respect of any complaints which succeed.

Disability

169. The claimant has a mental health condition (anxiety/depression). This is a mental impairment for the purposes of the Equality Act definition.

170. The claimant's anxiety/depression had an adverse effect on his ability to carry out normal day to day activities. The affected activities included eating, sleeping and taking part in social activities. On the basis of the claimant's evidence in his impact statement, which is accepted, the effect was substantial (in that it was more than minor or trivial). He lost weight as a result of the effect on eating and became extremely fatigued as a result of his sleep difficulties. He avoided people, was tearful and often went to the bathroom at work to cry.

171. The adverse effect began in 2011 and was continuing until at least the end of the claimant's employment with the respondent in March 2021. Although there were times during this period when the claimant's condition improved, and the effects lessened, the history of the claimant's condition means that substantial adverse effects were likely to recur (in the sense that that could well happen), particularly at times of stress. The effect of medication is disregarded, and recurrence of substantial adverse effects would have been more likely if the claimant had not been taking medication. The likelihood that without medication the substantial effects on the claimant's day to day activities would have recurred means that the substantial effects of the claimant's anxiety and depression are treated as continuing. This means that from 2012 (12 months after they first began in 2011) until March 2021 the substantial adverse effects of anxiety/depression on the claimant had lasted at least 12 months and were therefore long term.

172. We have concluded therefore that the claimant's anxiety/depression met the definition of disability for the purposes of section 6 of the Equality Act throughout the period of his employment with the respondent.

173. The respondent knew the claimant was disabled by anxiety/depression (or ought reasonably have been expected to know that he was disabled). This is because the claimant disclosed an anxiety condition on his application form and his GP certified him sick with anxiety in August 2016, early in his employment with the respondent. Also, Mrs Robinson was aware of the claimant's mental health condition.

Protected acts

174. The claimant says he did protected acts on the following occasions:
- 174.1 informal grievance at supervision meetings (on 29 December 2018 and 10 August 2018)
 - 174.2 annual appraisal March 2019
 - 174.3 grievance 8/9 April 2019
 - 174.4 email of 17 May 2019
 - 174.5 grievance meetings (30 April 2019, 29 May 2019)
 - 174.6 grievance hearing 2 August 2019
 - 174.7 email 5 August 2019
 - 174.8 appeal 23 August 2019
 - 174.9 appeal hearing of 2 October 2019.
175. We have considered whether the claimant did a protected act within the meaning of section 27 on any of these 11 occasions. In respect of alleged protected acts said to have been made in writing, we have included here some additional findings about the detail of the documents.
176. There was no evidence before us that the claimant did a protected act in either of the supervision meetings on 29 December 2018 and 10 August 2018, or in his annual appraisal in March 2019. Notes of the supervision meetings were at pages 152 and 154, there was no note of the March 2019 appraisal meeting. The notes of the meetings do not include anything that could be a protected act.
177. In his grievance letter of 8 April 2019 (page 175) the claimant used the words 'victimisation', 'harassment' and discrimination. However, these words were included in a list of complaints without any detail. Victimisation is referred to, but this was used in a non-technical sense, as there is no reference to any previous complaint or conduct by the claimant as the reason for the treatment complained about. The words harassment and discrimination are used, but there is no reference to any protected characteristic. The claimant says 'As a man, being bullied by a lady is horrible' but this is not the same as saying that Mrs Roberts would have treated a female employee any differently. It did not amount to an allegation of direct sex discrimination. The focus of the claimant's complaints in this letter is bullying and breach of confidentiality. We find that the letter of 8 April 2019 did not include an allegation of a breach of the Equality Act or anything else in connection with the Equality Act. It does not include a relevant pay disclosure under section 77. It was not a protected act within section 27.
178. The claimant's email of 17 May 2019 is at page 197. Again, the focus of this email is bullying and breach of confidentiality. The claimant describes himself as a 'vulnerable man' and says 'as a man I should not have to work in these conditions its untenable'. However, there is no reference to being treated differently than women, or treated less favourably because of his sex (or because of any other protected characteristic). In fact, the claimant refers in this email to two female staff members who he says were, like him, bullied by Mrs Roberts. Therefore, the complaints in this email do not amount to allegations that the respondent has breached the Equality Act.

The claimant raises two pay issues (pay for time off taken because of bullying and not getting a pay rise). He did not say that he wanted to find out the extent to which there was a connection between his pay and a protected characteristic such that this would amount to a relevant pay disclosure. He did not do anything else in connection with the Equality Act. This email was not a protected act.

179. The meeting on 29 May 2019 did not take place. It was rescheduled because the claimant was on sick leave at the time. There are no minutes of the informal grievance meeting on 30 April 2019. We have found that the claimant did not say in the meeting on 30 April 2019 that Mrs Roberts said he was '50% of a man' or call him gay. The complaints raised by the claimant in his meeting with Ms Devereux on 30 April 2019 did not amount to allegations that the respondent or Mrs Roberts had breached the Equality Act. He said in his email of 17 May 2019 that he 'never asked Ms Devereux to investigate his pay' (page 190). This was not a relevant pay disclosure. The claimant did not do a protected act in his meeting with Ms Devereux.
180. The grievance meeting with Ms Guilfoyle took place on 2 August 2019 (page 215). The claimant was accompanied by his union representative. The notes record that the claimant said during the meeting that Mrs Roberts had said he was 'only 50% of a man'. We have found that this was the first time that the claimant made a complaint about this comment. This could amount to an allegation of harassment related to sex and therefore amounted to an allegation that Mrs Roberts had contravened the Equality Act. It does not matter whether the allegation is proven or not. The claimant therefore did a protected act on 2 August 2019 when, in his meeting with Ms Guilfoyle, he said that Mrs Roberts had said he was 'only 50% of a man'. (The claimant did not mention pay in this meeting, and did not make a relevant pay disclosure.)
181. In his email of 5 August 2019 (page 218), the claimant said he felt singled out because he did not get a pay rise, but he did not say he was being singled out because of protected characteristic, and he did not say that he was seeking information to understand whether there was a link between his pay and a protected characteristic. The claimant did not, in this email, make any allegation of a contravention of the Equality Act and the email was not a relevant pay disclosure. He did not in this email do anything for the purposes of or in connection with the Equality Act. The claimant's email of 5 August 2019 was not a protected act.
182. The claimant's grievance appeal of 23 August 2019 was set out in a letter sent on his behalf by his union representative (page 245). This letter does not refer to the '50% of a man' comment, or to any other allegation of a contravention of the Equality Act. It does not mention pay or any link between pay and a protected characteristic. The letter was not a protected act.
183. The grievance appeal hearing with Lawrence Alexander took place on 2 October 2019. In the hearing the claimant alleged that Mrs Roberts had called him 'half a man' (page 252). As with the grievance meeting, this

amounted to an allegation that Mrs Roberts had contravened the Equality Act. He also said that she had insinuated that he was gay. This could also amount to an allegation of a contravention of the Equality Act. The claimant therefore did a protected act on 2 October 2019 when, in his meeting with Lawrence Alexander, he said that Mrs Roberts had said he was 'half a man' and insinuated that he was gay. (The claimant did not mention pay in this meeting, and did not make a relevant pay disclosure.)

