EMPLOYMENT TRIBUNALS

Claimant: Miss K Wilson

Respondent: Manchester University NHS Foundation Trust

Heard at: Manchester (by CVP) **On:** 12-16 April 2021
19-21 April 2021
10 and 11 June 2021
(in Chambers)
2, 5, 6 and 7 July 2021
10 and 11 August 2021

Before: Employment Judge Warren
Mr J Ostrowski
Mr P Stowe

REPRESENTATION:

Claimant: In person
Respondent: Mr A Sugarman of Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal is that:

1. The claims of detrimental treatment contrary to Section 47B of the Employment Rights Act 1996 are without merit and are dismissed.

2. The claims of harassment relating to sexual orientation under Section 27 of the Equality Act 2010 are without merit and are dismissed.

3. The claims of harassment related to the claimant's race under Section 27 of the Equality Act 2010 are without merit and are dismissed.

4. The claims of disability discrimination both for failing to make reasonable adjustments contrary to Section 20/21 of the Equality Act 2010, direct discrimination (Section 13 of the Equality Act), discrimination because of something arising on consequence of disability (Section 57 of the Equality

Act) and harassment related to disability (section 27 of the Equality Act) are without merit and are dismissed.

REASONS

Introduction

1. This case has a vast array of facts covering three separate venues from which the claimant worked over a period of years. We heard evidence from 12 respondent witnesses, the claimant herself and two witnesses in support of the claimant. The case had been case managed over and again, but even then, and with 3,500 pages of bundle to absorb, the claimant on the first day of the hearing produced an additional bundle of documents, unpaginated and without any form of index. She had not agreed the timetable, the chronology, the cast list or the order of the case until we discussed it on the first morning.

2. Employment Judge Warren apologises for the delay in the parties receiving this judgement. She has been unwell.

3. Previous Judges (EJ Slater and EJ Howard) had done their very best to provide a List of Issues. The claimant however blamed them for not including indirect discrimination(disability) in the List of Issues. When asked why she had not raised this before she indicated that the Judges had prepared the List of Issues and it was their fault.

4. There was a written application for anonymity under rule 50 , Tribunal Rules of Procedure which was refused with verbal reasons, on the grounds that it did not meet the criteria for rule 50.

5. It took the Tribunal the first two days to read into the case, and to deal with the preliminary matters.

6. We heard from the claimant first and made a number of adjustments for her. The respondent accepted that the claimant was disabled at the material time by reason of anxiety and depression. The claimant further asserted that she was disabled by reason of Post-Traumatic Stress Disorder ("PTSD"). The respondent denied that the claimant had PTSD.

List of Issues

7. The List of Issues can be found attached at Annex A of the last set of case management orders made. (Page 77 to 84 of the bundle).

1. Protected Disclosures

1.1. Did the claimant make one or more qualifying disclosures as defined in Section 43B of the Employment Rights Act 1996? The Tribunal will decide:

1.1.1. What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions:

PD1

Initially on 31 May 2016 and then on 15 November 2016 by email and then face to face to Maria Graham and Karen Fishwick. It was about Camilla Lewis's (another health visitor) alleged poor practice. The information tended to show that the health and safety of patients was likely to be endangered (Section 43B(1)(d)).

PD2

In June 2016 orally in a meeting and by email to Maria Graham and Becky Parker. The information disclosed was concern about Camilla Lewis and the health or safety of patients was likely to be endangered – Section 43B(1)(d).

PD3

Tuesday 17 January 2017 initially by email to Roy Nanjt and Christina Akuazoku. The information disclosed was concerns about Teresa Solano-Olivares not preparing a care plan for a patient with mental health issues and the information tended to show that the health or safety of patients was likely to be endangered. Section 43B(1)(d).

PD4

In June 2017 by email/letter to the Chief Executive of the Trust with concerns about Camilla Lewis and Teresa Solano-Olivares (as above) and behaviours in the team, bullying of the claimant due to raising concerns; isolation of the claimant; toxic environment e.g. colleagues telling patients to "fuck off and die", Paula McAdam saying "I don't do weeping willows" in relation to the claimant's mental health ; Helen Whelan saying "We get all the nutcases in this team" and the claimant being pushed into a wall. The health or safety of patients was likely to be endangered – Section 43B(1)(d); persons failing to comply with a legal obligations – Section 43B(1)(b); and in relation to pushing the claimant against a wall, commission of a criminal offence – Section 43B(1)(a).

PD5

In December 2017 by emails and orally to Louise Barrett about staff consuming rum cake during working hours whereby the health or safety of patients was likely to be endangered – Section 43B(1)(d).

PD6

December 2017 emails and orally to Louise Barrett about Rachel Thomas (health visitor) going on holiday when on sick leave. The health and safety of patients was likely to be endangered – Section 43B(1)(d); failure to comply with a legal obligation – Section 43B(1)(b).

PD7

Daily from July 2017 to January/February 2018 in emails and orally to Louise Barrett about Ruth Aves, Sue Thompson and Beverley Coleman making fun of the claimant's Polish name whereby the health and safety of patients was likely to be endangered – Section 43B(1)(d); failure to comply with a legal obligation – Section 43B(1)(b).

PD8

December to January 2017 by emails and orally to Louise Barrett describing poor standards of record keeping in the team whereby the health or safety of patients was likely to be endangered – Section 43B(1)(d); failure to comply with a legal obligation – Section 43B(1)(b).

PD9

5 February 2019 at a team meeting orally to all attendees of the team meeting firstly setting out the standard of behaviour by other staff – the claimant disclosed that people weren't speaking to each other, the claimant was being ostracised feeling uncomfortable about coming into work and had concerns about patient safety. The claimant disclosed a failure to handover patients when the staff member is absent on sick leave. It happened several times. On one occasion in respect of a child protection case, the failure to handover resulted in a nine-month delay. These two disclosures are allegedly a failure to comply with a legal obligation (Section 43B(1)(b) and the health or safety of patients was likely to be endangered – Section 43B(1)(d).

1.1.2. Did she disclose information?

1.1.3. Did she believe the disclosure of information was made in the public interest?

1.1.4. Was that belief reasonable?

1.1.5. Did she believe it tended to show (dependent on the disclosure that

1.1.5.1. A criminal offence had been, was being or was likely to be committed?

1.1.5.2. A person had failed, was failing or was likely to fail to comply with any legal obligation and

1.1.5.3. The health or safety of any individual had been, was being or was likely to be endangered.

1.1.6. Was that belief reasonable?

1.2. If the claimant made a qualifying disclosure, was it a protected disclosure made to the claimant's employer. Was it a protected disclosure?

2. Detriment (Employment Rights Act 1996 Section 48)

2.1. What are the facts in relation to the following acts or deliberate failures to act by the respondent.

Detriment 1 – August 2016

Maria Graham her line manager saying in front of colleagues that she had a complaint about one of the claimant's families when she had not.

Detriment 2 – August 2016

Warning the claimant not to record the conversation, again alleged to be Maria Graham.

Detriment 3 – August 2016 and around 5 August 2016 the assessment being completed

Unnecessarily referring the claimant to Occupational Health so she could remain sitting at her desk at a time when everyone else was changing desks and rooms (the claimant considered better for her asthma than a desk in the smaller room) when no-one else wanted the desk. She did not want to move moved without an assessment, which took place and the claimant was stressed by the Occupational Assessor calling her a "cheeky beggar" and saying the rooms were the same. The perpetrators are alleged to be Maria Graham and Bushra Ramzan (OH Assessor).

Detriment 4 – August 2016

Accusing the claimant of breaking drawers which were old and everyone slammed them shut and somebody else had broken a lock without that being mentioned. The claimant said she was singled out. Maria Graham and Becky Parker are the alleged perpetrators.

Detriment 5 – June 2017

Telling the claimant that she had to move from Chorlton to Burnage because staff that the claimant had complained about had now complained about her. The perpetrator was Becky Parker.

Detriment 6 – June 2017

Commissioning an investigation into the claimant's behaviour when an investigation had been made into complaints the claimant had made about the people, who had then complained about her.The perpetrator alleged to be Becky Parker.

Detriment 7 – Around May 2017

Pushing the claimant into a wall, glaring at her and intimidating her. The alleged perpetrator was Paula McAdam.

Detriment 8 – Around May 2017

Shouting and swearing at the claimant and in front of the claimant and using the words "fuck's sake, fucking sick of this, fuck off and die" and the perpetrators are alleged to be Helen Whelan, Teresa Solano-Olivares and Paula McAdam.

Detriment 9 – June 2017 – to January 2018

Not doing a stress assessment despite Occupational Health recommendation to do so and the perpetrator is alleged to be Louise Barrett.

Detriment 10 – January 17 to February 2017

Given an increased case load and a cry for help on 7 December 2016 and then again on 31 January 2017 to Christina Akuazoku and Michelle Kenyon. The perpetrators are alleged to have been Maria Graham, Becky Clough and Karen Fishwick.

Detriment 11 – In October 2017

Saying that the claimant would be subjected to a disciplinary process if she received any further complaints and the perpetrator was alleged to be Louise Barrett.

Detriment 12 – In October 2017

Telling the claimant to complete a plan within a week when she knew the claimant was on holiday and the perpetrator was alleged to be Louise Barrett.

Detriment 13 – Around September 2017

Making the claimant go to Chorlton where she had had previous issues, for an away day and the perpetrator was alleged to be Louise Barrett.

Detriment 14 – In February 2018

Decision being taken to discipline the claimant when she went off sick with stress and anxiety due to being targeted for making a protected disclosure and the perpetrators were alleged to be Tracey Forster and Natalie O'Mara.

Detriment 15 – 5 February 2019

At a team meeting the claimant was pointed at aggressively by a colleague and told that she needed to leave the team. The claimant alleges that this detriment was suffered because she had earlier made a protected disclosure on 5 February 2019 and the perpetrators was alleged to be Donna Hill.

Detriment 16

Subsequent to the meeting on 5 February 2019 various team members made malicious complaints against the claimant and as a result she has been subject to an investigation under the Respondent's Dignity at Work Policy. The claimant alleges that this detriment was suffered because she made the

protected disclosure on 5 February 2019. The perpetrators are alleged to be Donna Hill, Tracey Williams and Jenny Rowlands.

2.2. Did the claimant reasonably see that act or deliberate failure to act as subjecting her to a detriment?

2.3. If so, was it done on the ground that she made a protected disclosure?

Disability Discrimination

Failure to make reasonable adjustments

1. Noisy Environment. The noise increased the claimant's stress and anxiety, she was noise intolerant as a symptom of PTSD and she could become overwhelmed by noisy environments. She had difficulty focusing (hypervigilance is a symptom of PTSD so the claimant could hear every conversation). The reasonable adjustment the claimant says should have been made to prevent this disadvantage was noise-cancelling headphones, the Brain in Hand app that she could use daily to assess her mental health, sessions with a psychologist. Staff training on awareness of people with PTSD. The claimant says these were recommended by Access to Work and had now been done or are about to happen, but the claimant says should have been done earlier.

2. Allowing the team to behave in the following ways: Whispering in the other room about the claimant, ostracising the claimant, having a go at the claimant and blaming her for things which were not her fault. Also pushing the claimant into a wall. The conduct is alleged to have exacerbated the claimant's condition pushing her to breakdown to a point where she was suicidal (a greater effect than it would have had on her without her conditions). The claimant asserts that she should have been offered mediation by a mediator rather than by a team leader who did not know how to mediate, not subjecting the claimant to a disciplinary process, managing the team's behaviour more appropriately and staff awareness training.

3. Heavy caseload. Causing the claimant more stress and anxiety than would have been the case for someone without her condition. Following Occupational advice about regular one-to-one support, telling the claimant about Access to Work and reducing the claimant's caseload. It appeared to the claimant that she had more than other staff.

Other disability discrimination – direct discrimination and discrimination arising from disability, and harassment

1. June 2017. Moving the claimant from Chorlton to Burnage (after complaints about the claimant's behaviour and following complaints by the claimant about other team members). The perpetrator was Becky Parker and this was direct discrimination arising from the claimant's disability (something arising is the claimant's hypervigilance arising from PTSD, which meant the claimant noticed everything and led to staff in the team wanting her out.

2. August 2016. Humiliating the claimant in front of the team by saying that she had a complaint from one of the claimant's families. The perpetrator is alleged to be

Maria Graham and this is described as harassment/direct discrimination and discrimination arising from disability.

3. Daily from May 2016 to June 2017. Being ostracised by colleagues. The colleagues were Helen Whelan, Teresa Solana-Olivares and Paula McAdam. This is described as harassment and direct discrimination and discrimination arising from her disability.

4. May 2017. Pushing the claimant into a wall, glaring at the claimant, standing with arms folded so claimant could not get to her desk and the perpetrator is alleged to be Paula McAdam. This is alleged to be harassment, direct discrimination and discrimination arising from disability.

5. May 2017. The claimant disclosed her mental health difficulties and was then targeted and bullied and moved and subject to an investigatory disciplinary procedure thereafter. The alleged perpetrators were Helen Whelan, Teresa Solano-Olivares, Maria Graham, Becky Parker and Paula McAdam and the claimant asserts that this is harassment direct discrimination and discrimination arising from hypervigilance.

6. June 2017. Subjecting the claimant to an investigation by Becky Parker and this is described as discrimination arising from disability.

7. November 2016. Referring to the claimant as a nutcase by Helen Whelan and this is considered to be harassment and direct discrimination.

8. Daily up to June 2017 saying “I don’t do weeping willows”, said generally but the claimant was crying a lot, by Paula McAdam, and this is described as harassment, direct discrimination and discrimination arising from disability (the something arising being the claimant crying a lot).

9. In October 2007. Team telling the claimant she would be subjected to a disciplinary process if further complaints were received by Louise Barrett. This was discrimination arising from a disability (the something arising is the claimant’s hypervigilance arising from PTSD, which meant the claimant noticed everything) and led to staff in the team wanting her out and making complaints about her.

10. 21 November 2018. On 21 November 2018 the claimant was told that she would be subject to a capability process if she had any more time off sick. This was by Ali McMahon. This was direct discrimination and discrimination arising from disability (the something arising is the claimant’s absence).

8. It is conceded by the respondent that the claimant was a disabled person by reason of anxiety and depression. However, the claimant asserts further that she is a disabled person either by reason of having PTSD or (as amended during the course of the hearing) the symptoms of PTSD. The Tribunal will therefore have to decide the issue of disability as follows:

8.1. Did the claimant have a disability as defined in Section 6 of the Equality Act 2010 at the time of the events the claim is about? (the relevant period). The Tribunal will decide:

8.1.1. Did she have a mental impairment being PTSD or the symptoms of PTSD?

8.1.2. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

8.1.3. If not, did the claimant have medical treatment including medication or take other measures to treat or correct the impairment?

8.1.4. If so, would the impairment have a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

8.1.5. Were the effects of the impairment long-term. The Tribunal will decide:

8.1.5.1. Did they last at least 12 months or were they likely to last at least 12 months?

8.1.5.2. If not, were they likely to recur?

9. Harassment related to Disability/Sexual Orientation/Race – Equality Act 2010 Section 26

9.1. Did the respondent do the things alleged in the List of Issues herein?

9.2. If so was that unwanted conduct?

9.3. Was it related to sexual orientation, race or disability?

9.4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

9.5. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

10. Direct disability discrimination – Equality Act 2010 Section 13

10.1. The Tribunal will have to find the facts in relation to the allegations referred to below.

10.2. The claimant's protected characteristic of disability is that she has anxiety and depression, and asserts that she had PTSD or the symptoms of PTSD and she compares herself to Helen Whelan who describes herself as having PTSD.

10.3. Does the claimant reasonably see the treatment set out in the allegation as a detriment?

10.4. If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances for example without a disability was

or would have been treated? The claimant cited only one comparator in relation to one allegation and this was Helen Whelan who has PTSD herself. Other than that the claimant relied on a hypothetical comparator.

10.5. Has the also proven facts from which the Tribunal could conclude that the less favourable treatment was because of her disabilities of anxiety, depression, PTSD or the symptoms of PTSD?

10.6. If so, has the respondent shown that there was no less favourable treatment because of disability.

11. Discrimination arising from disability – Equality Act 2010 Section 15

11.1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability and if so from what date?

11.2. If so did the respondent treat the claimant unfavourably as alleged in the List of Issues?

11.3. Did things arise in consequence of the claimant's disability as asserted in this List of Issues?

11.4. Has the claimant proven facts from which the Tribunal could conclude that the unfavourable treatment was because of any of those things?

11.5. If so can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

11.6. If not was the treatment a proportionate means of achieving a legitimate aim?

11.7. The Tribunal will decide in particular:

11.7.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims?

11.7.2. Could something less discriminatory been done instead?

11.7.3. How should the needs of the claimant and the respondent be balanced?

12. Reasonable adjustments – Equality Act 2010 Sections 20 and 21

12.1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

12.2. A PCP is a provision, criterion or practice. Did the respondent have PCPs relating to the allegations of failure to make reasonable adjustments?

12.3. Did those PCPs put the claimant at a substantial disadvantage compared to somebody without the claimant's disability?

12.4. Did a physical feature put the claimant at a substantial disadvantage compared to somebody without the claimant's disability? Did the lack of an auxiliary aid put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

12.5. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at a disadvantage?

12.6. Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The adjustments are listed in the List of Issues relating to the failure to make reasonable adjustments.

12.7. By what date should the respondent reasonably have taken those steps?

Sexual Orientation Harassment

13. November 2016. Commenting how do women do that to one another and the perpetrator is alleged to be Helen Whelan.

14. Daily up to June 2017. Commenting on the claimant's facial appearance and what the claimant wore when she did not comment on others' appearances and always saying that the claimant looked bad to her face to put her down. The perpetrator again being Helen Whelan.

15. May to June 2017. In the investigation, using it against the claimant that she did not want anything to do with pictures of naked men which were handed round the office. The perpetrators in this case are alleged to be Lesley Bateman, Teresa Solano-Olivares.

Harassment relating to race

16. July 2017 to January 2018 (a daily occurrence) Making fun of the claimant's Polish name referring to her as "Keisha, Krishna, whatever your name is". The perpetrators are alleged to have been Ruth Aves, Sue Thompson and Beverley Coleman.

17. The claimant has alleged that she intended to bring a claim of indirect discrimination based on her protected characteristic of disability. And that 2 Employment Judges failed to include this in the List of Issues. We found that to be inherently unlikely and took into account further that there had been weeks between the agreement of the List of Issues with the Judge and the start of this hearing. The claimant had at no time raised the issue with the respondent or with the Tribunal. The respondent therefore had had no time to prepare a case against an allegation of indirect discrimination and the claimant had not until the first day of the hearing, raised the matter. Respondent's counsel confirmed that it had not been mentioned at the previous hearing and we noted that there had been more than one attempt to agree a list of issues with the claimant, and that this was the second full iteration. The respondent was entitled to have some certainty about the case that they were defending (which was in itself very substantial) and the Tribunal therefore did not consider it in the interests of justice

to allow the claimant to insert such a claim at the very last moment. It was noted that the matters that she sought to raise as claims of indirect discrimination were in any event covered by the claims already included of discrimination arising from disability.

Evidence

18. We heard evidence from the claimant in her own regard. We also heard evidence from Peter Marsh in her support. We also had an email from Wendy King which the respondent had not seen until the first day of the hearing, and an email statement from Emma Hocker (now Emma Hogg). Mrs Hogg, Ms King and Mr Marsh all gave evidence and were cross examined.

19. For the respondent, the following witnesses gave evidence: Maria Graham; Teresa Solano-Olivares; Helen Whelan; Jenny Rowlands; Paula McAdam; Ruth Aves; Alison McCartney; Tracey Forster; Beverley Coleman; Tracey Williams; Donna Hill and Louise Barrett. In addition we had evidence in the form of a statement from Lesley Bateman who did not give evidence. The claimant did not have the opportunity to cross examine her and we therefore gave her evidence less weight.

20. We tested the evidence against the evidential standard, the balanced of probabilities. We had to ask ourselves whether the facts of all of the discrimination or any of it were such that the Tribunal could conclude that on any of the alleged occasions the claimant was subjected to discriminatory conduct relating to the various protected characteristics that she raised.

Adjustments

21. The claimant (it was conceded by the respondent) was a disabled person by reason of anxiety and depression. At various stages throughout the proceedings, and bearing in mind that the claimant was a litigant in person, we adjusted our sitting patterns to assist her. We gave longer gaps to enable her to prepare for each part of the case, although at the very end of the case (and not during it) she complained that she felt she had been rushed. We took considerably longer to find documents in her supplemental bundle when on occasion she indicated that “there is a document in there somewhere”. There were days when she felt unwell and we gave her time. On one occasion we finished early to enable her to pick up her child from school. We adjusted the order of the evidence in order to accommodate the claimant's witnesses. Whenever the claimant appeared flustered or distressed, we gave her time to recover. The Employment Judge guided the claimant through cross examination referring her to the List of Issues, to assist. The Judge also gave her assistance with drafting questions as needed.

22. We had thebenefit of a bundle of more than 3,500 pages. In addition the claimant had a full A4 folder of unpaginated unindexed documents that she added on the day of the hearing. Although there were a number of allegations spread across a considerable time period and three places of work, it did not seem a proportionate response to produce bundles of that size. The Tribunal chose only to read those documents to which they were referred by witnesses, or in the initial non agreed reading list produced by the respondent.

The Law

23. The first issue to be resolved in this case will be whether or not the claims were brought in time. All of the claims fall within the category of cases that require the claims to be brought within three months of the date of the act or failure to act. That is subject to two provisos. The first is that with the requirement to undertake early conciliation with ACAS, the three-month time limit will stop at the date of referral to ACAS and start again with the issuing of the ACAS certificate. Secondly, there is a potential "just and equitable extension" in Section 123(1)(b) of the Equality Act 2010 (EqA). In unlawful discrimination cases claims may be considered in time provided that the claim is presented within such other period as the Employment Tribunal thinks just and equitable. For the purposes of Section 123 conduct extending over a period is to be treated as done at the end of the period and failing to do something is to be treated as occurring when the person in question decided on it.

24. The discretion for tribunals to hear out of time claims within whatever period they consider to be just and equitable is a broad test. In **Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA** when considering whether a tribunal was entitled to find it just and equitable to extend time the question that must be asked is whether there was material on which the tribunal could properly exercise its discretion. While employment tribunals do have a wide discretion to allow an extension of time under the just and equitable test in Section 123 it does not necessarily follow that exercise of the discretion is a foregone conclusion. **Robertson v Bexley Community Centre T/A Leisurelink [2003] IRLR 434 CA**. When employment tribunals consider exercising discretion under Section 123(1)(b) EqA "there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule". The onus is on the claimant to convince the Tribunal that it is just and equitable to extend the time limit. This does not however mean that exceptional circumstances are required, simply that an extension of time should be just and equitable. In the past the EAT has suggested that in deciding whether to exercise discretion tribunals would be assisted by looking at the factors listed in Section 33(3) of the Limitation Act 1980. This deals with the exercise of discretion in civil courts in personal injury cases and requires a court to consider the prejudice which each party would suffer as a result of the decision reached and to have regard to a list of particular features: the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with requests for information and the promptness with which the claimant acted once they knew the facts giving rise to the cause of action and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action. However the Court of Appeal in **Southwark London Borough Council v Afolabi [2003] ICR 800 CA** confirmed that whilst the checklist is a useful guide it does not have to be adhered to slavishly but the court went on to suggest there were two factors which are almost always relevant, the first being the length of and reasons for the delay and the second whether the delay has prejudiced the respondent. We are reminded in the case of **Hall v ADP Dealer Services Limited EAT 0390/13** that there is no necessity for the employment tribunal to follow a formulaic approach and set out a checklist of the variety of factors that may be relevant and in **Pathan v South London Islamic Centre EAT 0312/13** is liable to err if it focuses solely on whether the claimant ought to have submitted the claim in time. It is also important to weigh

up the relevant prejudice that extending time would cause to the respondent. Caselaw suggests that it will be important for a party seeking an extension of time to provide an explanation for the delay.

25. Under Section 48(3) of the ERA claims of detriment for bringing a public interest disclosure have to be brought within three months beginning with the date of the act or failure to act to which the complaint relates or where the act or failure is part of a series of similar acts or failures within three months of the last of them.

26. Unlike the discrimination claims brought herein, time can only be extended if it was not reasonably practicable for the complaint to be presented within three months and the claim is submitted within such further period as the Tribunal considers reasonable.

27. **Dedman v British Building and Engineering Appliances Limited [1974] ICR 53 (CA)** The application should be given a liberal construction in favour of the employee. What is reasonably practicable is a question of fact and a matter for the Tribunal to decide. **Walls Meat Company Limited v Khan [1979] ICR 52 (CA)** "The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the tribunal and that their decision should prevail unless it is plainly perverse or oppressive". The onus of proving that presentation in time was not reasonably practicable rests with the claimant. It imposes a duty on him to show why he did not present his complaint and if the claimant fails to argue that it was not reasonably practicable to present the claim in time the Tribunal will find that it was reasonably practicable. The case is **Sterling v United Learning Trust EAT 0439/14**. The Tribunal must then go on to decide whether the claim was presented "within such further period as the Tribunal considers reasonable". Lady Smith in **Asda Stores Limited v Kauser EAT 0165/07** explained it as follows: "The relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done."

<u>Public Interest Disclosures – Detriments</u>

28. The claimant brings a claim of detrimental treatment contrary to Section 47B of the ERA 1996 (ERA). In order to establish a qualifying disclosure within the meaning of Section 43B of the ERA the claimant must establish that (a) information (b) was disclosed by her (c) which in her reasonable belief was in the public interest and (d) which in her reasonable belief tended to show one of the prescribed matters in Section 43B, namely as relevant to this case, (i) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject, (ii) that the health and safety of any individual has been, is being or is likely to be endangered. For the qualifying disclosure to be protected it must be made by the worker in a manner which accords with Sections 43C to 43H. Qualifying disclosures made to the employer are protected under Section 43C. In **Cavendish Munro Professional Risks Management Limited v Geduld [2010] IRLR 38** it was held that there is a difference between conveying information and making an allegation. **Kilraine v London Borough of Wandsworth** in the EAT Langstaff P urged a

degree of caution approaching the information/allegation distinction because the statute does not make that distinction and things may constitute both a disclosure and the making of an allegation. It is a question of fact for the ET. The critical point is in order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1) a disclosure is not simply the communication of X to Y. Disclosure is a legal term of art and context is likely to be important.

29. In **Babula v Waltham Forest College [2007] IRLR 346** the EAT held that the Tribunal has to determine whether the employee's belief is reasonable. It is not fatal if the belief turns out to the wrong but it may be relevant. In **Dunton v University of Surrey [2003] ICR 615** the EAT acknowledged that the determination of the factual accuracy of the worker's allegations would be an important tool in helping to determine whether the worker held the reasonable belief that the disclosure in question tended to show a relevant failure. Section 43B(1)(b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject there must be a reasonable belief in a breach of a legal requirement, not simply guidance, industry rules or a moral obligation. **Eiger Securities LLP v Korshunova [2017] IRLR 115 EAT** actions can be wrong because they are immoral, undesirable or in breach of guidance but they may not be in breach of a legal obligation. The ET has to decide whether and if so what legal obligation the claimant believed to have been breached.

30. **Blackbay Ventures Limited v Gahir [2014] IRLR 416** "Save in obvious cases if a breach of legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. Section 43(1)(d) It is necessary for there to be a reasonable belief that "the health and safety of any individual has been, is being or is likely to be endangered likely requires more than a possibility or risk that the employer may fail to comply with a relevant legal obligation it means probable or more probable than not (**Kraus v Penna Plc [2004] IRLR 260**) a mere risk is insufficient.

31. It must be in the public interest – **Chesterton Global Limited and another v Nurmohamed [2018] ICR 731**. The Court of Appeal held it is a question of fact for the tribunal and suggested the following might be relevant: (a) the numbers in the group whose interest the disclosure, (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed, (c) the nature of the wrongdoing disclosed and (d) the identity of the alleged wrongdoer. Disclosure of breach of a worker's contract may be one reasonably regarded as being in the public interest if a sufficiently large group of other employees share the same interest. However workers making disclosures in the context of private workplace disputes should not attract whistleblowing protection. The burden of proof in protected disclosures In **Boulding v Land Securities Trillium (Media Services) Limited UKEAT0023006 (unreported)** Judge McMullen held as to any of the alleged failures the burden of proof is upon the claimant to establish upon the balance of probabilities any of the following: (a) that there was in fact and as a matter of law a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on and (b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

32. Employment Rights Act 1996 Section 47B(1) a worker has the right not to be subject 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. The decision-maker will be required to have knowledge of the protected act and for that to be the reason for the decision in question **Royal Mail Group Limited v Jhuti [2020] ICR 731 SC**. In exceptional cases if a person in the hierarchy of responsibility above the employee manipulates the decision-maker such that the real reason is effectively hidden it is the court's duty to get to the real reason. There is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker.

33. "On the ground that" means materially influenced by the decision in the sense of being more than a trivial influence (**Feckitt v NHS Manchester [2012] ICR 372**).

Burden of Proof

34. Once the claimant has established a protected disclosure and that she has been subjected to detriment under Section 48(2) it is for the employer to show the ground on which any act or deliberate failure to act was done. **Serco Limited v Dahou [2016] EWCA 832** confirms that the Tribunal may uphold the claim if the employer is unable to show the ground on which the act is done, but does not have to do so. This is different to a case of discrimination where if the employer fails to discharge the burden upon it, the claimant succeeds.

Sexual Orientation Harassment

35. This is a claim brought under Section 26(1) EqA.

36. There are three essential elements of a harassment claim. These are:

- unwanted conduct
- that has the proscribed purpose or effect, and
- which relates to a relevant protected characteristic

In **Richmond Pharmacology v Dhaliwal [2009] ICR 724 EAT** Mr Justice Underhill expressed the view that it would be a healthy discipline for a Tribunal in any claim alleging unlawful harassment specifically to address in its reasons each of the three elements. Section 26 states that a person A harasses another B if

- A engages in unwanted conduct related to a relevant protected characteristic. Section 26(1)(a) and
- The conduct has the purpose or effect of (i) violating dignity; or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B – Section 26(1)(b)

Thomas Sanderson Blinds Limited v English EAT 0316/10 – unwanted conduct means conduct unwanted by the employee. The implication is that this should be assessed subjectively from the employee's point of view. The conduct does not have to be directed specifically at the complainant for it to be unwanted by her.

37. If the claimant has made it clear through words or conduct that she personally has no objection to the conduct, that conduct will not be unwanted. The fact that the conduct has been going on for a long time with no apparent objection does not necessarily mean that the claimant accepts or condones it. The notion of invited conduct may be particularly relevant in the context of workplace gossip. Certain gossip for instance about an employee's private life can constitute unlawful harassment. If the employee however has chosen to put facts about her private life into the public domain she may struggle to establish that subsequent gossip about those facts is unwanted.

Racial Harassment

38. The law in relation to racial harassment needs no further introduction as it is the same as that for sexual orientation discrimination other than to say that the protected characteristic here is race.

Disability Discrimination

39. Claims are brought here under Section 13, 15 and 27 EqA. **IPC Media Limited v Millar [2013] IRlR 707**: "The starting point in a claim of discrimination arising from disability which depends on the thought processes, conscious or unconscious, of the putative discriminator, is to identify the individual responsible for the act or omission in question" Underhill P "We would only mention, because it is apposite to the issues on this appeal that, as with other species of discrimination, an act or omission can occur because of a proscribed factor as long as that factor operates on the mind of the putative discriminator (consciously or subconsciously) to a significant extent (**Nagarajan v London Regional Transport [1999] IRLR 572** per Lord Nicholls).

40. The EqA defines a "disabled person" as a person who has a "disability" – Section 6(2). A person has a disability if she has a "physical or mental impairment" which has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. The burden of proof is on the claimant to show that she satisfies this definition.

41. The time at which to assess the disability is the date of the alleged discriminatory act and this is also the material time when determining whether the impairment has a long-term effect. Whilst medical evidence plays an important role in tribunal proceedings there may be other evidence from which a decision can be reached. However a tribunal is very unlikely to be able to make safe findings without the benefit of medical evidence.

42. The claimant alleges four types of disability discrimination. 1. A failure to make reasonable adjustments, 2. Direct discrimination, 3. Discrimination because of something arising or in consequence of disability and 4. Harassment relating to disability

43. Failure to make reasonable adjustments contrary to Section 20/21 EqA.

There are three separate requirements that apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The three are:

- To take such steps as are reasonable to avoid substantial disadvantage caused by the application of a PCP (Section 20(3)). This requirement might for example to modify the terms of a workplace policy.

- To take such steps as are reasonable to avoid substantial disadvantage caused by a physical feature (Section 20(4)). This could include for example a ramp for a wheelchair user.

- Where a disabled person would but for the provision of an auxiliary aid be put at a substantial disadvantage, take reasonable steps to provide the auxiliary aid. (Section 20(5) e.g. special computer software.)