184. In summary on the issue of protected acts, the claimant did protected acts in the grievance meeting on 2 August 2019 and the grievance appeal meeting on 2 October 2019.

Protected disclosures

185. The claimant that he made protected disclosures on the following occasions:

- 185.1 grievance of 8/9 April 2019
- 185.2 email on 17 May 2019
- 185.3 grievance hearing 2 August 2019
- 185.4 appeal 23 August 2019
- 185.5 appeal hearing of 2 October 2019

186. For each of these occasions, we have to consider whether the claimant made a disclosure of information which, in the claimant's reasonable belief was made in the public interest and tended to show at least one of the following:

- 186.1 that a criminal offence had been committed, was being committed or was likely to be committed (the claimant relies on disclosure of information about Mrs Roberts snatching and throwing paper at the claimant which he says amounted to an assault);
- 186.2 that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject (the claimant relies on disclosure of information about a failure to comply with data protection requirements);
- 186.3 that information tending to show any matter falling within any one of the prescribed grounds under section 43B of the Equality Act 2010 has been, is being or is likely to be deliberately concealed (the claimant relies on disclosure of information about information being concealed during the investigation of his grievance).

187. The claimant's counsel did not include protected disclosure detriment in the complaints he said formed the thrust of the claimant's claim. As a result, there was little focus in the evidence and submissions on some of the issues which are part of the detailed legal tests we have to apply to decide these complaints.

188. For example, we heard very little by way of evidence and submissions to explain what the claimant said was deliberately concealed during his grievance investigation. We also heard very little evidence about the claimant's beliefs in making disclosures. The judge asked the claimant

about whether and why he believed his disclosures were made in the public interest because there was no evidence on this.

189. We have considered whether the claimant made a protected disclosure within the meaning of section 43A on any of the five occasions relied on.
190. Protected Disclosure 1: We have found that on 8 April 2019 the claimant disclosed information about breach of confidentiality by the respondent which he believed tended to show that the respondent had failed to comply with its legal obligations under the General Data Protection Regulations. Considering the objective element of the test, we have decided that the claimant's belief was reasonable, because the respondent accepted that documents which included allegations about the claimant's sex life were taken home by Mrs Roberts, albeit for a short period. The claimant was not aware of the arrangements for the security of the documents while they were away from the respondent's sites. It was also reasonable for the claimant to believe that his disclosure was in the public interest because he mentioned wider breaches of confidentiality which it was reasonable to believe were in the interests of a section of the public, that is the respondent's staff. We conclude therefore that the claimant's grievance was a qualifying disclosure. As it was made to his employer, it was a protected disclosure.
191. Protected Disclosures 2 and 3: For the same reasons, we have concluded that the claimant's email of 17 May 2019 was a protected disclosure, and that he also made a protected disclosure in his grievance meeting on 2 August 2019.
192. Protected Disclosures 4 and 5: The claimant's grievance appeal of 23 August 2019 was set out in a letter sent on his behalf by his union representative. We have found that in the grievance appeal hearing the claimant did not himself disclose any information about confidentiality breaches. We have concluded that the claimant did not make qualifying disclosures in the letter of 23 August 2019 or at the appeal hearing on 2 October 2019.
193. In summary, we have found that the claimant made protected disclosures in his grievance of 8 April 2019, his email of 17 May 2019 and at his grievance meeting on 2 August 2019.

The claimant's allegations of unlawful treatment

194. We have concluded that the claimant was disabled, and that he did protected acts on 2 August 2019 and 2 October 2019 and that he made protected disclosures on 8 April 2019, 17 May 2019 and 2 August 2019. We have next considered each of the claimant's allegations of unlawful treatment. We have mostly considered these in the order set out in the list of issues in the appendix but have grouped some together where they relate to the same factual matters.

195. The allegations are said to amount to direct discrimination and harassment, and some are also said to amount to victimisation and protected disclosure detriment.
196. In respect of the complaints of direct discrimination we consider, in respect of each of the alleged acts as we have found them to have happened, the reason why the treatment was afforded to the claimant and whether, because of sex, sexual orientation or disability, he received less favourable treatment than others. The claimant is heterosexual, but in the complaints of direct sexual orientation discrimination, the question is whether less favourable treatment was 'because of sexual orientation' not the narrower question of whether it was 'because of the claimant's sexual orientation'.
197. For the complaints of harassment, we consider whether, in respect of each act, it amounted to unwanted conduct, if so whether it was related to sex, sexual orientation or disability. Where we conclude that treatment was unwanted conduct related to sex, sexual orientation or disability, we go on to consider whether it had the required purpose or effect.
198. The claimant did not rely on section 27(1)(b). A complaint of victimisation can therefore only succeed in relation to allegations which post-date 2 August 2019 (the date of the first protected act). The complaints victimisation in relation to issues 1 to 26 fail, as we have found these acts to have occurred before the claimant did a protected act. We have considered victimisation in respect of issue 27 onwards.
199. The complaints of protected disclosure detriment can only succeed in relation to allegations which post-date 8 April 2019 (the date of the first protected disclosure). The protected disclosure detriment complaint therefore fails in relation to issues 1 to 15 as we have found that these took place before 8 April 2019. We have considered protected disclosure detriment in respect of issue 16 onwards.
200. In the victimisation and protected disclosure detriment complaints which post-date the protected acts and protected disclosures, we consider whether there is detrimental treatment and whether that treatment was because the claimant had done a protected act, or on the ground that he had made a protected disclosure.
201. Issues 1, 2, 3 and 4: We have found that Ms Coles spoke to the claimant in September 2017 about a historic incident concerning the claimant and a relative of his. The reason she did so was because it had been raised with the respondent by a county council officer following discussions with the police. It was entirely reasonable for Ms Coles to discuss this with the claimant. The claimant worked with older people, some of whom could be vulnerable, and so safeguarding was an extremely important consideration for the respondent. Even though the claimant had an enhanced check from the Disclosure and Barring Service, it was still possible that something could have come to light which had not been picked up during that check. The respondent dealt with this in a sensitive and proportionate manner. After

having a conversation with the claimant, the respondent was satisfied that no further steps needed to be taken.