Environment Agency v Rowan [2008] ICR 218 EAT . His Honour Judge Serota QC stated that the tribunal must consider:

- The PCP applied by or on behalf of the employer, or the relevant physical features of the premises occupied by the employer

- The identity of non-disabled comparators (where appropriate) and

- The nature and extent of the substantial disadvantage suffered by the claimant

44. What a claimant must do is to raise the issue as to whether a specific adjustment should have been made. They can also give evidence as to the suggested adjustment's practicality, economic impact or even reasonableness. So too can the employer. This was confirmed by the EAT in **Project Management Institute v Latif [2007] IRLR 579 EAT**.

45. If an employee is to succeed in a claim that the employer has failed to make a reasonable adjustment based on "practice" then they must identify the PCP to which it is asserted adjustments should have been made. And the Tribunal must only consider that. So the Tribunal must clearly identify the relevant PCP and the precise nature of the disadvantage it created for a disabled claimant by comparison with a non-disabled claimant.

Physical features causing substantial disadvantage

46. A second situation in which the duty to make reasonable adjustments arises. A physical feature is defined as a reference to the design or construction of the building, a feature of an approach to or exit from or access to the building or a fixture or fitting or furniture, furnishings, materials, equipment or other chattels in or on premises or any other physical element or quality. To avoid a substantial disadvantage in Section 20(4) it may involve removing the physical feature in question, altering it or providing a reasonable means of avoiding it. Requirement three involves the lack of auxiliary aid causing substantial disadvantage. This will usually mean a piece of technology or equipment that is intended to assist them but may involve providing additional help as well.

Direct discrimination (disability) Section 13 EqA

47. In order to claim direct discrimination under Section 13 EqA the claimant must have been treated less favourably than a comparator who is in the same or not materially different circumstances to the claimant. This could amount to the claimant being treated differently from how others were treated in such a way as to make it less favourable for the claimant. The Tribunal has to be satisfied the claimant was treated less favourably than a comparator because of a protected characteristic. The test is an objective one. The fact the claimant believes she has been treated less favourably does not of itself establish there has been less favourable treatment. The claimant's perception of the effect of the treatment upon her is likely to significantly influence the Tribunal's decisions as to whether objectively that treatment is less favourable.

Discrimination because of something arising on consequence of disability (Section 15 EqA)

48. The EqA makes specific provision allowing for more favourable treatment in the context of disability. Under 15(1) the disabled employee must have been treated "unfavourably". The Employment Tribunal is reminded in **T-Systems Limited v Lewis EAT 0042/15** to ensure that they identify the alleged unfavourable treatment. This is what the alleged discriminator does or says or omits to do or say which places the disabled person at a disadvantage (disadvantage is the same word as is used in indirect discrimination claims).

49. In **Cowie and others v Scottish Fire and Rescue Service [2022] EAT 121** the EAT noted there is a relatively low threshold for finding unfavourable treatment but a tribunal must first answer two questions of fact: (i) What was the relevant treatment and (ii) Was it unfavourable to the claimant(s). There is no need for a comparator in order to show unfavourable treatment.

50. The unfavourable treatment has to be shown by the claimant to be because of something arising in consequence of her disability. Something must have led to the unfavourable treatment and this something must have a connection to the claimant's disability.

51. **Basildon and Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305 EAT** held there is a need to establish two separate causative steps for the claim to be made out. The first is that the disability had the consequence of "something" the second is that the claimant was treated unfavourably because of that something.

52. In **Pnaiser v NHS England and another [2016] IRLR 170 EAT** Mrs Justice Simler summarised the proper approach to establishing causation under Section 15. First the tribunal has to identify whether the claimant was treated unfavourably and by whom and then has to determine what caused that treatment focussing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant. The Tribunal must then determine whether the reason was something arising in consequence of the claimant's disability which could describe a range of causal links. This is an objective question and does not depend on the thought processes of the alleged discriminator. Any allegation of discrimination arising from disability will only succeed if the employer is unable to show that the unfavourable treatment

to which the claimant has been subjected is a proportionate means of achieving a legitimate aim.

Harassment relating to disability Section 27 EA

53. The provisions set out above for harassment related to race and sexual orientation apply equally to disability and are not repeated herein.

The burden of proof

54. With the exception of the alleged failure to make reasonable adjustments where the burden of proof has been dealt with within that heading, the burden of proof is the same for all of the other discrimination claims. The burden remains initially upon the claimant to prove that the alleged discriminatory treatment happened and that the respondent was responsible.

55. The claimant must show a probability rather than a mere possibility that the respondent has committed the unlawful act. **Laing v Manchester City Council and another [2006] ICR 1519 EAT** Mr Justice Elias confirmed: "It is for the employee to prove that he has suffered the treatment not merely to assert it and this must be done to the satisfaction of the tribunal after all of the evidence has been considered. Employment tribunals are to be discouraged from applying the burden of proof rule as set out in the statute, in a strict and mechanical way in every case of discrimination. Mr Justice Elias in **Laing** (above) confirmed their focus must at all times be the question whether or not they can properly and fairly infer discrimination.

56. The shifting burden of proof rule is set out at Section 136 of the EqA. Section 136(2) provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA the court must hold that the contravention occurred and Section 136(3) provides that Section 136(2) does not apply if A shows that he or she did not contravene the relevant provision.

The Facts

57. We have only dealt with the facts insofar as we found them relevant to the issues in the case.

58. The claimant is a qualified Health Visitor who worked for the respondent over three different sites. At each site she was part of a team of Health Visitors and Nursery Nurses. The respondent concedes that the claimant was a disabled person by reason of anxiety and depression at the material time. The claimant asserted that she had PTSD as well, although during her evidence this became 'symptoms' of PTSD.

59. The respondent is an NHS Trust which provides Health Visitor support both pre and antenatal to families.

60. The claimant began work for Manchester University NHS Foundation Trust as a Health Visitor in the Chorlton team, originally as a student in 2012. At that time Helen Whelan (a health visitor within the team and the claimant's supervisor) felt that the claimant could be quite unprofessional. In particular she had an issue with

the fact that the claimant would send messages late at night to her mobile phone complaining about other people in the team in an inappropriate way. Ms Whelan felt hamstrung by the fact that she did not have grounds to fail the claimant as unfit for practice because she met the specified learning and clinical outcomes required to be certificated.

61. Once qualified, the claimant went to work at the Rusholme Health Centre and came back to work at Chorlton in March 2015. The claimant worked with Helen Whelan then as a colleague, both being qualified Health Visitors.

62. The claimant later moved to the Burnage team and subsequently to Cheetham. We heard witnesses from all three of the claimant's teams with which she worked, against many of whom she alleges either detriments because of whistleblowing on her part; that she suffered discrimination because of her mental health; sexual discrimination because of her sexual orientation; and because of racial discrimination.

63. Maria Graham, a Health Visiting Team Lead for South Manchester, worked with the claimant when she came back to Chorlton in January 2015. She was the claimant's line manager and she very quickly became aware of tensions in the team concerning the claimant. Various members of her team made informal complaints about the claimant's behaviour and the way in which she was making them feel uncomfortable. They had received complaints from her clients, but the clients did not want to formalise the complaints. Ms Graham had no formal evidence with which to back up these allegations or action them. She reported them to Ms Parker, her manager (and the Service Lead). She advised the team that they would have to formalise things if they wanted to take it further, but they did not want to do that at that time.

64. On 31 May 2016 the claimant disclosed to Ms Graham that she had concerns about the safe practice of Camilla Lewis, a newly qualified Health Visitor. Following receipt of the concerns Ms Graham arranged a meeting with the claimant and her own line manager to discuss the concerns. This was arranged for 21 June 2016. Before the meeting could take place and whilst Ms Graham was on annual leave, the claimant and Ms Lewis had an altercation in the office. It was dealt with by Ms Kenyon who was the temporary Team Lead while Ms Graham was away. The argument was about Ms Lewis' practice. She was so upset that she asked to be moved out of the team, and it was agreed that she could work from the Rusholme team until Ms Graham returned from annual leave.

65. Before the meeting took place on 21 June Ms Graham had received emails which the claimant had sent to Ms Lewis which Ms Graham considered to be entirely inappropriate in tone and content, given that Ms Lewis was a junior member of the team and needed support and supervision.

66. At the meeting on 21 June the claimant gave three examples of Ms Lewis' poor practice:

(1) A child had attended the clinic with its eyes rolling and Ms Lewis had failed to refer the child on.

(2) Ms Lewis left an antenatal referral for the claimant on a case where there was genital mutilation and had not prioritised the case or handed it over as she should have done.

(3) A client had asked for advice about sleep and Ms Lewis said that she had not looked into it and asked the claimant for advice in front of the client.

67. The claimant also said she had concerns about Ms Lewis' attitude and behaviour, saying she was bossy, niggling, and 'having a go' at the claimant frequently. The claimant said that sitting next to Ms Lewis in the office was detrimental to her health, but she was limited as to where she could sit because of pollen coming in through the open window. The claimant was asthmatic and explained that she was allergic to pollen. (Throughout this case she has not alleged that her asthma was part of her disability).

68. Ms Graham carried out further investigations with regard to Ms Lewis' conduct and was satisfied that she had behaved appropriately for her level of qualification in each of the cases that the claimant had cited. She was very junior and needed support. Ms Lewis subsequently made a request to be transferred out of the Chorlton permanently so that she did not have to work with the claimant, which was granted

69. Ms Graham was then accused of causing the claimant detriments as a result of what the claimant believed were public interest disclosures about Ms Lewis. She noted that the claimant made numerous complaints about other health professionals, a GP and families she worked with.

70. On one occasion she accused Ms Graham of raising a complaint from one of the families she was caring for, in front of colleagues. Ms Graham was adamant in her evidence that she would not raise such matters in such a way. The claimant further suggested that Ms Graham's other motivation for embarrassing the claimant by talking about this complaint in front of the rest of the team was because the claimant was a disabled person through anxiety, stress, depression or PTSD (at the time). Ms Graham was adamant in her evidence that she had no idea that the claimant had any mental health issues at the time, and vehemently denied trying to embarrass the claimant or cause her any detriment.

71. At a meeting on 21 June 2016 the Chorlton team discussed rearranging the seating for the whole team. They thought it would be helpful to assist with team dynamics and because it was split over two rooms and had almost become two different teams. Everybody agreed the decision except for the claimant. The claimant said she did not want to move and referred herself to Occupational Health. No one else referred the claimant to Occupational Health She said she did not want to move from where she was because of her asthma and because pollen would come in through the window in the other office.

72. Ms Graham received a report from Occupational Health dated 14 July 2016 (page 157) which said that the claimant preferred to remain where she was because of her diagnosis of asthma and the heat, stuffiness and pollen exposure in the other office available. A health and safety adviser, Bushra Ramzan, undertook a risk assessment in respect of the working environment for the claimant. It was agreed in

the meantime that the claimant would remain in the same office but move to a different desk.

73. In an email discussion on 19 July 2016 the claimant said that she would arrange for Access to Work to undertake an assessment. Ms Ramzan's assessment was that there was no evidence that the pollen count in the air in the second office would be any different unless the wind blew in one direction, or there were more flowers at one side of the building. We heard no evidence to suggest either of those were the case.

74. The claimant was copied into that report and Ms Graham was shocked by the inappropriate and unprofessional tone and content of the claimant's reply. She met with the claimant on 25 August 2018 (page 165) and explained that the email was not acceptable. She also discussed other matters which had been raised with her about the claimant's behaviour. She was completely unaware of any suggestion that either Ms Ramzan or the Occupational Health adviser had called the claimant a "cheeky beggar" and both deny making that comment. We do not find that it was made.

75. The health visitors kept their records manually in filing cabinets with drawers. Although each would have their own drawer, they would on occasion go into other people's drawers to check on individual files. The team members accused the claimant of slamming her drawers hard all of the time: it was a constant complaint from the rest of the team. They suggested that as a result of her conduct, the drawers had become damaged.

76. Ms Graham did not speak to the claimant about this but Tracey Forster, Lead Manager for Children's Community Health Services, came over to look at the drawers because there was a concern that they held confidential patient information and were no longer secured. The claimant alleged in this regard that she was singled out and that other people's cabinets were also broken. She cited a broken lock on another cabinet which was not complained about. Ms Graham felt that a broken lock on a cabinet was not a comparable situation. The front of the claimant's drawers had come away from the rest of the drawer because they had been banged open and closed with force. The team complained to her about the fact that it demonstrated the level of aggression that the claimant was exhibiting in the office.

77. On 7 December 2016 the claimant sent an email (page 181 of the bundle). This is an email in which she alleges she made a cry for help. There were workload issues raised about the whole team. Ms Graham discussed the issues of workloads with her line manager and told the claimant that she would come over to the team and see what support she could offer, and Ms Forster agreed to meet the claimant to discuss the issues.

78. On 16 November 2016 the claimant met Karen Fishwick, who was by then Ms Graham's line manager, to complain about the way she had been treated. She said that she was targeted, and that Ms Ramzan and Ms Graham had mocked her. The claimant also said that she had not dealt with "nitpicking and tittle-tattling" in the team and had not managed her concerns about Ms Lewis appropriately.

79. Ethna Dillon was appointed to do an investigation into these allegations and in late December 2016 Ms Graham asked to be moved out of the team because she

felt she could no longer manage the claimant in circumstances where she had made such a serious complaint against her. The complaints against her were subsequently not upheld. She noted from then on that Ms Akuazoku and Ms Kenyon ran the Chorlton team.

80. Subsequently the claimant made an allegation that she had been given an increased workload in January and February 2017. If she was then it could not have been because she had raised concerns about Ms Lewis, because the disclosures about Ms Lewis were made only to Ms Graham and Ms Graham had left by then. Ms Graham confirmed that she was unaware of any mental health difficulties that the claimant may have.

81. Ms Graham was aware that the claimant had asthma – but the claimant does not say she is disabled by her asthma. She was aware because of the claimant's objection to moving to a different desk in the office.

82. The claimant makes an allegation that Paula McAdam pushed her into a wall (and during her evidence said it happened twice) and accused Ms Graham of not making adjustments to prevent it happening. Ms Graham was unaware about the claimant being ostracised or assaulted or her receiving any different or inappropriate treatment. She accused Ms Graham of not dealing with the team's behaviour appropriately, but Ms Graham found that it was the claimant's behaviour in the team which was the issue.

83. There were several meetings to discuss a number of complaints from other external professionals or colleagues about the claimant's behaviour. Ms Graham she did not see any behaviour towards the claimant by other members of the team which required addressing. She found the allegation of the claimant being pushed into a wall once or twice unlikely, having known both parties.

84. Ms Graham had arranged for mediation to occur between the claimant and Ms Lewis. That was undertaken by Rohit Nanji, the Health Visiting Team Lead, who was a qualified mediator. She used the Trust's Dignity at Work policy, the first step of which was to have an informal mediation, and both the claimant and Ms Lewis agreed to mediation with Mr Nanji. Ms Graham was present when it occurred.

85. The claimant accepted in her evidence at the Tribunal that she was unaware that Mr Nanji was a qualified mediator and that part of her claim was that he was unqualified.

86. In one of the meetings with the claimant she asked that staff awareness training be arranged in relation to her disabilities and disability generally. This was agreed. There was a session eventually arranged with the team, to try to resolve some of the issues, on 27 November 2016. The claimant chose not to go to any future group sessions after that first one.

87. Teresa Solano-Olivares was also a Health Visitor in the team at Chorlton. They had met earlier in Rusholme when Ms Solano-Olivares was a student Health Visitor. In June 2014 she was asked to join a clinic being managed by the claimant. She gave advice to a mother on a feeding issue. The claimant immediately jumped up and started shouting at the mother and disagreed with the advice that had been given. Ms Solano-Olivares spoke to her Practice Manager who confirmed she had

given the correct advice. However, the reaction of the claimant was such that Ms Solano-Olivares would be polite and professional but was wary of her.

88. Ms Solano-Olivares moved to the Chorlton team in November 2015 after the claimant. Because of what had happened earlier, she kept her distance from the claimant. She saw, however, that the claimant's conduct had not changed. She observed that the claimant could be aggressive and challenging. She described herself as frightened of the claimant. When the claimant was in a bad mood she described that she would bang around and slam things down on her desk and slam doors. She would also shake and slam the filing cabinets and one of them was damaged as a result. She would type very hard on her keyboard and desktop phone and the number 9 button would stick – you had to use the number 9 for an outside line. The claimant was known to shout at other people including members of the team, clients and social workers, and even with the door closed she could be heard. She described the claimant as an oppressive presence in the office, creating an environment of intimidation. The claimant was so aggressive both verbally and physically that the witness was frightened to be in the office with her. She did say she had no knowledge that the claimant had mental health difficulties until she became involved in this claim. She had suggested that staffing levels gave her anxiety. She denied ostracising the claimant. She did accept that she kept her distance and kept any interaction professional.