202. In respect of the investigation which took place in July 2018, the reason Mrs Roberts conducted this investigation was because a staff member and her parent raised a concern about the claimant's conduct. The concern was not only about a sexual relationship between adult colleagues; there was an allegation about the way in which the claimant had treated the staff member after the alleged relationship ended. If true, this could have amounted to sexual harassment. Mrs Roberts accurately recorded on the IIACC form that a concern (not a complaint) had been raised. The fact that the staff member did not want to make a formal complaint does not mean that the respondent was not entitled to investigate this matter, particularly given the importance of safeguarding in the working environment. In light of what the respondent had been told, it was reasonable to conduct an investigation and for that investigation to include speaking to other staff members who had been named by the person raising the concern as people who could provide more information. Although the claimant was not immediately told the name of the person who had raised the concern, he was told this during the course of the investigation.
203. The respondent's actions in relation to issues 1, 2, 3 and 4 were not because of sex, sexual orientation or disability. The July 2018 investigation concerned an allegation regarding the claimant's sex life, but it was not carried out because of that. The respondent acted as it did because it had received information which its managers considered it should follow up or investigate, not in any sense because of sex, sexual orientation or disability.
204. For the same reasons, the respondent's actions in respect of these issues were not in any way related to sex, sexual orientation or disability. This means that the respondent's actions in respect of issues 1 to 4 do not amount to harassment, as an essential part of the legal test is not made out.
205. Issue 5: We have found that Mrs Roberts said the claimant was '50% of a man' in about July 2018. This was unwanted conduct, and it expressly referenced him being a man. We have not found that it had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
206. If we had found that the comment had required effect, we would have gone on to consider the circumstances in which the comment was made, and whether the claimant's perception was reasonable. Taking into account the context in which it was made, our finding that it was said as a joke about automatic cars, we would have concluded that it would not have been reasonable for the comment to have the required effect on the claimant.
207. We find therefore that this comment did not amount to harassment related to sex (or sexual orientation or disability).
208. For the same reasons, this comment did not amount to less favourable treatment because of sex (or sexual orientation or disability). It was an ill-

judged joke which, when the context and the claimant's response to it are taken into account, did not amount to a detriment to the claimant.

209. Further, the comment was made in about July 2018. The claim was presented in February 2020, that was about 15 months after the primary time limit for this complaint had expired in October 2018. The claimant said that factors that should be taken into account when considering whether it would be just and equitable to extend time in relation to his claim were the fact that he brought a grievance and that he was on sick leave. Neither of these reasons applied to this complaint. (The grievance was made on 8 April 2019 and the claimant did not raise this complaint until 2 August 2019. His period of long term sick leave started on 28 June 2019.) If we had had to decide the question of whether it would be just and equitable to consider this complaint, we would have decided that it was not, given the length of the delay and the absence of good reason for the delay.
210. Issue 6: This complaint fails on the facts. We have not found that Mrs Roberts said the claimant was gay.
211. Issue 7: We have found that Mrs Roberts said that the claimant used too much fragrance. The reason why Mrs Roberts said this was because of the intense effect of the claimant's use of fragrance in close proximity to others.
212. We have found that Mrs Roberts was commenting on the temporarily overpowering smell, not making any suggestion about the claimant's sexual orientation or about sexual orientation in general. Mrs Roberts would not have behaved any differently if a member of staff who was female or of a different sexual orientation had done the same thing. This does not amount to direct discrimination.
213. For the same reasons, Mrs Roberts' comment was not related to sex or sexual orientation. This means that the treatment does not amount to unlawful harassment, as an essential part of the legal test is not made out.
214. (This issue was not said to amount to disability discrimination or harassment.)
215. Issue 8: This relates to the temporary storage of the IIACC investigation papers in a suitcase in Mrs Robert's car. We have found that Mrs Roberts took the paperwork home with her in a locked case so that she could take it to head office to keep it there, because the claimant had asked her not to keep it at Place Court. Mrs Roberts transported documents between sites on a regular basis, and had a suitcase for the purpose in her car. Mrs Roberts would not have acted any differently in similar circumstances for a member of staff who was female, of a different sexual orientation or who did not have the disability of anxiety/depression. Sex, sexual orientation and the claimant's disability did not play any part in Mrs Roberts' treatment of the investigation paperwork.

216. For the same reasons, Mrs Roberts' conduct on this issue was not related to sex, sexual orientation or disability. Again, an essential part of the legal test for harassment is not made out.
217. Issues 9, 10 and 13: These issues concern the authority to search form. We have found that staff were asked to sign an authority to search form in about January/February 2019. All staff were asked to sign the form. We have not found that Mrs Roberts insisted that she wanted to search the claimant's car at that time. Rather, the respondent asked the claimant to give his authority in advance, should grounds for a search arise in future. The reason why the respondent took this step was because the police had advised it to do so. The form the respondent used allowed members of staff to withhold consent. The claimant declined to give his permission for a search of his car. The respondent did not take any steps against the claimant as a result of him withholding his consent for a search of his car. The respondent acted no differently in respect of the search authority forms for members of staff who were female, of a different sexual orientation or who did not have the disability of anxiety/depression.
218. We have found that Mrs Roberts snatched some search paperwork from the claimant and later threw it across his desk towards him. Ms Guilfoyle found that Mrs Roberts' acted inappropriately out of frustration. The reason for Mrs Roberts' inappropriate interaction with the claimant was because she was annoyed that other staff members had not signed the authority to search paperwork. It was not because of sex, sexual orientation or the claimant's disability. It did not amount to direct discrimination.
219. For the same reasons, Mrs Roberts' conduct on this issue was not related to sex, sexual orientation or disability. This means that the complaint of harassment in respect of this issue also fails, as an essential part of the legal test is not made out.
220. Issue 11: We have not found that Mrs Roberts said she would force the claimant to work night shifts, or that the claimant was required to work night shifts. We have found that in early 2019 the claimant was asked to work some night shifts to cover staff sickness. He was unhappy about this but he was not in the event required to work these shifts. We have found that the claimant and Mrs Roberts discussed this at their meeting on 18 March 2019. They had a difference of opinion about the expectations on someone working on-call. Mrs Roberts suggested that she would discuss this with Ms Coles. This was a reasonable suggestion for a way forward.
221. We have not found that Mrs Roberts swore. We have found that at the end of the meeting she said, 'I'm the area manager and it will be done my way'. The reason why she did this was because the claimant kept asking the same questions and she wanted to end the meeting.
222. The claimant was frustrated by his interactions with Mrs Roberts. However, Mrs Roberts' treatment of him was not because of sex, sexual orientation or disability. She would not have dealt any differently with a staff member who was female, of a different sexual orientation or not disabled. Her conduct

was not in any sense because of sex, sexual orientation or disability and cannot amount to direct discrimination.

223. For the same reasons, Mrs Roberts' conduct on this issue was not related to sex, sexual orientation or disability. This means that an essential part of the legal test for harassment is not made out.
224. Issue 12: This complaint fails on the facts. We have not found that Mrs Roberts shredded a compliment left for the claimant.
225. Issue 14: We have found that Mrs Roberts said 'He's got another 28 days' to employees at Campbell Place, but that she was referring to the claimant being signed off sick, not being given notice. It was said in the context of arrangements being made to cover for the claimant. It was not said to the claimant but was reported back to him. The reason why Mrs Roberts said it was because she was arranging cover for the claimant while he was on sick leave. It was not said because of sex or sexual orientation.
226. For the same reasons, Mrs Roberts' conduct was not related to sex or sexual orientation. This means that this does not amount to unlawful harassment as an essential part of the legal test is not made out.
227. This comment was not direct disability discrimination. The claimant's sick leave was mentioned as the background to a conversation about staffing arrangements, but it was not because of the claimant's disability.
228. Similarly, in relation to the complaint of disability-related harassment, the comment was related to disability in the sense that it was about the claimant being on sick leave. We have not found that it had the required purpose or effect. If we had found it to have had the required effect, we would have found that it was not conduct which it was reasonable to perceive to have violated the claimant's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for him.
229. Issues 15 and 17: This relates to the care plans. We have found that the discussion about care plans between the claimant and Mrs Roberts took place during the meeting on 18 March 2019 (not April 2019). We have not found that Mrs Roberts said the words alleged by the claimant in issue 15. We have found that she discussed the new care plan templates and that she said they included less detail than the claimant's plans. The reason for Mrs Roberts actions was because a new template had been introduced across the respondent's sites for operational reasons, because they were easier for carers to read and absorb quickly. We have not found that Mrs Roberts deleted the claimant's care plans as alleged in issue 17. After the new care plan template was introduced, new plans were written and uploaded onto the Dropbox, overwriting the previous plan.
230. Mrs Roberts' discussions with the claimant about the care plans, and the way in which the new care plans overwrote the previous version were in no sense because of sex, sexual orientation or disability and cannot amount to direct discrimination.

231. For the same reasons, Mrs Roberts' conduct regarding the care plans was not related to sex, sexual orientation or disability and does not amount to unlawful harassment.
232. The claimant says that this treatment amounted to protected disclosure detriment. The burden of proof in protected disclosure detriment claims is on the respondent where the claimant can show that they have made a protected disclosure and been subjected to a detriment. The treatment before 8 April 2019 cannot have been because of a protected disclosure made on 8 April 2019. To the extent that the over-writing of the care plans post-dates the claimant's first protected disclosure on 8 April 2019, we do not find this to amount to a detriment to the claimant. It was an organisational decision which was not personal to the claimant. There were clear operational reasons for the change of policy. The over-writing of the care plans previously prepared by the claimant was not a detriment to him. This means the burden of proof does not shift to the respondent on this issue.
233. If we had found there to have been a detriment, we would have concluded that the respondent has satisfied us that this treatment was not done on the ground of the claimant having made a protected disclosure in his grievance. The plans to introduce the new template were discussed at a manager's meeting well before the claimant made his grievance, and the over-writing was the general approach taken by the respondent when new care plans were made.
234. Issue 16: The claimant alleges that he was told by Mrs Robinson that Mrs Roberts wanted him sacked for gross misconduct. We have not found that Mrs Roberts said this or that Mrs Robinson said this. We have found that there was a discussion between Mrs Robinson and Mrs Roberts about whether the claimant's actions on 6/7 April 2019 amounted to gross misconduct. The reason why Mrs Roberts raised the issue of gross misconduct with Mrs Robinson is that she and the claimant had had a difference of opinion in their meeting on 18 March 2019 about the steps an on-call manager should take and she was unhappy that the claimant had not adopted her approach when on-call shortly after their discussion. She did not raise it because of sex, sexual orientation or disability.
235. For the same reasons, Mrs Roberts' discussion with Mrs Robinson about the claimant's conduct was not related to sex, sexual orientation or disability and cannot amount to unlawful harassment.
236. The discussion took place prior to the claimant's first protected disclosure (it was mentioned in the grievance letter of 2 April 2019).
237. Issues 18 and 19: These allegations are about delays and issues with the informal stage of the claimant's grievance. The informal stage in the claimant's case took longer than the timeframe set out in the procedure. The grievance letter was sent on 8 April 2019. Ten working days from 8 April 2019 was 22 April 2019. The meeting with Ms Devereux took place on 30 April 2019, 5 working days later. The grievance outcome was sent to the

claimant on 15 May 2019, a further 10 working days later. Mrs Robinson had updated the claimant on 11 and 18 April 2019, and had explained that identifying an appropriate might take some time.

238. We accept that the reason why there was a delay in dealing with the grievance was because of the respondent's need to identify an appropriate decision-maker, to take advice from Ms Devereux and then to deal with the question of whether the claimant had withdrawn his grievance. We accept that Ms Devereux required some time to provide her response because of the nature of the issues raised.
239. We accept that the reason why Mrs Robinson thought the claimant was withdrawing his grievance was because there was a misunderstanding between her and the claimant: she thought that the claimant wanted to withdraw his grievance entirely, but he was actually asking for it to be dealt with locally, by which he meant informally. This misunderstanding was also a contributing factor in the delay responding to the claimant's grievance.
240. The delay in responding to the claimant's grievance at the informal stage and the misunderstanding about the withdrawal of the grievance were not because of the claimant's sex, sexual orientation or disability. The complaints of direct discrimination fail.
241. For the same reasons, the delay and issues with the informal grievance procedure were not related to sex, sexual orientation or disability. They could not therefore amount to sex, sexual orientation or disability related harassment.
242. The delay in responding to the grievance and the misunderstanding about the withdrawal of the grievance both took place after the claimant's first protected disclosure. The delay and misunderstanding were a detriment, and so the burden moves to the respondent. The respondent has satisfied us that neither the delay in dealing with the informal grievance or the misunderstanding about the withdrawal were in any way influenced by the fact that one of the claimant's complaints was about breach of confidentiality and therefore amounted to a protected disclosure. Any complex complaint would have been dealt with by the respondent in the same way. These were not detriments on the ground that the claimant had made a protected disclosure.
243. Issue 20 and 21: We have found that the respondent moved the claimant's desk. We have not found that the claimant's role reduced, but we have found that the claimant was asked to change the balance of where he worked, so that he was working alongside the carers for around three days a week, rather than spending the majority of his time in the office. We have found that the changes took place at around the time the claimant returned from sick leave on 2 April 2019. They had happened before the claimant's grievance, because he mentioned them in his grievance.
244. The reason why the respondent moved the claimant's desk was because the claimant's managers thought he was leaving, and they decided that