89. On 24 May 2017 Ms Solano-Olivares submitted a grievance against the claimant (page 254). It was a complaint about an accumulation of behaviours but the last day had been the previous day when she had attended work to find the claimant in a very bad mood. It was the day after the Manchester bombing and she and staff were all talking about the attack in shock. She had not noticed that the claimant had arrived into the office. The claimant moved through to her office and noted that she had taken over Ms Solano-Olivares desk space and was making passive aggressive comments over the phone to somebody about the rest of the team “bitching” about the claimant. The witness knew that was not the case but took her diary and left the office before the claimant came off the telephone.

90. There was also an issue of annual leave at around that time. The whole team sorted it out between themselves but, according to the witness, the claimant had refused to join in with the discussion. She then decided to take some time off at the last minute and rather than talking to the team about it, emailed the Head of Service to complain about the team. They all got an email from Ms Parker, the Head of Service for Health Visiting, to say they needed to sort it out between them. This caused upset for the rest team as they had worked together to try and sort it out but without the claimant’s cooperation.

91. It was suggested that Ms Solano-Olivares was responsible for the passing of pictures of naked men around the office and that the claimant was treated badly because she did not want anything to do with it because of her own sexual orientation. All of the team who gave evidence denied that there was on any occasion any passing of pictures of naked men around at all.

92. There was an occasion when the team went out for the lunch, the claimant was present, and there was a discussion about who would be the next James Bond. There was some suggestion that Idris Elba was going to take on the role, and they

all agreed that he was attractive and charismatic and would be a good James Bond. The claimants said she did not know who he was, so they listed a number of films that he had been in, but she was still unaware. One of the team looked up a picture of Idris Elba on her phone and showed the claimant a picture of him fully clothed. Her response was "Urgh, he's black". They were all shocked at her reaction.

93. The claimant had placed in the middle of her unlisted and unindexed bundle a pornographic photographic of Idris Elba naked, with an enhanced image of his genitals. She accepted that this was not the image that she was shown at the café, and when asked why she had thought it appropriate to put it in the supplemental bundle of documents for her case she said, "it was similar". Several witnesses gave evidence about that conversation in the café, and all agreed that the photograph of Idris Elba was of him fully clothed. There was no evidence at all from any witness other than the claimant that naked photographs of men were being handed around the office. Ms Solano-Olivares looked at the internet for pictures of Idris Elba subsequently and believed that the photograph she had shown to the claimant at the cafe was a 'suited and booted' image taken at the British Academy Television Awards in April 2017.

94. Ms Solano-Olivares suffered from PTSD as a result of something that had happened to her years before. She has found it extremely distressing to have to deal with the claimant's accusations on top of that. She told us that it was hurtful to her for the claimant to have invented such malicious allegations. The claimant did not in fact originally raise this allegation in her complaint against Ms Solano-Olivares. Ms Solano Olivares first raised the conversation as a complaint against the claimant because she was so concerned about her racist reaction to the photograph.

95. Ms Solano-Olivares went on to explain that the claimant was very open about her sexual orientation in the office, and everybody would know that she was gay. On one occasion she suggested that she was going to have her hair dyed pink and the claimant replied, "If you do, I'll take you to Vanilla", which is a lesbian club. This was at a time when the claimant had alleged that the witness was bullying her.

96. The claimant alleged that in May 2017 Ms Solano-Olivares swore at her and said, "fuck sake, fucking sick of this" and "fuck off and die". The witness admitted she sometimes swears or blasphemes, although generally in Spanish (her first language), but she has never sworn at anyone, and only ever in frustration at the type of work that she was doing, which could be stressful. She has never said it to the claimant and commented that she would have too frightened to swear at the claimant, because she would have been extremely concerned about how she would have reacted.

97. The claimant alleged that the witness had sworn at her because she had raised legitimate concerns about the practice of Ms Lewis, but in fact Ms Solano-Olivares had no idea that any such concerns had been raised until she was asked about the issue during the preparation of her statement for the Tribunal.

98. None of the claimant's concerns raised about Ms Solano-Olivares, including that she had been bullied and sworn at, were upheld in the subsequent investigation (page 553). Ms Solano-Olivares was able to confirm that whilst at Chorlton she never saw anybody being physically or verbally abusive or offensive towards the claimant, nor behaving in an inappropriate or unacceptable way. She found it

unpleasant to work with the claimant and she has found it hurtful that what she has described as malicious allegations made by the claimant against her.

99. Ruth Aves gave evidence that she first met the claimant as a student Health Visitor at the Burnage Health Centre in 2013. They only spent about a week together then. She started work with the claimant on 14 June 2017 when the claimant had been moved (with her consent) from the Chorlton team to the Burnage team to enable an investigation to take place into complaints both by the claimant and against her.

100. Ms Aves describes not wanting to be in the office with the claimant and working in her car. She said the claimant frequently misconstrued things that she said and reported them to managers. She found the claimant's behaviour intimidating and would feel physically sick in her presence. She said the claimant was an oppressive presence in the office and she thought the claimant believed everyone was getting at her when they were not.

101. She noted that the claimant now alleged that she made fun of her Polish name, referring to her as “Keesha, Krishna, whatever your name is”. The witness had no idea that the name “Keesha” was Polish until she learnt about the claim and the allegations. She remembered the name Keesha (spelt phonetically) from when they had spent the week together as student Health Visitors, and she did not believe that she did mispronounce the name. If she did get it wrong, it would be by mistake having got the name mixed up. She did not have any motivation to make fun of the name or to cause the claimant upset.

102. She remembered an occasion when Beverley Coleman mispronounced the claimant’s first name. Beverley Coleman is a Caribbean lady, well-known in the office for mispronouncing things. She recalled Ms Coleman referring to the claimant as “Krishna” on one occasion, and the claimant saying, “she’s not some Indian God”. It was a light-hearted conversation and was laughed at and appeared to be accepted as a genuine accident by Ms Coleman at the time.

103. Ms Coleman gave evidence to the Tribunal about that occasion. She worked at the Burnage Health Visiting team as a Community Nursery Nurse. She recalled meeting the claimant for a couple of days when she came as a student for her training, but Ms Coleman had little contact with her because she was being looked after by somebody else.

104. Ms Coleman met the claimant properly when she joined the team as a qualified Health Visitor on 14 June 2017. She got on well with the claimant and their relationship seemed fine. They would talk about her daughter and relationships. There was never any tension or confrontation. The claimant sent her a “friend” request on Facebook. Ms Coleman was astonished then to find that she had made allegations against her and in particular that she was accused of discrimination against the claimant on the grounds of her race. She had only ever seen the claimant's name in writing when the claimant joined the team and did not know how it was pronounced.

105. She confirmed that it was absolutely correct that she mispronounced the claimant's name for a period of time when she first started in the team. She believed she may have called her “Krishna”. In any event she learned that it was incorrect.

She was corrected by the claimant who gave her a piece of paper with her name on it, laughing and saying, “My name is pronounced Kreesha”. Ms Coleman practiced saying it until she got it right and she saw no evidence of the claimant being angry about it or upset. She was sure at the time that the claimant understood it was a genuine mistake.

106. The request to be friends with her on Facebook came after this incident. Ms Coleman explained that she had a habit of mispronouncing things and had to practice and learn names. Her daughter made fun of the way she gets words wrong and there are certain words that she just cannot pronounce correctly, for example “volka” instead of “vodka” and “revelant” instead of “relevant” and “pacific” instead of “specific”. She was brought up in the Caribbean and it could be that she says words like that because of the accent she learned there and because her pronunciation was never corrected as a child. In her evidence she confirmed that she had no idea that the claimant was Polish or that her name was Polish, and she did not say anything to or purposely get her name wrong because she was Polish. The mispronunciation was a genuine and innocent mistake.

107. Ms Bateman, whose evidence we read, first met the claimant at Rusholme Health Centre and then again in March and June 2017 when they worked in the Chorlton team. They got on fairly well. She noticed that other people would pussyfoot around the claimant. She too denied ever having seen a picture of a naked man being passed around the office or that she treated the claimant badly because the claimant did want to be involved and because of her sexual orientation. She recalled the incident regarding Idris Elba and remembered that the claimant was shown showed a picture of him on a phone fully clothed, and that the claimant’s reaction was to say “Urgh, he’s black”.

108. She confirmed that the claimant was very open in talking about her current girlfriend and her ex girlfriend and her sexual orientation. She noted that although the claimant had put in complaints about the team in July 2017 and then had spoken to the investigator, and had made other allegations about how she had been treated badly because of her sexual orientation, she made no mention of any allegation they had been looking at pictures of naked men and that she was treated badly because she did not join in and because of her sexuality. Ms Bateman had voiced concerns during the investigation about the claimant’s behaviour because she as fed up with her attitude and the way she spoke to other people, not because of her sexual orientation as alleged.

109. Whilst the claimant was at Chorlton in 2015, she accused Helen Whelan and others of ostracising her in May 2016, after her father had died in the April. In fact Helen Whelan gave evidence that they sent her flowers.

110. She also accused Helen Whelan of calling her a “nutcase” in November of 2016 because she had disclosed that she had mental health issues. Helen Whelan denied ever knowing about any mental health issues, commenting that the claimant was aggressive and that Helen Whelan had never bullied her. We considered Helen Whelan’s the more convincing – she had no reason to bully the claimant of whom she was wary, and there is no evidence that Ms Whelan was at any time told of the claimant’s depression or anxiety.

111. Ms Whelan knew that the claimant was bis-sexual but never commented upon 'how do women do that to each other'. Helen Whelan denied she had ever commented on the claimant's appearance because she was bi-sexual, other than to give compliments about her clothes. Helen Whelan did not swear at the claimant but on one occasion admits that she did say that she had not been "sitting on her arse all day". She denied swearing because of any complaints made by the claimant and confirmed that she did not know the majority of the claimant's allegations. By May 2017 she had decided that the claimant was a bully, aggressive, would slam her cabinet drawers, slam things onto her desk, shout and be sarcastic.

112. On 26 May 2017 Helen Whelan put in a grievance because the claimant had said that she had put the fear of God into two new mums in the same day and appeared to be gloating about it. Helen Whelan had observed the claimant bullying Camilla Lewis and felt that she was unprofessional and aggressive. It was not because of the claimant's sexual orientation or mental health or any other concerns that the claimant had raised.

113. Ms Graham asked to be moved because she could not longer work with the claimant and she she had been totally unaware of the claimant's alleged mental health conditions.

114. Paula McAdam worked from June 2016 to June 2017 in Chorlton. She recalled shortly after starting work with the claimant she heard the claimant scream at Camilla Lewis "I am watching you". Camilla Lewis cowered and was sobbing and Ms McAdam was shocked. She had no idea that the claimant had any concerns about Ms Lewis's practice. She noted that the claimant in her evidence said that she ostracised and bullied the claimant. Ms McAdam thought they were getting on well together and between August and September 2016 the claimant went to Portugal and rang her from Portugal asking her to send money and requesting the use of her credit card. Ms McAdam did not have a credit card and the claimant seemed cross. Ms McAdam lived near the airport and the claimant had parked her car at Ms McAdam's house and she drove her to the airport.

115. In July 2016 she was invited to go and see the claimant's kitten and in a phone call some time in September/October 2016 was invited to say hello to the claimant's mum. Ms McAdam was aware that the claimant slammed cabinet drawers hard and slammed things on her desk. She was alleged to have pushed the claimant into a wall (initially described as "punched twice" but later amended by the claimant). This was alleged to have happened in May 2017. Ms McAdam described it as a complete fabrication. The claimant she noted had not mentioned it until 3 July 2017 two months later and there is no record of any report in that time.

116. Ms McAdam denied completely that she had pushed her hard as a joke or charged through the door or constantly intimidated the claimant. She noted that the claimant had originally asserted this was on 27 May 2017 which would have been a Saturday when no-one would have been working, and then was amended to around 25 May 2017. On 20 September 2017 Ms McAdam noted that the claimant said that Ms McAdam had hit the claimant twice in the office and banged into her. Ms McAdam describes this as a complete fabrication. As a matter of fact we agree with her. On 3 April 2020 during preparation for the case the claimant alleged that Ms McAdam had thrown her onto a wall. Ms McAdam's response to that is that the

claimant is much bigger than Ms McAdam who would not have been physically capable of doing that. There was subsequently a full internal investigation held and this accusation was not upheld within the organisation. The entrance to the office is by the filing cabinet that the claimant uses and the door is not glazed but solid. If somebody is opening the filing cabinet then having opened the door you have to squeeze past. That is the best explanation that Ms McAdam could give for the allegation brought against her.

117. Ms McAdam had been shown Ms Solano-Olivares and Ms Whelan's statements during preparation for the case. The claimant alleged that they laughed at the assault. The two alleged witnesses confirmed that they did not see any assault and certainly did not laugh at anything.

118. The same three health visitors are alleged to have sworn at the claimant. Ms McAdam on oath was adamant that she did not and never had sworn in the office at the claimant. She had sworn but it was never aimed at anyone and following Claire Jackson's subsequent investigation she was advised not to swear in the office. Ms McAdam was accused of using the phrase "weeping willows". She uses this to describe mums who cry a lot. Ms McAdam described herself as just dealing with the stress of the job when she used this phrase, certainly not aiming it at the claimant. She had never seen the claimant cry, she found her to be aggressive and Ms McAdam had no knowledge of the claimant having any mental health issues.

119. Miss Solano-Olivares had had an issue with the claimant when she was a student and so was wary of her. Miss Solano-Olivares started work in Chorlton in the November of 2015 but kept her distance, describing herself as frightened of the claimant. She would bang things around, slam things on the desk and slam doors. She had heard her shout at members of the team, clients, social workers and then had also seen her thrown the receiver down at the end of phone calls. Miss Solano-Olivares had no idea that the claimant had mental health issues. She described herself as not ostracising the claimant but being wary. On 24 May 2017 she lodged a grievance against the claimant. Before the claimant had entered the building the team were talking about the Manchester bombings from the day before. They did not notice the claimant arrive. Miss Solano-Olivares moved through to the office to find the claimant on the phone saying that the team were bitching about her. Miss Solano-Olivares immediately left the office.

120. Miss Solano-Olivares herself is having counselling and has been diagnosed with PTSD because of matters which occurred in her childhood. She does not like looking at naked men and this allegation has set her back and affected her own mental health. She was the first to raise the issue because she considered the claimant was being racist.

121. There was only one witness who covered all three of the claimant's employment bases and that was Tracey Forster who was the lead manger in the Trust. She was able to give something of an overview.

122. She was aware that in the summer of 2016 Maria Graham and Becky Parker were dealing with the claimant's behaviour which she described as low-level but increasingly frequent. The claimant brought a grievance against Ms Graham and initially refused mediation. Tracey Forster commissioned an investigation into the claimant's complaints, and later added other staff complaints about the claimant to

the investigation. None of the allegations made by the claimant were upheld. The claimant appealed and the appeal was rejected. Allegations about the claimant were upheld and it was recommended that a disciplinary process be started.

123. In June of 2017 Ms Whelan and Ms Solano-Olivares both submitted complaints (as referred to amongst others in paragraph 121 above. The claimant was moved out whilst the investigation was going on. She was moved to Burnage and she made no objection or comment at the time.

124. Subsequently the claimant has suggested that part of the reason she was moved was because she was hypervigilant or had PTSD. That was not mentioned at the time.

125. Claire Jackson was to investigate and when the claimant subsequently brought complaints against Whelan and Solano-Olivares and Paula McAdam, Ms Forster commissioned Claire Jackson to deal with those as well in one report. The outcome was that there was to be no further action about the claimant's complaints but that Paula McAdam was reminded about swearing in the office. The recommendation was that the claimant was to be referred for a disciplinary hearing because of her inappropriate and unprofessional behaviour.

126. The claimant had moved to Burnage on 14 June 2017. Initially all seemed to be well other than the incidents already referred to about the claimant's name and Beverly Coleman. Her line manager was Louise Barrett. Ms Barrett's only concern at first appeared to be the claimant sending several emails to her every day which felt oppressive. She noted that the claimant was complaining a lot about the team.

127. Subsequently in October 2017 however Louise Barrett received four complaints about the claimant in one week. In accordance with the disciplinary policy, she set up an informal counselling meeting which occurred on 5 October 2017. At that meeting she noted that the claimant would not accept any criticism and deflected by criticising others. She described as a very difficult conversation but it was agreed there would be an action plan, to have no more complaints for 3 months, and then to review any complaints there may be, with a view to considering whether or not there needed to be further action. The claimant appeared to accept everything that was said in the meeting but subsequently sent challenging emails afterwards.