relocating his desk would be better for privacy. The reason why the respondent asked him to work more alongside the carers was because the claimant's managers thought this would be helpful to assist with a performance issue with carers.

245. It is understandable that it would be difficult for the claimant to return from sick leave to find that his desk had moved and to be asked to change his duties. It would have been better for the respondent to have spoken to him before moving his desk, and to have consulted more with him about the changes to his duties. However, the respondent's actions were not because of the claimant's sex, sexual orientation or disability.
246. For the same reasons, these issues were not related to sex, sexual orientation or disability and so did not amount to unlawful harassment.
247. The move and proposed role changes happened before the claimant's first protected disclosure, and so cannot have been on the ground of the protected disclosure.
248. Issues 22 and 23: These complaints fail on the facts. We have not found that Mrs Roberts made the comments as alleged.
249. Issue 24: This relates to the outcome of the informal grievance. We have not found that Ms Devereux failed to address all the claimant's complaints. We have found that Ms Devereux investigated five points which she identified with the claimant as his main concerns. This was a pragmatic approach in light of the claimant's grievance letter which was long and detailed, and the claimant's request to resolve things locally. In her letter Ms Devereux set out her findings and the respondent's explanation for the issues raised. She did not expressly say whether the claimant's complaints were upheld or not, rather she set out some suggestions for next steps. It was a balanced response, as Ms Devereux accepted that, as he had said, the claimant was unable to perform his job in the same way he used to. The reason why Ms Devereux sent a copy of the letter to Ms Coles was that Ms Devereux had asked Ms Coles to follow up with the claimant on some pay issues.
250. Ms Devereux's investigation was an informal one in respect of the claimant's main concerns. She was hopeful that her response would provide a resolution so that the claimant could move on, as he had told Mrs Robinson he wanted to. Ms Devereux's response was not because of sex, sexual orientation or disability. She would not have treated the grievance any differently if it had been brought by a person who was of a different sex or sexual orientation or who was not disabled. The informal grievance outcome was not directly discriminatory.
251. For the same reasons, the informal grievance outcome was not related to sex, sexual orientation or disability. They could not therefore amount to sex, sexual orientation or disability related harassment.

252. The grievance response was made after the claimant's first protected disclosure. The informal grievance outcome was a detriment to the claimant, as he was unhappy with it. The burden of proof moves to the respondent. The respondent has satisfied us that the outcome was not in any way influenced by the fact that one of the claimant's complaints in his letter of 8 April 2019 was about breach of confidentiality and therefore amounted to a protected disclosure. It would not have been treated any differently if it had not included that complaint. Ms Devereux did not fail to address the complaint about breach of confidentiality because it amounted to a protected disclosure. She did so because it was not identified by the claimant as one of his main concerns, and she and the claimant agreed that she would investigate his main concerns. The informal grievance outcome was not on the grounds of the claimant's protected disclosure which he made in his grievance letter.
253. Issue 25: We have found that Mrs Robinson asked the claimant to attend an attendance review meeting under the respondent's absence management policy. It was not a disciplinary hearing. The reason Mrs Robinson asked the claimant to attend this meeting was because he had met the triggers under the policy. The requirement to attend the meeting was not because of sex, sexual orientation or the claimant's disability.
254. The attendance review meeting was related to disability in that it arose from sickness absence because of the claimant's anxiety/depression. We have not found that it had the required purpose or effect on the claimant to amount to unlawful harassment. If we had found that it had the required effect, we would have decided that it was not reasonable for it to have done so, because it was a meeting with the claimant's line manager which was required under the respondent's absence management procedure, and because at the meeting the claimant's manager decided that no further action was to be taken and stage one of the procedure would not be enforced.
255. Requiring the claimant to attend a meeting to discuss his sickness absence was not a detriment, and so the burden of proof does not shift to the respondent in respect of the protected disclosure detriment complaint on this issue. If we had decided that the burden had shifted, we would have accepted that the fact that the claimant had made a protected disclosure in his grievance of 8 April 2019 did not in any way influence Mrs Robinson's decision to invite him to a sickness absence review meeting. This was not on the grounds of the claimant having made a protected disclosure.
256. Issue 26: We have not found that in June 2019 Mrs Roberts said she didn't care what anyone else said it was her way. We have found that in the meeting on 18 March 2010 Mrs Roberts told the claimant, 'I'm the area manager and it will be done my way'.
257. This comment was not made because of sex, sexual orientation or disability. It was an abrupt response to questions by the claimant and it gave the impression that Mrs Roberts was not listening to the claimant's concerns. Mrs Roberts could have made her point more sympathetically. Nonetheless

we are satisfied that in these circumstances Mrs Roberts would have responded to another employee in the same way, irrespective of sex, sexual orientation or disability. The reason why Mrs Roberts made this comment was because the claimant had asked the same question several times and Mrs Roberts wanted to bring the meeting to a close.