128. She submitted an informal complaint against her line manager and subsequently refused to engage with Louise Barrett. Another health visitor found a chronology on the printer on 14 November 2017 which appeared to have been prepared by the claimant setting out her comlaints.

129. The claimant subsequently changed her mind about the informal complaint and put in a formal complaint against Louise Barrett indicating that she was no longer willing to attend one-to-ones with her. Ms Barrett felt undermined and fearful about her work.

130. On 15 January 2018 she put in a formal complaint about the claimant's conduct. The investigations into both upheld Ms Barrett stance.

131. In December 2017 before Ms Barrett's complaint, there had been an incident at a bring and share lunch between the health visitors. One of the health visitors had brought a rum cake, a cake in which rum had been added before it was baked. All the health visitors other than the claimant ate the cake. The claimant commented that she "fucking hated them all and was not staying". The claimant then went to Ms Barrett raising the issue of the health visitors having alcohol at lunchtime. Ms Barrett dealt with it and asked that in future no cake have alcohol in it while the health visitors were working. She did tell the claimant what she had done.

132. The claimant then alleged fraud against a member of staff who was off sick. The member of staff had posted on Facebook with a picture of them flying to Dublin. The staff had been on long-term sickness absence with a knee injury. Ms Barrett realised that she had in fact given permission to the member of staff to go on holiday whilst off sick. Ms Barrett advised the claimant that she had dealt with it.

133. The claimant then complained about Beverley Coleman getting her name wrong and Ms Barrett asked Beverly Coleman to make more of an effort in future.

134. The claimant complained that Ruth Aves had misspelled her name and Ruth (Aves) did not understand how this had happened. The two of them together had checked this in a Word document and noted that autocorrect changed it to the incorrect spelling. Ms Barrett reassured the claimant that this was not a malicious act but simply a computer glitch and the claimant never complained again.

135. The claimant did complain about poor recordkeeping however. The health visitors were using a new electronic system which was going live in January 2018. It was not only the claimant who complained and raised issues with those who got it wrong. Ms Barrett considered them to be small issues which did not present a risk and told the claimant it had been dealt with. The claimant was not satisfied and wanted to know what had been said and what she had done about it. She was then told that she had been treating the claimant improperly.

136. The claimant objected to there having been no risk assessment on her move despite the Occupational Health recommendation from her self-referral. Ms Barrett had noted that one had been done on 24 May 2017 just before the claimant moved and saw no reason to repeat the exercise and noted that the claimant had not asked for it.

137. Ms Barrett organised a team away-day at Chorlton, organisation for which had started before the claimant began work at Burnage. The claimant refused to go because she did not want to go back to Chorlton. She could have chosen not to attend. However, Ms Barrett arranged for her to use a different entrance into the building, be escorted in by her current colleagues and the claimant decided she was happy to attend and did not complain further.

138. In October 2017 however she was told that she may be subject to discipline about further complaints. Her agreed action plan was that there were to be no complaints for three months and Ms Barrett would then review any complaints and then consider if it would be appropriate to take disciplinary action. At the same time the claimant was asked to review her casework. The claimant was given seven days in which to send the review to Ms Barrett. She did not tell Ms Barrett that she could

not comply because she was away the following week on holiday. Had Ms Barrett been aware she would have given her longer.

139. Ruth Aves noted that claimant arrived in Biurnage in June 2017 but did not expect her and had not been told that anybody was coming into their team. She personally found the claimant difficult and she found herself working in her car rather than going into the office. On one occasion she offloaded about a difficult patient and the claimant she noted typed up her own version of what had been said and then repeated it to a manager. Ruth Aves felt intimidated and felt sick. The claimant alleged that Ruth Aves made fun of her name but Ms Aves had no idea that the name was Polish, she remembered the name from when the claimant had been there as a student years before. If she pronounced it incorrectly it was an accident and she confirmed the exercise undertaken to put the claimant's name into a Word document when it was autocorrected to Krishna from Krisha. She did confirm that Beverley Coleman did get it wrong on one occasion but noted that the claimant had laughed about it.

140. Again Tracey Forster as lead manager had an overview of what happened at Burnage. She noted the claimant had started in the Burnage team on 14 June 2017 and they met on 20 July 2017 to look into the investigation into the complaints from Chorlton. The claimant described herself five weeks into her new team as being really happy, liking the team which was well-managed by Louise Barrett.

141. In October 2017 Louise Barrett had had four complaints in three days about the claimant. Ms Forster was aware that Ms Barrett had discussed the complaints and set up the three month action plan.

142. The claimant submitted a complaint about bullying and harassment against Ms Barrett as a result, describing her as heavy-handed.

143. On 12 October she approached Ms Forster and asked to move saying she was being bullied and threatened. Ms Forster advised her to complete the action plan first and then she would consider the move.

144. On 8 November 2017 Head of Service Ethna Dillon met the claimant and the claimant agreed to draw a line under matters but later the claimant changed her mind indicating that she may wish to make formal allegations.

145. Ms Dillon commented on 14 December that she thought matters had been resolved. On 20 December 2017 the claimant raised a formal grievance against Ms Barrett. Ms Forster asked for the chronology and was surprised to see it contained allegations from early to mid-July 2017.

146. On 15 January 2018 Louise Barrett complained about the claimant to HR. The claimant was refusing to attend one-to-ones with Louise Barrett and the only communication that they had was through email.

147. The claimant went on sick leave on 21 January 2018. The claimant was sent the outcome of the Chorlton investigation indicating that she may be subject to disciplinary process. The claimant's allegations were not upheld. After a meeting on 7 February 2018 and on 26 February 2018, circumstances led Ms Forster to believe

the relationship between the claimant and Ms Barrett had broken down and the claimant was offered the chance to move to Cheetham after her sick leave expired.

148. On 8 March 2018 the claimant raised a grievance that the move from Chorlton to Burnage was unlawful and without her consent and that her request to leave Burnage in October 2017 had been refused.

149. The grievance was heard by Nicky Boag the lead manager. The grievance was not upheld and she appealed twice and was not upheld.

150. The claimant was off sick from 22 January 2018 to 18 June 2018 when she returned to work to begin afresh at Cheetham. At Cheetham Alison McCartney(née McMahon) was her line manager.

151. On 21 November 2018 because of a recent short absence for 'vomiting', the capability process was started. The claimant said this was because of her stress and anxiety. Ms McCartney said it simply fell within the Trust's policy to deal with her extensive absences.

152. In June 2018 the claimant had already got reasonable adjustments underway although some had not been completed until she returned to work because they required her input. At the meeting on 9 July 2018 after a sickness absence review there was a review of the adjustments.

153. She had been recommended to have silencing headphones and had those. There was a recommendation that the Trust buy the Brain in Hand app but she had not received that. It was chased but took time because of problems with the order process. It included providing the claimant with a new phone which would operate the app.

154. Ms McCartney chased the team training that had been recommended, and allowed the claimant to choose her own desk. She offered two health visitors to be the claimant's buddies.

155. The training session on the issue of disability was delayed until 27 November but did then go ahead.

156. The meeting on 21 November was because the claimant had been off sick with a diagnosis of vomiting from 12 to 14 November 2018. She had met a trigger under the absence policy having been off for 102 days in 12 months. She was offered informal counselling at Stage 1 and offered help. But she was told that further absences may lead to formal Stage 1 proceedings and was issued with the template letter which follows such a finding from the policy. The claimant signed her return to work form and she did not object or allege she was being discriminated against at the time.

157. . On the same day she had a one-to-one meeting with the same manager. She indicated her workload was manageable and she was enjoying the work. She indicated the Brain in Hand app was still not working properly.

158. Between then and 5 February 2019 when there was a staff meeting, various tensions developed within the team. The claimant and others (including Mr Marsh

and Ms King) suggested the team should be split and also that term-time working with the nursery nurses was unsustainable.

159. The staff met on 5 February to discuss these issues and were offered the opportunity to raise any other issues that they wished. Donna Hill was not present for the first half of the meeting as she had a hospital appointment. During that first part of the meeting, which was chaired by Lisa Sanchez the claimant said that nobody said hello to her when she came in and when asked she confirmed she did not say hello either. After a short discussion about this Donna Hill joined the meeting.

160. Donna Hill had been off sick and had returned in the October of 2018. She found the claimant to be smug and aggressive and would snap at her about phone calls. She found the atmosphere oppressive, leaving her on edge and anxious. She noted that the claimant had referred two of her files for review to Sarah Davenport who had found them to be fine. She noted that nobody else ever referred files for review - "It meant that you were looking for mistakes".

161. Having attended the meeting on 5 February 2019 late she did not hear the claimant say that nobody was speaking to each other but what she did hear the claimant say was that "that lot in that corner are like schoolchildren" meaning Donna Hill. Donna Hill asked if that was who the claimant was addressing her comment to and she replied "Yes, you're the main trouble-causer in the office." The claimant was described as being aggressive and having a raised voice. Donna Hill burst into tears and left. She noted the claimant was smirking and as she left she said to the claimant "You need to leave". She meant that the claimant needed to leave the room but both the claimant and several other witness assumed that she meant the team. Donna Hill was humiliated and distressed and frightened.

162. On 9 February the claimant made a complaint about Donna Hill's comment. It was investigated by Caroline Greenhalgh. The claimant included other matters which she had not raised before.

163. There had been a meeting with an external speaker about breastfeeding and feeding babies. Donna Hill had no experience personally of breastfeeding a baby and asked a question. The claimant laughed in front of everybody sarcastically and replied "It's common sense". Donna Hill again left the room humiliated. She gave evidence to the Tribunal that she cannot have children.

164. Ms Hill asked to work elsewhere and in fact then worked from home for six months to avoid the claimant, before moving teams. She suffered extreme stress because of the claimant's conduct and described that she was now taking anti-depressants.

165. Jennifer Rowlands described the claimant moving to Cheetham in the June of 2018. She had known her before and got on well but now found her unapproachable and with funny moods. She would be terse and stand-offish. She was aware of the tension over the issue of too many people were working term-time hours only and at the meeting on 5 February 2019 believed that Donna Hill had said that the claimant should leave the team. She described the claimant as having been unfair and rude and that she and Lucy Buckley both left in tears . She did not say or do anything or submit a complaint but she was present at the training session on

breastfeeding when the claimant said it was just common sense and Donna Hill left in tears.

166. As a result of that on 3 April she submitted another formal complaint that the claimant was bullying Donna Hill. Others raised the same complaint. The claimant raised counter-complaint. There was an investigation in August 2019. Two further complaints were made by Jennifer Rowlands that the claimant had given ten tasks to her, it was usually two or three. She felt she was being hounded and the work should have been spread across the whole team. The complaints were added to the investigation. She described the way that the claimant behaved as unacceptable.

167. Tracey Forster again had an overview. The claimant had described the described the team as being lovely and supportive in their early meetings. There then followed allegations and counter-allegations. On 5 February the claimant had been rude to the team. They were distressed and they complained. On 9 February the claimant complained about Donna Hill and the others. A decision was taken that she should be made the subject of a disciplinary process but she appealed that decision.

168. The matter came before Jon Lemey who was the HR Director. He agreed to review all of the processes from Chorlton to Cheetham. He commissioned Ali Morris to undertake an investigation and the outcome showed that the standards of behaviour within the team were not what was expected. The team were asked to reflect and apologise to each other. He took the decision that there would be no disciplinary action being taken against the claimant because the whole process had taken so long.

169. Ms Forster had an overview in relation to the adjustments made to the claimant for work.

170. In March 2018 the claimant asked for an Access to Work referral saying that she was affected by PTSD following the death of her father. Access to Work raised various adjustments, did not confirm whether she did have PTSD or not and saw no evidence from her in that regard.

171. The report however was received on 18 April and the headphones which would enable her to work in silence were ordered on 26 April and received on 25 June. The claimant had been off sick throughout that period. The recommendation that she be given the Brain in Hand app for her phone could not be actioned until her return to work on 18 June but she did complete the form eventually on 23 July.

172. It was found it needed a smartphone which duly arrived but needed a sim card which she needed to fill in a form for. It is unclear if she did but she had the app on her own smartphone in any event. On 5 October 2018 a trainer was arranged for the app. However, Access to Work had not specified the right level of licence and this was eventually made available to the claimant on 23 January 2019. Access to Work had recommended that she be given training on coping strategies to be booked on her return on 18 June. This was chased on 18 September by the claimant and eventually booked on 20 September and a trainer allocated.

173. Access to Work also recommended disability awareness training for the team. This was arranged for when as many of the team as possible were available and was ordered on 5 September 2018 when everybody had return from annual leave and sickness leave. The bill was paid on 20 October 2018 and it took place on 27 November 2018. There were other adjustments offered on her return to work on 18 June 2018 to assist the claimant further. There was a quiet room that she could use if it was free. She could choose her desk position to suit herself.

174. Ms Forster had no idea that the claimant was suggesting she was ostracised – she says it was not raised and she saw nothing.

175. Ms Forster did inspect the claimant's filing cabinet at Chorlton and from the nature of the damage could see that the claimant had been heavy-handed and that the only damage of that nature was the claimant's drawers. Ms Forster asked Maria Graham to ask her to be more gentle and ordered replacement drawers for the claimant.

176. With regard to the incident when the claimant alleged that she had been pushed into a wall by Paula McAdam Ms Forster arranged an investigation, noted that it was more than six weeks after the incident that the complaint was made and the incident allegation were not upheld.

177. With regard to the situation between Camilla Lewis at Chorlton and the claimant she had appointed an internal mediator as she saw no good reason to move to an external mediator. Rohit Nanjji undertook the mediation. He was a qualified mediator.

178. The claimant told her she had a higher caseload than others but only in relation to the whole team. She never raised it as an individual and managers believed that the claimant had a perception that she personally had a higher caseload although that was not in reality made out.

179. Ali Morris had reviewed all of the processes and concluded that all of the complaints from both sides. had been handled fairly and appropriately.

180. On 14 March 2019 the claimant was updated. Mr Leney, Director of HR, decided that it had been so long since the decision to subject the claimant to the disciplinary process that it would not be fair to proceed so the disciplinary process was dropped. He did conclude however that the claimant was challenging and difficult to manage.

181. The final witness to give evidence about the claimant's time at Cheetham up to the point she brought her claim was Tracey Williams. Tracey Williams was a nursery nurse. She returned to work in November 2018 after sickness absence and the claimant was already there. She recalled on 26 January 2019 that there had been a night out because two staff were leaving. The claimant had sent a message to say she would join them but then did not. Subsequently a lunch was arranged both for the two leavers and new joiners. The claimant was not at the meeting when the lunch was arranged but it had been talked about openly in the office.

182. On 5 February 2019 there had been a meeting at which there had been discussion about the fact that the nursery nurses worked term time only. Peter March

and Wendy King had raised grievances about this. There had been a meeting with management but the claimant Mr Marsh and Ms King had refused to attend. She were told that between the two of them, one of them would have to move teams. The 5 February meeting was the first meeting after that. She confirmed that Lisa Sanchez had offered the opportunity for anyone to raise concerns and that the claimant had said nobody ever said hello to her but confirmed that she did not either when asked. Ms Williams confirmed the account of the altercation between the claimant and Donna Hill, believing Donna Hill's account to be the accurate one as materially supported by other witnesses and confirmed by the claimant's own account. On 7 February 2019 she was asked to put her recollections in an email. It was worthy of note that she believed Donna Hill had said "get out of our team" (although she did not recall it specifically, others did).

183. There was a further team meeting the following week on 12 February 2019 when a discussion took place about what should happen when staff were on holiday and the 'working term-times only' enabled the claimant to 'have another dig' at Ms Williams.

184. On 21 February 2019 Ms Williams wrote to Sarah Davenport setting out her concerns about the way she was being treated and four days later wrote again to Sarah Davenport making a formal complaint. She was told to record all her concerns and send them in a letter and when she received the outcome of an investigation her complaints had all been upheld

185. Following this the claimant lodged her case with the Tribunal. Mr Marsh also lodged a case with the Tribunal which is to be heard separately and on another occasion by a different Tribunal.

Submissions

186. Both parties made written submissions and supported them with oral submissions.

Respondent's Submissions

187. We were reminded that the claimant brought claims of detrimental treatment contrary to section 47B of the Employment Rights Act 1996 ("ERA"), harassment relating to sexual orientation (section 27 Equality Act 2010) ("EA"), harassment relating to race (section 27 EA), disability discrimination, direct discrimination (section EA), discrimination because of something arising in consequence of disability (section EA), harassment relating to disability (section 27 EA) and a failure to make reasonable adjustments contract to sections 20/21 EA.