258. For the same reasons, the comment was not related to sex, sexual orientation or disability and so cannot amount to sex, sexual orientation or disability-related harassment.
259. This comment was made before the claimant's first protected disclosure and so cannot have been made on the grounds of the claimant's protected disclosure.
260. Issue 27, 28, 29, 32 and 36: These issues relate to the grievance appeal. The claimant complains that in the appeal the respondent:
- 260.1 Failed to give a response within 10 working days of the appeal meeting (issue 27);
 - 260.2 Failed to deal with the phrases '50% of a man' and/or gay (issue 28);
 - 260.3 Criticised the claimant's credibility (issue 29);
 - 260.4 Failed to properly investigate the appeal (issue 32);
 - 260.5 Failed to uphold the appeal (issue 36).
261. In relation to the appeal response time, we have found that Lawrence Alexander wrote to the claimant on 8 October 2019 to say that he would reply by 18 October 2019. The response was sent on 18 October 2019. This was two days after the 10 working days timeframe set out in the policy, which expired on 16 October 2019. The reason for the delay was that reviewing the notes and evidence and making a decision took longer than the 10 days provided for in the procedure.
262. We have found that at the appeal Lawrence Alexander used the list of the claimant's 24 concerns which had been agreed between Ms Guilfoyle and the claimant. The reason why Lawrence Alexander did not deal with the phrases '50% of a man' and/or gay, was that even though the claimant raised these with him at the meeting, Lawrence Alexander was working through the grievance complaint list and this did not include any complaint about the phrase '50% of a man'. As a result it was overlooked.
263. Lawrence Alexander criticised the claimant for telling him that he did not know what on-call was, and for saying that he had not withdrawn his grievance. The reason why he did so was that having reviewed the notes and evidence he decided the written documents contradicted what the claimant was saying and so he did not believe what the claimant had told him about these points.
264. Lawrence Alexander conducted an investigation of the points raised by the claimant in his appeal. He reviewed notes and evidence. The outcome was that one point in the grievance was overturned. Lawrence Alexander upheld

the others. His reason for doing so was because he found no evidence to support the claimant's other allegations, and he noted discrepancies in the claimant's evidence.

265. Overall, it is clear that the claimant's large and detailed grievance complaint was complex and difficult for the respondent to deal with. However, the respondent did its best to consider it thoroughly. As to the procedure it followed, it changed its approach when concerns were raised by the claimant, such as in relation to the appointment of Ms Coles. Its decision at all stages was balanced, with all the decision makers including Lawrence Alexander open to considering the claimant's complaints and ultimately accepting some of them.
266. The delay and other issues raised by the claimant with his grievance appeal were because of the reasons set out above. They were not in any way because of sex, sexual orientation or disability. These issues do not amount to direct discrimination.
267. For the same reasons, the grievance appeal issues were not related to sex, sexual orientation or disability and were not unlawful harassment contrary to section 26.
268. The delay in providing the appeal outcome and the outcome itself amounted to detriments and took place after the claimant made protected disclosures. The burden shifts to the respondent in the protected disclosure complaint. However, we are satisfied that the delay and the outcome were not in any way influenced by the claimant's protected disclosures. Any complex complaint would have been dealt with by the respondent in the same way. Lawrence Alexander reached the view he did after considering the evidence, not because of the nature of the complaints the claimant was making and had made previously. The delay and the grievance appeal outcome were not on the grounds of any of the claimant's protected disclosures.
269. For the same reasons, the delay and the grievance appeal outcome were not because of any of the claimant's protected acts.
270. Issues 30 and 31: These issues concern the investigation of the claimant's informal and formal grievance. We have not found that Ms Devereux or Ms Guilfoyle failed to properly investigate the claimant's grievance. Both identified the claimant's main concerns with him and then took steps to investigate those concerns, including speaking to witnesses. Both concentrated on the concerns identified by the claimant. The fact that the claimant was not happy with the outcome of the informal and formal grievance and that he later felt other issues should have been included in the scope of the investigation does not mean that they were not properly investigated. These complaints fail on the facts.
271. In any event, the investigations were in no sense affected by sex, sexual orientation or disability, and were not directly discriminatory. For the same reasons the investigations were not related to sex, sexual orientation or

disability such that they would amount to unlawful harassment contrary to section 26.

272. Also, neither investigation was influenced in any way by the fact that the claimant had made a protected disclosure (that is, making an allegation about breach of confidentiality) in his 8 April 2019 grievance letter. The claimant's first protected act was on 2 August 2019, after Ms Devereux's investigation. It was done before Ms Guilfoyle's investigation, but her investigation was not affected in any sense by the claimant's protected act.
273. Issues 33, 34 and 35: These issues relate to pay. The claimant raised two concerns about his pay, the underpayment issue and the pay rise issue. Issue 33, as we understand it, relates to Ms Devereux's commitment in the informal grievance outcome letter that Ms Coles would send a letter to the claimant explaining why the respondent considered that he had been overpaid, not underpaid as he thought. We have found that the reason the respondent omitted to send this letter was because of an oversight which arose when the claimant objected to Ms Coles hearing stage one of his grievance.
274. Issues 34 and 35 relate to the claimant not receiving a pay rise. We have found that pay rises were awarded to carers in around April 2019. This was because of the increase in the national minimum wage. The reason why the claimant did not receive a pay rise was explained to the claimant by the respondent. The reason was that, under the respondent's policy, team leaders only receive a pay rise where performance targets are met and, because of a reduction in hours, Place Court had not met its performance targets. This was the decision of Oliver Alexander who was not the subject of the claimant's complaints. There was no evidence that any other team leader received a pay rise where performance targets were not met. The respondent explained why Mrs Robinson (a site manager) received a pay rise. We accept that the reason the claimant did not receive a pay rise was because of the application of the pay policy and Place Court's reduced hours.
275. We have not found that the respondent failed to explain this to the claimant. Ms Devereux and Ms Guilfoyle explained the reason why the claimant did not receive a pay rise in their outcome letters.
276. The respondent's actions in relation to issues 33 to 35 were not because of sex, sexual orientation or disability. The failure to send a letter to the claimant was because of an oversight, and the decision not to award a pay rise to the claimant was because of the policy and Place's Court's performance. They were not because of sex, sexual orientation or disability.
277. For the same reasons, the respondent's actions in respect of the pay issues were not in any way related to sex, sexual orientation or disability and do not amount to harassment contrary to section 26.
278. The failure to send a letter about the claimant's pay issue and to award a pay rise are detriments, and the claimant made protected disclosures,

meaning that the burden shifts to the respondent. However we are satisfied that the respondent has shown that these failures were not on the ground of any of the claimant's protected disclosures. The pay review decision was made by Oliver Alexander who was not the subject of the claimant's protected disclosure and his decision was made for policy reasons as set out above. The respondent's actions in respect of the pay issues were not in any way because of the claimant's protected acts.