188. We were reminded of the nature of the case in general and reminded to consider the parties' credibility.

189. It was alleged that the claimant's account was littered with important inconsistencies and marked by deliberate vagueness and a lack of detail. On key issues it was not backed up by contemporaneous evidence. The claimant was persistently evasive when answering questions despite repeated warnings, and she consistently misrepresented the documents. Her witness statement failed to deal

with key issues. Pitted against that was the evidence of 12 credible straightforward witnesses.

190. Rather than applying the law as set out by the respondent, we have chosen to move that to a separate section on the law and confirm that we agreed all the case law and statutory provisions referred to in the respondent's skeleton argument.

Public Interest Disclosure

191. The respondent asserts that most of the detriment claims are out of time, everything that is said to have occurred at Chorlton is out of time, and they cannot be said to form a similar series of acts. The detriments relied upon as being within time are different in nature and were allegedly carried out by different people in a different workplace. The burden is on the claimant to persuade the Employment Tribunal to disapply the primary limitation period. The claimant had produced no evidence to justify a conclusion that it was not reasonably practicable for the complaint to be presented in time.

Protected disclosures 1 and 2 which related to Camilla Lewis

192. The respondent does not accept, either in the email of 31 May 2016 or what was relayed orally on 21 June 2016 to Maria Graham, constituted protected disclosures within the meaning of the Employment Rights Act 1996. It is denied the claimant had a reasonable belief she was disclosing information (a) tending to show that health and safety was likely to be endangered, or (b) that it was in the public interest. Rather, it was likely that the claimant was motivated to raise these minor issues because she was not getting on with Ms Lewis and she wanted her to move. The claimant described her as "highly strung, niggling and having a go, and bossy" in her evidence. The claimant said that Camilla Lewis had been goading her every day for six months but when asked to clarify that had only said that Camilla Lewis had been slamming the phone down after calls and unnerving her.

193. The incident with the child with rolling eyes happened on 23 March 2016, two months before the claimant raised it. If she had genuinely believed it to be a matter likely to endanger health and safety, it is inconceivable she would not have raised it sooner. The claimant was not present at the time of the incident. The information she disclosed was based only on what she says she was told by Ms Lewis. The claimant in her email (page 146) said that the baby was not referred to A & E or Rapid Access but instead sent home and was not overly concerned. In the meeting with Maria Graham the claimant subsequently claimed that the child was referred to A & E by an Outreach worker later. The claimant cannot have had a reasonable belief in that account as it was not true. Ms Lewis had advised the mum to take the child to the GP, which she had done. The GP had referred to A & E and the child was referred on a non urgent referral to Ophthalmology. Ms Lewis had confirmed that that had happened (154) and it had been confirmed in the GP's letter (Dr Khan). In evidence the claimant was forced to modify her position and say that the child was only referred to the GP because the claimant advised Ms Lewis to tell the mother to do that. That is not the account the claimant gave at the time.

The advice about sleep

194. On 31 May 2016 (page 146) the claimant provided information that Ms Lewis had said to a mother "it's not something I have looked into really" when asked about sleep issues. The claimant provided further information about this orally on 21 June 2016, namely that on 19 May (one month later) at a development clinic one of the clients asked for sleep advice and Ms Lewis said she had not looked into the subject and asked the claimant to give her opinion. The suggestion from the claimant was that Ms Lewis did not know the bare minimum regarding systems, policy, baby, activity, problems, etc. There was no detail about this given and could not therefore have sufficient specificity to be protected under the Employment Rights Act 1996. Information provided that Ms Lewis was still in her preceptorship and had asked someone more senior (i.e. the claimant) for advice, which was provided and passed on to the mother. This could not be information tending to show it was more probable than not that health and safety had been, was being or was likely to be endangered.

195. The evidence from the respondent's witnesses was that such queries might be expected from somebody at that stage in their career. The claimant did not report it for 12 days and when she did it did not suggest that she was genuinely thinking health and safety was being endangered. The claimant had identified an example of one newly qualified Health Visitor asking for advice in one case. She has never explained why she thought it was in the public interest to raise this issue.

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196. This was not raised in the claimant's email on 31 May 2016 (page 146) but only in the meeting on 21 June 2016. The claimant complained that there had not been a sufficient handover and the referral was not prioritised. The child had not yet been born. Ms Lewis had handed the case over to the claimant within the timeframe required by the antenatal pathway and the visit had taken place within the recommended time. The Midwifery Service was aware of the family and were working with them. There was no suggestion the child might come to harm as the result of the lack of a handover at that time. Ms Graham found no issue with it and it is denied that the claimant had a reasonable belief that health and safety was being or was likely to be endangered.

Detriments 1 and 2 – Maria Graham misleading the claimant about a complaint

197. It is denied this ever happened. The claimant has provided very limited information about the circumstances of the incident. She could not provide a date for it. There was no complaint at the time about it and the claimant did not mention it on 25 August 2016 in her meeting with Maria Graham, although she did raise other issues. The claimant in fact reported that she had been feeling happy in the team (165). She did not mention this alleged incident until three months later on 15 November 2016 (176), which was after Maria Graham had raised concerns about the claimant's attitude and behaviour which had been brought to her attention. The claimant's account that Maria Graham mentioned a complaint but then refused to give any information about it at all is not credible and is denied, as is the allegation that for no apparent reason Maria Graham warned the claimant not to record the conversation. Even on the claimant's account, Maria Graham only said to the claimant that a complaint had been received from one of her families, not that it was

about her, and it was true in fact that a complaint had been received from one of the claimant's families.

198. This alleged incident took place three months after the alleged public disclosures in relation to Camilla Lewis. There is no evidential link between the two and the claimant has advanced no sensible basis on which the Employment Tribunal could conclude that Maria Graham had this in mind when dealing with her three months earlier. It is not in dispute that in August 2016 Maria Graham was unaware of any mental health difficulties suffered by the claimant. That cannot therefore have amounted to discrimination. Even on the claimant's case, this had nothing to do with her mental health. This incident is 15 months out of time. Maria Graham left the team in December 2016 and could not possibly be involved in any detriments thereafter.

Detriment 3 – Unnecessarily referring the claimant to Occupational Health and Bushra Ramzan calling the claimant a "cheeky beggar"

199. The claimant was not referred to Occupational Health unnecessarily, in fact she self-referred as she accepted in evidence. It had been decided that the seating arrangements for all staff should be reconfigured and the claimant was the only member of staff who wanted to remain at the same desk because of alleged heat, stuffiness, pollen exposure in any other location. The claimant self referred in the hope Occupational Health would support that position.

200. The claimant had alleged medical grounds for refusing to move even to another desk in the same room, and it would have been perfectly reasonably for the respondent to refer her to Occupational Health, although that did not in fact happen. It could not have had anything to do with the claimant raising discrete issues about Camilla Lewis in May 2016.

201. Bushra Ramzan, an Occupational Health Assessor, prepared a report which noted that the respondent had in fact agreed for the claimant to stay in the same room and move down just one desk, but did confirm there was no evidence to suggest the pollen count was any different from one room to the other (page 163). The report was not derogatory and it did not mock the claimant. The claimant prepared a startling obviously inappropriate response thanking Ms Ramzan for her "input and mockery". The claimant confirmed in her evidence that this referred to the Occupational Health Assessor's comments in the written report about pollen.

202. When the claimant met with Maria Graham to discuss the report on 25 August 2016, she did not complain that Bushra Ramzan had called her a "cheeky beggar". In cross examination, however, the claimant said she had raised it but it was not recorded. When the claimant was taken to task about how she had responded to Ms Ramzan the claimant claimed both of them were just having banter (page 167). In evidence for the first time the claimant said that she did not say it was banter, she said the notes were inaccurate. When pressed by the Employment Judge to answer the questions being posed of her the claimant changed her evidence and accepted that she had said "it was banter".

203. Three months later the claimant claimed in the email to Karen Fishwick (176) that it was not banter and Ms Ramzan's report was done to "trigger and wind me up on behalf of a manager". That serious allegation was baseless but still the claimant

did not complain that she had been called “a cheeky beggar”. The respondent avers that is because it was not true. The claimant did not even refer to this allegation in her witness statement. Even if it were said, there is no evidence whatsoever to suggest that Bushra Ramzan’s interactions with the claimant were in any way coloured by the claimant raising concerns about Camilla Lewis three months earlier to Maria Graham. There is no evidence Bushra Ramzan even knew about it.

204. It is also notable that despite discussing adjustments with Bushra Ramzan the claimant did not mention any adjustments required for the disabilities that she now relies on. The alleged incident is between 15 and 16 months out of time.

Detriment 4 – Being singled out for breaking drawers in August 2016

205. There is ample evidence from the claimant's colleagues that she regularly slammed the filing cabinet drawers and aggressively tried to open them when they were in fact locked, causing damage to the drawer containing her files as can be seen on the photos (156J-L). Only the drawer containing the claimant's families was broken like that. The claimant in her evidence suggested that others, including the Duty Health Visitor, opened the drawer with her files as much as she did.

206. In spite of that Maria Graham did not actually confront the claimant about this. It is unclear but Becky Parker may have done. If she did it was entirely justified and wholly unrelated to the public interest disclosures made three months earlier to somebody else. There is no evidence Becky Parker was even aware of the disclosures. This incident is 15 months out of time.

Detriment 10 – Increased caseload January to February 2017

207. The claimant accepted the workload issues around this time were not because of any alleged protected disclosure. There were workload issues across the team in late 2016-2017. Maria Graham had left the team (because of the claimant) in December 2016 and two other Health Visitors ran Chorlton thereafter. Any suggestion that the workload situation in January/February 2017 was a product of Maria Graham targeting the claimant is therefore misconceived.

208. The claimant’s concerns raised in December 2016 were about the team’s workload not her own workload (181). There was no mention in that email by the claimant that she was struggling due to mental health issues. This allegation is 9-10 months out of time.

Protected disclosure 3 – 17 January 2017 (196B)

209. It is denied that the claimant’s email of 17 January 2017 constituted a protected disclosure:

(a) The claimant has adduced no evidence to suggest she reasonably believed it was a disclosure made in the public interest: it was about one discrete failure to document by one colleague in one case.

(b) The claimant did not have a reasonable belief it tended to show the health and safety of patients had been, was or was likely to be

endangered. The claimant claimed that nothing was written in the records despite the birth November 2016.

210. That could not be right as there was an EPDS score, and had the claimant looked at the electronic system where visits were recorded for performance purposes she would have seen there were visits to the family whether something was documented in the hard copy notes or not. The claimant's email in any event, and the concerns raised within it, were not brought to the attention of Teresa Solano-Olivares or the Chorlton team, according to their evidence. They were unaware of it.

Detriment 7 – Paula McAdam pushing the claimant into a wall (May 2017)

211. This is an allegation of a deliberate assault. It did not happen, and the claimant's account is fictitious. The claimant has given only the scantest of details about the incident. Her accounts have not been consistent:

(a) On 3 July 2017 she complained that Paula McAdam was guilty of "hitting me and pushing me into a wall purposely and swearing at me". The allegation that Paula McAdam hit the claimant is not part of her complaint to the Employment Tribunal. In the investigation that followed, the claimant said it was not an isolated incident and Paula McAdam "used to push me quite hard as a joke but for me it was a personal attack" (430). In evidence she said it was a regular occurrence throughout the time they worked together. When asked why she did not tell Paula McAdam to stop she said, "I would have done" but seemingly could not remember, which is not tenable. She did not raise it with Paula McAdam. The claimant was hardly somebody likely to stay quiet while being regularly "attacked".

(b) The claimant also said that Paula McAdam "pushed me into the wall, came charging through the door and purposely pushed me into the wall" (page 430). In the evidence to the Employment Tribunal the claimant said both she and Paula McAdam were coming through the door, which is not glass, at the same time. Dismissing any accident the claimant said she knew it was deliberate because Paula McAdam did not apologise. However, in the account set out at page 430 the claimant said that Paula McAdam said, "Oh, sorry" (430). The claimant quickly revised her account and said, "Paula McAdam did apologise but it was not genuine".

(c) On 20 September 2017 (478) the claimant gave a slightly different account, that "Paula McAdam hit me twice in the office and purposely banged into me causing me to fit the wall and hurt myself". That is very different to it being a regular occurrence. In correspondence for this claim the claimant revised her account again and gave a wholly preposterous account that Paula McAdam had "thrown" her into the wall

212. The claimant chose not to mention any of this in the witness statement she prepared for this Tribunal. Paula McAdam, who is about a foot shorter than the claimant, who is not slight, gave clear and consistent evidence that this alleged assault did not happen. The claimant said it was witnessed by Teresa Solano-Olivares and Helen Whelan and that they found it amusing. Both witnesses denied it. If the claimant had been hurt and the two witnesses had been looking on smiling it

is inconceivable that the claimant would not have raised that at the time, but the claimant made no complaint about this allegedly deliberate assault or of being the victim of regular pushing and being hit at the time. She waited over two months to complain about it on 3 July 2017 (372-4). The reason she gave in evidence for the lack of the contemporaneous complaint was that she was ground down to the ground and there was no point in mentioning it because no-one listens, but the claimant had of course been happy to raise a plethora of other issues.

213. Claire Jackson investigated the incident and concluded it did not happen. The claimant did not accept her finding was reached in good faith. It is similarly denied that Paula McAdam was glaring at the claimant or intimidating her. The claimant provided no details in support of such allegations and there was no contemporaneous complaint about them. The Tribunal is invited to reject the claimant's evidence and to conclude that this incident simply did not occur. Even if Paula McAdam had barged through a door knocking into the claimant, the claimant's case that she did so because of the alleged first three public interest disclosures is baseless. Public interest disclosures 1 and 2 were almost a year earlier, and Paula McAdam was not even aware of the detail of the claimant's concerns about Camilla Lewis. She was aware that the claimant had shouted at Camilla Lewis, as she observed it, and she thought the claimant had been inappropriate. She was unaware of public interest disclosure 3. This allegation is six months out of time.

Detriment 9 – Shouting and swearing at the claimant around May 2017

214. It is denied that Helen Whelan, Teresa Solana-Olivares and Paula McAdam shouted and swore at the claimant. The claimant's case is inconsistent and not credible.

215. In relation to Helen Whelan, the claimant alleged in her witness statement that she had wandered around the office telling patients to "fuck off and die". In evidence she claimed that was a mistake, in fact even on the claimant's account Helen Whelan only swore twice – once when she said, "I've not been sat on my arse all day" and once when she said "for fuck sake" when typing, according to the claimant (page 429). Neither constituted swearing at the claimant, which the claimant was reluctant to accept when cross examined, and Employment Judge Warren had to warn the claimant that if she did not answer the questions it could harm her credibility. In any event Helen Whelan denied saying "fuck off and die" but admitted saying that she had "not been sitting on her arse all day". She volunteered that during the investigation.

216. Ms Solan-Olivares accepted that she swore from time to time in the office, usually in Spanish but never at the claimant. In her evidence the claimant gave only one example of Ms Solano-Olivares swearing at her and that was when the claimant allegedly complained about people whispering about her after the Manchester bombing and Ms Solano-Olivares said she was "fucking sick of this". It is denied, but in any event plainly had nothing to do with any alleged public interest disclosure that the claimant relies upon.

217. Paula McAdam accepted that she swore at work but said she had never sworn at the claimant, and the claimant's case appeared to have been modified to now accept that. The claimant's allegation now appears to be that on a daily basis when putting the phone down on patients Ms McAdam would say, "fuck off and die".

That is not credible. When interviewed the claimant said that Paula McAdam had regularly said "fuck off and die" (page 430), not words she repeated at the Employment Tribunal. It was denied by Paula McAdam.

218. Claire Jackson investigated this by speaking to the Chorlton staff and she rejected the allegation. She was right to do so. Even if the claimant's account was accepted, Paula McAdam was not swearing at the claimant as she initially alleged. In evidence the claimant said she found it particularly offensive because it was being said when her father was dying in a hospice. This change in position was particularly problematic for the claimant's case. It would date the swearing to before April 2016 and thus before her first public interest disclosure. That would not be possible anyway as Paula McAdam did not start work at Chorlton until after April 2016. It is inconsistent with the claimant's pleaded case that this happened in May 2017 and the suggestion of daily offences and upsetting comments is inconsistent with the uncontested evidence in the summer of 2016 that the claimant called Paula McAdam from a holiday having parked her car on Paula McAdam's drive and had a lift to the airport, asking to borrow Paula McAdam's credit car to hire a car whilst on holiday. Indeed when the claimant was on the phone to her mother in September 2016 she passed the phone to Paula McAdam to speak to her for a chat.

219. When the claimant lodged a written complaint to Karen Fishwick (176) she inexplicably did not mention this offensive and unprofessional swearing by Ms McAdam. She was unable to explain why and claimed to have raised it orally with Michelle Kenyon, but in her interview with Clare Jackson she denied it, and there is no corroborative evidence to support that the claimant did so raise it. The claimant's pleaded case had been that this happened in May 2017. Even if it did take place and in some way was directed at the claimant, there is no evidence whatsoever to link it to any public interest disclosures about Camilla Lewis which occurred nearly a year earlier, or to the email in January 2017 about Teresa Solano-Olivares which none of the individuals alleged to have been swearing were in fact aware of. On the claimant's revised account, Paula McAdam's swearing was before she had even made a public interest disclosure while her father was in a hospice. This allegation is six months out of time.

Detriments 5-6 – The decision to investigate the claimant's behaviour and to move her (June 2017)

220. As a result of the claimant's ongoing inappropriate behaviour at work, which included her being aggressive, intimidating, unapproachable and defensive, formal complaints were lodged about her. On 24 May 2017 Teresa Solano-Olivares lodged a grievance about the claimant (255-257) referring to this behaviour. She followed it up with a formal bullying and harassment grievance form on 8 June 2017 (344-6).

221. On 26 May 2017 there was an incident in which the claimant appeared to gloat about frightening a school teacher, mother and parent in one go, "killing two birds with one stone". Helen Whelan lodged a complaint about the claimant (258-9, 260-1). The documents show concerns about the claimant's behaviour. There is no suggestion to support the claimant's case that the complaints were lodged because the claimant had raised three discrete concerns to Maria Graham a year earlier about Camilla Lewis or because the claimant had raised an issue about Teresa

Solano-Olivares' notetaking in January 2017, something that Teresa Solano-Olivares and Helen Whelan were unaware of.

222. It was right that there was a perception that the claimant had caused Camilla Lewis to leave the team. That was not because of any protected disclosure but rather because of her inappropriate behaviour towards Ms Lewis. In any event the key issue here is whether the decision to carry out an investigation was because of a protected disclosure: it obviously was not. Having received two serious complaints about the claimant's conduct and behaviour Becky Parker informed the claimant that allegations had been made about her under the Trust's Dignity at Work policy and they needed to be investigated (page 350). The reason for the investigation was that complaints had been made about the claimant, not that the claimant had made alleged public interest disclosures a year earlier. The same was true of the decision to move the claimant while the investigation was carried out. This was normal and indeed a sensible step to take. It would not even matter if the public interest disclosures had operated on the minds of colleagues who made the colleagues. The Employment Tribunal must examine the mind of the decision maker (per **Jhuti**). Even the claimant accepted that the reason for the investigation was that complaints had been made about her.

223. It is notable that Claire Jackson carried out a thorough and detailed investigation into the claimant's complaints, carrying out around 30 interviews. There was a wealth of evidence in support of the claimant's inappropriate behaviour from a variety of sources. Even the claimant's friend, Bushra Khawaja commented that she could be outspoken and direct. She appeared to have upset Teresa Solano-Olivares and in response to a question about whether the claimant had made comments that could be seen as racist she said that she made others feel uncomfortable with comments about "Polish people coming over here getting all the jobs and using our services" (page 411). The allegation is five months out of time.

Detriment 9 – Louise Barrett not doing a risk assessment (June 2017 to January 2018)

224. The claimant moved to Burnage on 14 June 2017 and was initially happy there until concerns were raised about her conduct and her behaviour and attitude by Louise Barrett. Prior to that time the claimant thought the management was better than at Chorlton (334) and on 22 September described Louise Barrett as "a great team lead" (432). The claimant now however alleges that Louise Barrett subjected her to a whistleblowing detriment by not conducting a risk assessment, seemingly because she had raised three specific issues about a colleague from a different team over a year prior. The contention lacks merit. The claimant accepted eventually in cross examination that she did not ask for a risk assessment to be carried out and she did not suggest one was necessary. Further, a risk assessment had only recently been done on 24 May 2017 (885). Although that was in a different team at Chorlton, as it clear, the claimant's fresh start at Burnage appeared to have been going well and the claimant was initially content. Even if one ought to have been done, which is denied by the respondent, it had nothing to do with the claimant raising concerns about Camilla Lewis over a year earlier. When asked why the claimant made such a link her answer was "because Louise Barrett's manager was my old Head of Service and was aware of why I was moved there".

Public disclosure 4 – Email/letter to the Chief Executive in June 2017

225. There was no evidence of an email/letter to the Chief Executive in June 2017. The claimant disclosed late during the course of the hearing a letter addressed to Jill Heaton dated 11 July 2017. It complains about her alleged treatment whilst at Chorlton but does not include complaints about the matters the claimant suggests it does in the agreed List of Issues, for example there is no mention of Camilla Lewis or the specific concerns the claimant raised about her, and there is no reference to comments allegedly made by Paula McAdam, e.g. "fuck off and die" and "I don't do weeping willows". There is also no reference made to the comment allegedly made by Helen Whelan ("nutcases"). It is not a disclosure which in the claimant's reasonable belief was in the public interest – it is a *Parkins v Sodexho* type complaint.

226. It has not been suggested by the claimant that any of the witnesses alleged to have subjected her to detriments were aware of the letter and nor is there any evidence the letter featured in the reasons for the claimant's treatment.

Public disclosure 7 – Alleged daily complaint about making fun of the claimant's Polish name (July 2017 to Jan/Feb 2018)

227. This is simply false, a gross misrepresentation of the truth.

Detriment 13 – Away day September 2017

228. This allegation is a nonsense and the claimant's characterisation of it provides a window into her world of misrepresentation and fact twisting. The idea that Louise Barrett deliberately organised an Away Day at Chorlton as retribution for the claimant having raised a concern about two colleagues from a different team 15-16 months earlier is risible, even if what she said about the Away Days were true, which it is not.

229. Louise Barrett explained that there was a lack of other suitable facilities and there is no evidence whatsoever to back up the claimant's contention in evidence that there were other suitable and available venues that could have been chosen. She did not cross examine Louise Barrett on that and did not raise it at the time. The claimant initially said she did not want to go (934) but it was explained to the claimant it would not take place in the Health Visitors Room but the Homeless Family Room and it was the only room available. She was told, as she accepted in her evidence, that she could be walked into the building with somebody, and she could access through a different entrance. The claimant said she would be ok attending (933) and did so, even though she had a choice whether to attend or not.

Detriments 11-12 – Informal counselling meeting on 5 October 2017 (497)

230. Louise Barrett confirmed that in early October 2017, having received a complaint about the claimant from Gill Bowser, she then received four further complaints within the space of a week, all from different sources. That was very unusual. She took advice from HR about how to deal with it and it was agreed she would meet the claimant under the Trust's performance management policy for an informal counselling meeting.

231. Louise Barrett met the claimant on 5 October 2017 and put the issues to her. Contrary to the claimant's initial position at the Employment Tribunal (105 of the witness statement bundle) detail was provided as is clear from 497-499. The claimant responded to the various allegations but was defensive and challenging in her behaviour. She sought to deflect criticism by raising complaints about others, and she did not think four complaints in a week was excessive or a cause for concern. The claimant in her evidence accepted some of the allegations were discussed and said she did not remember whether others had been or not.

232. It was perfectly reasonable for Louise Barrett to deal with this matter informally and to remind the claimant of the expected attitude and behaviours. She accepted herself that the complaints were not too serious but felt due to the combination that it was important to prevent escalation. She also (contrary to what the claimant says) did acknowledge positive feedback (page 499).

233. After the meeting the claimant was sent page 496 which was a perfectly reasonable proportionate response in the circumstances. The claimant could have involved the formal procedure but did not. The claimant was told that the purpose of the meeting was to identify areas of improvement and ways in which she could be supported, and an action plan was discussed for that purpose. The claimant was told that if her performance and/or conduct was not brought up to the required standard or could not be maintained "this may result in progression to the formal procedure" (page 496). The claimant was not told, as she alleges, that she would be subject to a disciplinary process if she received further complaints.

234. The suggestion that Louise Barrett did this not because of the fact she had received four complaints in a week about the claimant but rather because of some alleged public interest disclosures the claimant had made in a different team about different people 15 months prior is laughable and without any evidential basis.

235. In cross examination the claimant gave a different reason for Louise Barrett's actions, namely that the claimant had made a complaint about Gill Bowser.

236. The action plan meeting took place on 5 October 2017. The plan was to last three months. The claimant was asked to ensure her caseload was up to date "next week" to reflect her caseload (497). The letter took some time to get out and it is accepted it landed the week before the claimant was due to go away. Louise Barrett had not clocked that fact – the holiday was not mentioned in the meeting on 5 October 2017, and that plainly was not something that was in retaliation for alleged public interest disclosure 15 months earlier.

237. What is clear is that this was a turning point in the claimant's time in Burnage. She reacted badly to criticism and went on the offensive, four days later remarkably accusing the manager she had only a few weeks regarded as a "great team leader" of bullying and harassment, simply because of the informal counselling meeting. This illustrates the extreme difficulty the respondent has had in managing the claimant.

238. It is in this context that the following alleged protected disclosures need to be seen. The respondent avers they were not the produce of a reasonable belief in public interest health and safety issues or a failure to comply with legal obligations

but part of her bad reaction to complaints being brought to her attention, her approach being that attack is the best form of defence.

239. The claimant appears to suggest that she was tired of the way Sue Thompson spoke to her and this situation was comparable. She was asked if she had spoken to Sue Thompson about the way her tone made the claimant feel, because she believed that Sue would be open to that feedback and would respond before it went further. The claimant said she would try to do that in the future but found it hard to challenge people (which seemed unlikely). Ms Barrett made the reasonable point that she could not act as a go-between for members of staff on all occasions but if the claimant was unable to, she only needed to ask Ms Barrett to mediate and she would. The claimant said she completely agreed.

240. Gill Bowser, however, in October (who was not one of the four initial complainants) had already told Louise Barrett that she was unable to speak to the claimant alone.

Public interest disclosure 5 – The rum cake (December 2017)

241. This was not a public interest disclosure because the claimant did not have a reasonable belief that consuming a small piece of rum cake would probably go to endanger anyone's health and safety nor that in fact it did. It is notable that she made no enquiries to find out how much rum had gone into the cake nor whether any alcohol had likely evaporated in the baking process. The claimant did not further have a reasonable belief such disclosure about a limited number of the claimant's colleagues on one occasion was in the public interest.

Public interest disclosure 6 – Rachel Thomas' Dublin trip

242. This is not a public interest disclosure because the claimant had no reasonable belief that she was disclosing information that tended to show health and safety was probably endangered (the claimant did not suggest otherwise when cross examined); and that it was a legal obligation that was likely to be breached. It is for the claimant to identify the legal obligation she had in mind and she has adduced no evidence of that. Further, she made no effort to check whether Ms Thomas had sought permission for the trip, which in fact she had. Any belief she did have, therefore, was not a reasonable one. This was not in the public interest. In fact this was an issue about one colleague taking a holiday whilst on sick leave, with permission.

Public interest disclosure 8 – Poor standards of team recording (December 2017 to January 2018)

243. It is accepted that the claimant did raise concerns about recordkeeping to Louise Barrett in this period. She was not alone in doing so. A new electronic system (EMIS) was being introduced, and a lot of issues came to light. It is not accepted that the information raised by the claimant constituted a public interest disclosure. The claimant has provided wholly inadequate details of the particular deficiencies in recordkeeping that she asserts constituted public interest disclosures. It is plainly not the case that every recordkeeping defect tends to show health and safety endangerment or a breach of a legal obligation. The claimant has not identified the legal obligation upon which she relies, and she has failed to identify the

emails upon which she relies. Louise Barrett confirmed that the issues the claimant raised were relatively minor, concerning such things as missing signatures or missing NHS numbers, and the claimant confirmed that was the nature of the issues she raised (page 108). That does not meet the test for a public interest disclosure.

Detriment 14 – Decision to "discipline" (February 2018)

244. There was no decision to discipline the claimant. Claire Jackson's detailed investigation report was completed on 24 January 2018 (532-583) and was sent to Tracey Forster.

245. The Jackson report recommended, based on the wealth of evidence gathered, that the two allegations against the claimant set out at pages 532-533 proceed to disciplinary hearing. Tracey Forster considered the report and the recommendations and decided it was right to act upon them. She therefore informed the claimant that she was going to make arrangements to convene a disciplinary hearing but reminded the claimant of her right under the Dignity at Work policy to appeal the findings, which the claimant went on to do.

246. Tracey Forster's decision was based on the fact that Claire Jackson had uncovered significant evidence in support of allegations that the claimant had behaved in an inappropriate way and failed to comply with the standards and expectations professional behaviour required. This was not a decision made because the claimant had made one or more public interest disclosures. It is not even clear what public interest disclosure the claimant relies upon as being connected to this decision.

247. The claimant in cross examination accepted that she did not think Ms Forster had made this decision because of any public interest disclosure – she did not know the full story.

Public interest disclosure 9 – 5 February 2019 meeting at Cheetham

248. The claimant relies on two alleged public disclosures:

(1) Concerns raised about the behaviour of others towards her – the claimant avers she disclosed that others were not speaking to her, ostracising her, and she was feeling uncomfortable about coming into work. The factual account of what was said at the meeting is denied. The claimant did not raise all of these issues. In response to a suggestion by Helen Yarwood that the office dynamics felt strained the claimant agreed and said no-one said "hello" to her. She was asked by Lucy Buckley whether she said "hello" to others, and she confirmed she did not. The claimant did not complain about being ostracised more generally. This was clearly not a public interest disclosure. Her complaint about the way she was being treated is of the *Parkins v Sodexho* type. There was no reasonable belief in the public interest element and the claimant has not identified the legal obligation she considers may not have been complied with. In evidence she said she could not remember even saying at the preliminary hearing that she thought this was a breach of a legal obligation.

(2) A failure to hand over patients when a staff member is sick – the claimant simply did not raise this at all during the meeting on 5 February 2019. All of the respondent's witnesses present at the meeting confirmed it was not said. It is not mentioned in Peter Marsh's statement. The claimant's written evidence does not refer to it and in oral evidence the claimant could not remember saying it in the meeting either, merely saying that it had been mentioned at some point. There is no reference to her raising it in any documents.

Detriment 15 – The 5 February meeting.

249. It is plain even on the claimant's account and that of her witness, Peter Marsh, that when Donna Hill told the claimant she needed to leave or leave the team that was in response to the claimant saying, "that corner is like a playground" and then telling her, in front of all her colleagues, that she was "a or the main trouble causer, was dangerous and spoke to the team assistants like shit". The claimant did not deny she said these things to Donna Hill and that Donna Hill's response was to say that the claimant needed to leave.

250. In evidence the claimant accepted that Donna Hill's behaviour was because "I raised concerns about playground behaviour". Peter Marsh said the room exploded when the claimant made her playground comment. He did not suggest public disclosure 9 was made in this meeting.

251. Even if public disclosure 9 is found to be protected, it was plainly not the reason Donna Hill acted the way she did. It was the wholly inappropriate way she was spoken to by the claimant during a team meeting.

252. The witnesses go further and say that the claimant spoke to Donna Hill in an aggressive accusatory manner with a raised voice while pointing at her. Tracey Williams described it as "awful, uncomfortable, unprofessional and nasty". The claimant's response, when put to her in her evidence, was that what she said needed to be said. The evidence also suggested that Donna Hill, who had arrived late to the meeting, was very upset and was not aggressive towards the claimant.

Detriment 16 – Alleged malicious complaints

253. In her evidence the claimant clarified that the malicious complaints she was referring to were the ones lodged by her colleagues about the meeting on 5 February 2019 and also one lodged by Jennifer Rowlands six months later in August 2019.

254. The complaints about the claimant's behaviour at the meeting on 5 February 2019 were lodged because her behaviour had been inappropriate, upsetting and nasty. She upset a number of colleagues and they were entitled to lodge complaints about it. It is clear from the complaints lodged that it was the claimant's conduct and behaviour that had led to the complaints rather than any alleged public interest disclosure. There was no evidence to suggest otherwise.

255. The claimant did not put it to either Donna Hill or Tracey Williams in cross examination that the complaints they lodged following the 5 February 2019 meeting were malicious or motivated by protected disclosures. Jennifer Rowlands' August complaint (2670A) was lodged because she perceived the claimant was targeting

her by allocating an excessive number of tasks to her, doing so in an appropriate way and then criticising her for responding to the claimant in a similar way. Ms Rowlands gave evidence explaining her reasoning and it plainly had nothing to do with any alleged public interest disclosure made six months earlier, if it was made on 5 February 2019.