The burden of proof

279. As we have explained above, we have concluded that the claimant made protected disclosures, the first being on 2 April 2019. In relation to those issues where we have found the claimant to have been subject to a detriment, we have looked to the employer as required by section 48(2) of the Employment Rights Act to show the ground on which any act, or deliberate failure to act, was done. We were satisfied that the respondent has shown that the detriments were not on the ground that the claimant had made protected disclosures.
280. In respect of the complaints of direct discrimination, we have been able to determine the reasons why the respondent treated the claimant as it did, and as a result we have concluded that he was not treated less favourably because of sex, sexual orientation or disability. That means that we do not need to assess the complaints of direct discrimination, harassment and victimisation by reference to the shifting burden of proof.
281. If we did have to apply the burden of proof in relation to those issues, we would have concluded that the burden did not shift to the respondent. There was no evidence from which we could conclude that the treatment of the claimant was related to sex, sexual orientation or disability or that it would have been any different for a member of staff who was female, of a different sexual orientation or who did not have the disability of anxiety/depression. If we had found that the burden had shifted, we would have been satisfied that the respondent had non-discriminatory reasons for the actions it took, as explained above in respect of each of the issues. The complaints of direct discrimination in relation to these issues therefore cannot succeed.
282. We would reach the same decision in respect of the burden of proof in the complaints of harassment. We have in mind our finding that Mrs Roberts made the '50% of a man' comment, but we also take into account the nature and context of this comment. It is not evidence from which we could conclude that there was unlawful harassment in relation to the other complaints made by the claimant such that the burden shifts. We have concluded that the burden of proof would not shift to the respondent in relation to the complaints of harassment. If we had found that the burden had shifted, we would have been satisfied that the treatment the claimant complained about was not related to sex, sexual orientation or disability, except in relation to issues 5, 14 and 25, where we have found that the conduct did not have the required purpose or effect.

283. We would reach the same decision in respect of the complaint of victimisation. We have not found that there is evidence from which we could conclude that the treatment the claimant complains about which occurred after he made his first protected act on 2 August 2019 was because of that act.
284. We next consider the complaint of failure to make reasonable adjustments, before stepping back to assess the claimant's complaints in the round.

Failure to make reasonable adjustments

285. The issues in relation to this complaint are set out at page 83 of the bundle.
286. A PCP is a provision, criterion or practice. The claimant relied on the PCP of 'investigating purported sexual relations between colleagues'. We have not found that the respondent had any written policy prohibiting sexual relationships between colleagues. We have found that Mrs Roberts started an investigation under the IIACC procedure into a concern that was raised by the claimant's colleague which was about a purported sexual relationship. The respondent said that the same approach would have been taken to others in his position. We have concluded that the investigation process which the respondent carried out in this case amounted to a PCP.
287. The claimant says that the investigation process put him at a substantial disadvantage in comparison to people who do not have anxiety/depression in that:
- 287.1 He felt unsafe during the process and
- 287.2 He was not able to engage fully with the process.
288. He did not explain to us why he felt unsafe during the process or give any details about the ways in which he was not able to engage and why. We have found that he attended two meetings about the concern and had his own legal advice. We have concluded that the claimant was not at a substantial disadvantage in relation to the investigation process. As he was not at a substantial disadvantage, no duty to make adjustments arose.
289. If we had concluded that the claimant was at a substantial disadvantage, we would have gone on to consider whether the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at that disadvantage. We have concluded that it did not know this. The respondent knew about the claimant's anxiety, but it had no information or knowledge about the way in which an investigation procedure could disadvantage him. The disadvantages relied on by the claimant were not so obvious that the respondent could have reasonably been expected to know that someone with anxiety and depression would have been likely to be placed at those disadvantages. We would therefore have concluded that the respondent was not under a duty to make reasonable adjustments to the investigation process because of paragraph 20(1)(b) of part 3 of schedule 8 of the Equality Act.

290. There was therefore no failure by the respondent to make reasonable adjustments in respect of the July 2018 investigation.

The claimant's claim in the round

291. Having considered the claimant's 36 allegations individually, we have not found any of them to amount to unlawful treatment, whether direct discrimination, harassment, victimisation or protected disclosure detriment. We have not found that the respondent failed to make reasonable adjustments.

292. The need to focus on a large number of individual incidents as we have had to do in this claim can risk leading to a failure to see the claim in the round, or the 'big picture'. We should not treat the individual incidents in isolation from one another, because the big picture may shed light on individual complaints. To avoid an overly fragmented approach we have 'stepped back' and considered the full picture of all the claimant's complaints.

293. We think that some aspects of the claimant's treatment were unsatisfactory and the claimant has genuine reason to be aggrieved about those aspects. It was upsetting for the claimant to come back from a period of sick leave to find that his desk had been moved and that changes to his day-to-day duties were proposed (even if he was planning to leave). The respondent could have introduced these changes at a better time and with more consultation with the claimant.

294. Ms Guilfoyle accepted that Mrs Roberts' conduct when in frustration she snatched forms from the claimant was inappropriate, and we have found further inappropriate treatment in that she also threw them across the claimant's desk when she gave them back to him. We have found that she spoke abruptly to him.

295. It was also unsettling for the claimant to have negative comments made by Mrs Roberts about him passed on 'second hand'. We have found that the comments were not always accurately passed on, and it also meant the claimant was hearing about issues indirectly, without being able to discuss them with Mrs Roberts. Perhaps predictably, against the background of the personality clash which existed between the claimant and Mrs Roberts, it made their already difficult relationship worse. It also reflected the wider culture, accepted in the informal and formal grievance outcome, of managers not being sufficiently careful about confidentiality when having discussions about staff.

296. When looking at the claim in the round, we also take into account what Mr Shepherd said about the thrust of the claim. The claimant's claim was put in many alternative ways. The claimant said in respect of most of his factual allegations that they happened for a number of reasons; some treatment was said to have been for five different reasons (sex, sexual orientation, disability, a protected act and/or a protected disclosure). Mr Richardson described this as a kitchen sink approach. It is of course possible for one act to be unlawful discrimination because of more than one protected

characteristic (an obvious example would be a comment referencing both sex and sexual orientation). Similarly, a claimant can put complaints in the alternative, such as saying that an act amounts to either direct discrimination or harassment. But in this case the very large number of alternatives put forward (even when the main focus is narrowed to the complaints of sex and sexual orientation discrimination and victimisation) suggests that the claimant may have been looking for a basis on which he could show that treatment he was unhappy about was unlawful. It seems to us that rather than being connected with any protected characteristic, protected act or protected disclosure, the central reason for the issues the claimant had was the personality clash with Mrs Roberts.

297. It was clear to us from the evidence we heard that the claimant's personality clash with Mrs Roberts informed his perception of his treatment. He started to see normal operational things as personal, for example the requirement to complete the search form and the new care plan template. He interpreted things Mrs Roberts said as evidence she wanted to dismiss him when it was not, such as the 28 days comment and the 'gross misconduct' discussion. This perception also caused the claimant to overstate or overemphasise some points as things went on, for example he referred in his formal grievance hearing to Mrs Roberts having shredded seven compliments about him, after initially telling Ms Guilfoyle that he wanted her to investigate whether 'a compliment' had been shredded. He also described the request to complete the search form as a request to actually search his car, when no such request had been made.
298. There were many matters the claimant was unhappy about. Some of these could have been handled better by the respondent. But the relevant test for us is not whether the respondent could have done things better. We have to apply the legal tests which apply to complaints of direct discrimination, harassment, victimisation, protected disclosure detriment and reasonable adjustments. Overall, we do not think that the respondent's treatment of the claimant was anything to do with sex, sexual orientation, disability, or the complaints the claimant was making. Rather, problems stemmed from the difficult relationship between the claimant and Mrs Roberts and the claimant seeing a lot of the things he was unhappy about through the lens of the poor working relationship with Mrs Roberts. The claimant worked in a setting which often has a higher proportion of female staff. Most of the staff at Place Court were female. We considered whether the claimant being a man in that setting impacted either consciously or subconsciously on the way Mrs Roberts treated him, particularly in the light of her comment '50% of a man'. We have decided, on the basis of the evidence we heard, that it did not, and that Mrs Roberts would have treated a woman in the claimant's circumstances in the same way.
299. Having stepped back and carefully considered these factors and the claimant's claim in the round, we have concluded that the claimant's allegations of unlawful treatment are not made out.

Time limits

300. As we have not found any of the complaints to have succeeded, we do not need to consider the question of whether any of the complaints were presented in time other than the indication we have given in relation to issue 5.
301. At the end of the liability hearing, in line with practice in the region, a remedy hearing was listed for 22 August 2022. That hearing has now been vacated.

Employment Judge Hawksworth

Date: 10 May 2022

Judgment and Reasons sent to the parties
on: 17 May 2022
For the Tribunal Office

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APPENDIX – AGREED LIST OF ISSUES IN TABLE FORM

IN THE EMPLOYMENT TRIBUNAL (READING)

Case No: 3302319/2020

B E T W E E N:-

MR MICHAEL FULLER

Claimant

- and -

(1) ALEXANDER CARE AND SUPPORT LIMITED

&

(2) APEX PRIME CARE LIMITED

Respondents

ISSUES

1. The Claimant alleges that he suffered the treatment identified at 1-36 below. The issues below apply to the following claims:

- a. Direct Sex/Sexual Orientation/Disability Discrimination (the issues [in italics] relate exclusively to sex and sexual orientation).
- b. Harassment (the issues [in italics] relate exclusively to sex and sexual orientation).
- c. Victimization: In relation to the victimisation issues the Claimant relies on matters postdating 27 July 2018
- d. Whistleblowing: The Claimant relies on matters postdating 8 April 2019
- e. Reasonable adjustments- as highlighted in the list of issues on page 88

ISSUE NUMBER	DATE	ISSUE
1	September 2017	Issue: Michelle Coles asking about the Claimant's [relative]
2	27 July 2018	Issue: Investigating the Claimant (for having a sexual relation with a colleague)
3	27 July 2018 (same day as allegation)	Issue: Not telling the Claimant the name of the person he allegedly had a sexual relation with
4	30/31 July 2018	Issue: Respondent asking female members of staff whether the Claimant had tried anything sexual with them

5	Around July 2018	Issue: HR saying C is '50% man' or '50% of a man'
6	Around July 2018	Issue: HR saying the C is 'gay'
7	Around July 2018	Issue: HR saying that the Claimant wears too much perfume
8	August 2018	Issue: The Claimant's confidentiality being broken/ The Claimant's data protection being breached
9	January- April 2019	Issue: HR snatching paper from the Claimant's hand
10	January – April 2019	Issue: HR throwing paper at the Claimant
11	Around January 2019	Issue: HR saying she was the 'fucking area manager' and saying she would force the Claimant to work night shifts.
12	Around February 2019	Issue: HR shredding a compliment left for the Claimant
13	26 February 2019	Issue: HR insisting she wanted to search the Claimant's car
14	Around March 2019	Issue: HR stating 'He's got another 28 days'
15	Around April 2019	Issue: HR saying 'I want a fucking chat with you. All of your work is wrong. I want it taken out. Your level of detail is unacceptable'
16	8 April 2019	Issue: Hazel wants you sacked for gross misconduct
17	After 9 April 2019	Issue: Deleting the Claimant's care plans
18	(By) 15 April 2019	Issue: The Respondent failing to hold the informal response to the 8/9 April 2019 grievance within the time frame indicated in the policy
19	18 April 2019	Issue: The Claimant being told That the Claimant wanted to withdraw his grievance
20	Around April/May 2019	Issue: Moving the Claimant's ordinary working place
21	May 2019	Issue: The Claimant's role being reduced
22	Around May 2019	Issue: HR saying 'He's not coming back in this fucking office'

23	Around May 2019	Issue: HR saying, 'Next stage he'll be in the car park'.
24	15 May 2019	Issue: The response to the grievance: <ol style="list-style-type: none"> 1. indicating that the Claimant was unable to perform his job in the same way he used to 2. failing to address all the Claimant's complaints 3. failing to uphold the Claimant's complaint/complaints 4. Sharing the grievance outcome with Michelle Coles
25	8 June 2019	Inviting the Claimant to a disciplinary hearing regarding his absence from work
26	Around June 2019	Issue: HR saying she didn't care what anyone else said it was her way.
27	18 October 2019	Issue: The Respondent failing to give a response to the 23 August 2019 grievance/appeal within the time frame indicated in the policy
28	18 October 2019	Issue: Failing to deal with the phrases the Claimant cited '50% of a man' and/or 'gay' in the Claimant's appeal
29	18 October 2019	Issue: Lawrence Alexander criticising the Claimant's credibility in the appeal outcome
30	Ongoing	Issue: The Respondent failing to properly investigate the Claimant's 8/9 April 2019 grievance
31	Ongoing	Issue: The Respondent failing to properly investigate the Claimant's 2 August 2019 grievance
32	Ongoing	Issue: The Respondent failing to properly investigate the Claimant's 23 August 2019 grievance/appeal
33	Ongoing	Issue: C Failing to receive a letter regarding finance
34	Ongoing	Issue: Not giving the Claimant a pay rise
35	Ongoing	Issue: Failing to properly explain why the Claimant was not given a pay rise
36	Ongoing	Issue: Failing to uphold the Claimant's appeal