Sexual Orientation Harassment

256. The respondent accused the claimant of making a vexatious claim in this regard.

Allegation 1: Helen Whelan saying "how do women do that to one another (November 2016)

257. This allegation was made with a glaring lack of detail. The claimant is a vociferous complainer but there was no reference to this very distressing and shaming comment (page 47), either at the time it happened. The claimant was unable to provide a date but in cross examination suggested it was around November 2016. It was not mentioned in the claimant's email on 30 November 2016 to Karen Fishwick about bullying. It was not mentioned in the claimant's bullying and harassment grievance or when she was interviewed by Claire Jackson. It was eventually mentioned on 26 July 2017 (after complaints had been made about her and she had been moved), but she did not mention this particular incident. The claimant was unable to explain why she had not raised it. At first the claimant suggested she did not want people to know she was in a same sex relationship, but she then accepted in cross examination in fact that she had been quite open about that previously. The allegation is mentioned briefly in the claimant's further and better particulars of claim (page 47) but the claimant did not mention it in her witness statement for the Tribunal.

258. In cross examination the claimant alleged that she was deeply upset by this comment, made in a busy café while sitting at a table with Helen Whelan and others, when there were parents and colleagues present. She has not identified any witnesses to the comment prior to giving her evidence in Tribunal. She was unable to say why she said in her 22 February 2018 appeal that she heard a conversation in which Helen Whelan said this, when her account was that it was said to her and others at the table. She was unable to provide any context at all, what the conversation was about before this was said, but she maintained that Helen Whelan was talking about lesbians having sex in disgust and Helen Whelan saying it deliberately to upset the claimant.

259. When Helen Whelan gave her evidence, the claimant did not ask a single question about the incident. She simply did not put it to her. If she was genuinely so distraught and upset, she would have asked Helen Whelan about it. Helen Whelan denied making such a comment and told the Tribunal that the claimant had chosen to tell her she was bisexual before even telling her mother, and that Helen Whelan was entirely supportive of it. That was also unchallenged.

260. The respondent's case is that the claimant is fabricating this evidence to build a case and the Employment Tribunal is invited to make a robust finding to that effect.

261. The allegation is 12 months out of time.

Allegation 2 – Daily negative comments about the claimant's facial appearance and clothing up to June 2017

262. The respondent alleges this is completely untrue. It is not credible that Helen Whelan would have made upsetting personal comments about the claimant's facial appearance and clothing on a daily, or regular (as the claimant said in evidence) basis, through to June 2017. It is even more incredible that the claimant would not have said something about it at the time because she complained to Karen Fishwick on 30 November in her bullying and harassment grievance, or when interviewed by Claire Jackson.

263. In evidence the claimant alleged it had been going on since before her dad was unwell i.e. pre April 2016. However, the first time the claimant made reference to anything resembling this allegation was in an email dated 26 July 2017 (page 433), 15 months after her father's death. In it she said, "I do feel I was targeted because of my sexual orientation and how I look as Helen often made reference to this". She gave no detail, no particulars and no suggestion that the comments related directly to her sexual orientation.

264. When the claimant appealed the Jackson grievance findings on 22 February 2018 she gave a different account, "Helen Whelan was often whispering in the next room about how the claimant looked and about her characteristics as a gay person". This is a completely different allegation to the one she made to the Tribunal – that Helen Whelan would comment directly to her about how bad she looked. She has never explained what whispering about her characteristics as a gay person is supposed to mean. The claimant did not include this allegation in the witness statement she prepared for the Tribunal.

265. In her evidence the allegation morphed. The claimant said not that Helen Whelan was making comments about her facial appearance and what she was wearing, but rather would say "you look rough". The claimant was unable to explain what that had to do with her sexual orientation. This is a serious and fabricated allegation. The Tribunal is invited to make clear findings to that effect. The allegation is also five months out of time.

Allegation 3 – The "naked" Idris Elba photo (May/June 2017)

266. The respondent described this as a scandalous and fabricated allegation made with scant detail and with no detail whatsoever about it in her witness statement.

267. In evidence the claimant said she was very upset and disgusted by being shown a completely naked picture of Idris Elba in the office. She has disclosed a picture which she claims was similar to that which was shown by Teresa Solano-Olivares and Lesley Bateman, in her supplemental bundle. That is undoubtedly hardcore pornography.

268. It is notable the claimant did not complain about the incident when she complained about her treatment in the team in July 2017 and when she was interviewed by Claire Jackson.

269. The claimant's explanation in cross examination was "I have difficulty remembering things especially under duress". She was interviewed at length by Claire Jackson and she raised many other things so that it not plausible.

270. Teresa Solano-Olivares is extremely upset and aggrieved by the allegation. She said it did not and would never have happened. Rather, when talking about who might be the next James Bond Idris Elba was mentioned, the claimant did not know who he was and was shown a picture of a clothed Idris Elba and said in response, "Urgh, he's black". It is therefore quite incredible that when cross examining Teresa Solano-Olivares the claimant put this question to her, "Do you think showing me a virtually naked picture was acting professionally towards me?". The photograph she had adduced in her supplemental bundle was far from a virtually naked Idris Elba.

271. The Employment Tribunal is invited to make a clear finding this did not happen. The claimant cannot possibly be mistaken about what she as shown: in the middle of a working day, hardcore pornography of the type she has included in her supplemental bundle. She has lied about it. Further, she has gone to the trouble of searching for similar naked pictures of Idris Elba on the internet to include in the bundle, when plainly a description would have done. Hardly the conduct of someone genuinely distressed and upset by sight of such a photo. Even if it were true, this is not less favourable treatment because of sexual orientation and the allegation is at least five months out of time.

<u>Racial Harassment</u>

272. The claimant's claim is that from the time she started in Burnage in July 2-017 Ruth Aves, Sue Thompson and Beverley Coleman made fun of her Polish name, referring to her as "Keesha, Krishna, whatever your name is". She repeated the phrase like a mantra through her cross examination. She claimed Beverley Coleman did this everyday and they found it funny and were giggling about upsetting the claimant.

273. The respondent's case is that what she says is untrue. The claim is pleaded on the basis that the harassment was because she was Polish or perceived to be Polish because of her name. The claimant told Employment Judge Slater in a preliminary hearing that she had just found out she was partially Polish. In the full hearing the claimant said that her mother was part Irish and she did not know the rest of her mother's heritage as she was adopted, so the position was therefore that she might be Polish.

274. There was no perception that the claimant had a Polish name by the respondent. She had an unusual name, but no-one had any awareness that it was or might be Polish or even non English. The claimant did not ever tell anyone her name was Polish. Secondly, nobody made fun of her name, as she now alleges. Beverley Coleman accepts that she got the claimant's name wrong on a number of occasions, as she in fact gets many names wrong of people and nouns. There was a light-hearted conversation about it in which the claimant said, "I'm not some Indian God". It was a genuine mistake. The claimant sent Beverley Coleman a "friend" request on Facebook after this alleged harassment.

275. When the claimant penned her chronology of events in November 2017 she said Ruth Aves and Sue Thompson got her name wrong, but she did not mention

Beverley Coleman at all. She had no explanation for this in cross examination other than “perhaps I was protecting her, I have no idea”.

276. In cross examination the claimant did not suggest to Beverley Coleman that she was being untruthful in her evidence. She did not put to her that she had persistently said “Keesha, Krishna, whatever your name is”, or that her mistake was anything to do with a perception of her being foreign. Ruth Aves got the claimant's name wrong once in an email, that was the extent of it. The claimant did raise Beverley Coleman’s failure to get her name right once or twice in conversation, but it was not a regular complaint and there was no suggestion it was connected to the claimant being Polish, foreign or having a non English name, if indeed that is right.

277. The claimant's case is inconsistent with other evidence. She confirmed she was happy in the Burnage team on 24 July 2017 and she expressed the view that the team was lovely on 22 September 2017. The claimant had a good relationship with Beverley Coleman, as she accepted, who remains astonished by the allegations. In evidence the claimant changed her case and instead of running an argument that she was treated less favourably, not because she was perceived to be Polish but rather she was perceived to be foreign. Beverley Coleman was brought up in the Caribbean and it seems particularly unlikely she would discriminate against the claimant because she was perceived not to be British. Beverley Coleman and the respondent’s other witnesses were not cross examined by the claimant on the basis that she was being discriminated against because was perceived to be foreign.

278. The claimant has twisted an innocuous sporadic example of a colleague accidentally getting her unusual name wrong into a malicious campaign of discrimination visited upon her by three different people.

Disability Discrimination

279. The claimant was at the material time, the respondent has accepted, disabled by reason of anxiety and depression. The respondent does not admit the claimant was also disabled by reason of PTSD. The claimant did, in response to an email about Helen Whelan about her annual leave, tell Ms Whelan that she was having therapy for PTSD. She told Louise Barrett something along the same lines on 15 June 2017. She told Louise Barrett that it was under control. She did not mention hypersensitivity as a symptom, whether controlled or otherwise. An Occupational Health report from 4 May 2017 a few weeks earlier merely referred to work related stress, not PTSD, anxiety or depression. In July 2017 the claimant said that she did tell Louise Barrett that she was struggling due to PTSD. Louise Barrett denies that in her evidence. Louise Barrett was clear that the claimant did not seek to relate the difficulties she was having to any mental health issues.

280. The claimant referred to an email on 7 November 2017 as an example of her raising noise as an issue. It is notable that not only was the email from November, not July, but the claimant did not mention PTSD or mental health generally. She has not been able to provide evidence of any other email which did make a link.

281. The first mention of PTSD in the claimant's GP records is in March 2018 when it records, “She thinks she has PTSD, asking for a referral to EDMR” (page 2666). This was two days after she had contacted ACAS about bringing a Tribunal claim. The GP has not confirmed the diagnosis.

282. In January 2017 the claimant's GP records show that she was referred back for counselling because of bereavement issues and anxiety, not because of PTSD. The claimant accepted in her evidence that she had never seen a psychiatrist of a clinical psychologist.

283. The height of the claimant's case is that her counsellor, Norma James, has reported that she suffered with PTSD type symptoms, panic and flashbacks in addition to symptoms of depressed mood, heightened anxiety and panic. PTSD type symptoms is not a diagnosis of PTSD and in any event a counsellor is appropriately qualified to make a diagnosis of such a psychiatric condition. It is further noted that Ms James does not refer to hypervigilance of a tendency to notice everything.

284. The Occupational Health reports received by the respondent did not confirm that the claimant had PTSD and did not express the view that she was disabled. Geoff Cullen, who is a counsellor/psychotherapist and EMDR accredited therapist, is not a clinical psychologist or a psychiatrist and not qualified to make PTSD diagnosis. His one page report (1005) confirms the claimant was suffering with a considerable level of trauma when he saw her on 27 August 2018.

285. There is a letter from the Sorrel Group Practice dated 14 September 2018 at page 1050 which is not signed by any individual and purports to confirm that the claimant suffers (as at that date) with anxiety, depression and PTSD. That however is not backed up by the claimant's GP records so it seems there has been no formal diagnosis by a medical practitioner.

286. The respondent does not accept the claimant was disabled by PTSD at any relevant time.

Knowledge of Disability

287. The respondent accepts it had knowledge, actual or constructive, that the claimant was disabled by reason of anxiety and depression, from 18 April 2021 when the respondent received the Access to Work report (page 900) requested by Tracey Forster. The claimant was off work from 6 February 2017 to around 22 March 2017 with work-related stress (not anxiety or depression). She returned to work and was declared fit for work. There was no reason for the respondent to believe the claimant was disabled by anxiety or depression, and even if she was that it was likely to be long-term. There was no mention of PTSD. She did not mention anxiety or depression in her meeting to discuss the stress questionnaire on 24 May 2017.

288. The claimant's email on 25 May 2017 related to the heading "Annual leave next week". It was not read by her colleagues because the "Annual leave next week" issue was of no concern to them. She did tell Louise Barrett she was receiving therapy for PTSD and suffered with panic and anxiety in June 2017. She did not suggest her day-to-day activities were impacted, and despite Louise Barrett's invitation to raise any problems she was having thereafter, she failed to do so.

289. Louise Barrett was very clear in her evidence that the claimant had never made any link between PTSD and noise, workload or indeed any other issues.

290. The respondent then deals with the application of the law to the facts. In chronological order rather than the order in which they appeared in the agreed List of Issues.

Allegation 3 – Miss Solano-Olivares, Helen Whelan and Paul McAdam ostracising the claimant daily from May 2016 to June 2017

291. The respondent's evidence is to be preferred because it is consistent, corroborated by other witnesses and in contrast to the claimant's very unsatisfactory account. The claimant's account is not consistent with agreed evidence.

292. In July 2016 the claimant invited Paula McAdam back to her house to look at her new kitten. In August 2016 the claimant parked at Paula McAdam's house, left her car there, and Paula McAdam gave her a lift to the airport. When on holiday the claimant phoned Paula McAdam to ask if she could use her credit card to hire a car. The claimant accepts that all of this happened, and this was all during the time when the claimant alleges that Paula McAdam was ostracising her. They were also, to a degree, tactile in that period, the claimant admitted to putting her scarf around Paul McAdam's neck in a friendly manner.

293. Helen Whelan had previously supervised the claimant in 2012 and again when they started working together in March 2015 and they had a good relationship.

294. Teresa Solano-Olivares was wary of the claimant for a variety of reasons and kept her distance but always remained profession, as she explained. She would, avoid, avoid small talk and found the claimant difficult to deal with because of her aggressive and challenging behaviour.

295. A fundamental flaw to the claimant's case is that during that period none of the three ladies were aware that the claimant suffered from any disability, whether anxiety, depression, PTSD or otherwise. That is not in dispute. They cannot have and did not therefore discriminate against her or harass her because of it. Even if the claimant was ostracised, which is denied, she was not ostracised because of her disability, or for that matter because of any alleged hypervigilance and an ability to notice things. Her colleagues treated her cautiously because of her aggressive, difficult and challenging behaviour. This allegation is at least five months out of time.

Allegation 8 – Paula McAdam's comment "I don't do weeping willows" daily (up to June 2017)

296. It is not denied that Paula McAdam said, "I don't do weeping willows". She accepts that she used the phrase "weeping willows" to describe some of the clients that she had and that her colleagues had to deal with. She did not mean it offensively and in fact regularly sees and takes pride in helping mothers who are having difficulty breastfeeding. It was not directed towards to the claimant. It is denied that the claimant was crying a lot, or if she was that Paula McAdam was aware of it. The claimant never complained about Paula McAdam using that phrase, and Paula McAdam was unaware that the claimant had any form of disability. She certainly did not say it because the claimant was crying a lot. The allegation is at least five months out of time.

Allegation 2 – Maria Graham misleading the claimant about a complaint (August 2016)

297. This is the same point as detriment 1 in the whistleblowing complaint and it is denied, it did not happen.

298. In August 2016 Maria Graham was unaware of any mental health difficulties suffered by the claimant and cannot have discriminated against her on that basis. In any event, even on the claimant's case, it had nothing to do with her mental health or any alleged hypervigilance. The incident is 15 months out of time. Maria Graham left the team in December 2016 and could not possibly be involved in any detriments thereafter.

Allegation 7 – Helen Whelan referring to the claimant as a "nutcase" (November 2016)

299. This did not happen, and the claimant has provided no detail or context around the allegation. It is not mentioned in the statement she prepared for the Tribunal and it is not mentioned in the complaint she lodged on 16 November 2016 or in the email on 30 November 2016. It was denied by Helen Whelan. The claimant said she did not know when it had happened and then changed her case and claimed what Helen Whelan in fact said was "we get all the nutcases at Chorlton". That is a very different allegation from calling the claimant a nutcase, and the claimant accepted she made no complaint about it at the time.

300. In any event, at the time the allegation was made Helen Whelan did not know the claimant had suffered with anxiety and depression. The allegation is 12 months out of time.

Allegation 4 – Paul McAdam pushing the claimant into a wall in May 2017

301. This is the same as detriment 7 above. The claimant cannot decide whether this was done because of an alleged whistleblowing or because of alleged disability discrimination. The reason is that both allegations are entirely spurious. The incident did not occur. In any event Paula McCann was unaware the claimant suffered with a disability so cannot have treated her less favourably or harassed her because of it. This allegation is five months out of time.

Allegations 5 and 6 – Targeted, bullied and moved and subjected the claimant to an investigatory procedure (May 2017)

302. This appears to be detriments 5 and 6 in the public interest disclosure claim above, and for the same reasons it is denied. The claimant's allegations of bullying and being targeted are vague and unparticularised. Although Maria Graham is named in this allegation, she had left the team in December 2016. All others were unaware of the claimant's alleged disability.

303. The claimant avers that the "something arising" is behaviour. It is unparticularised. It is intended to mean the behaviour that led to complaints about her, but that is denied. Nowhere in the medical evidence adduced does it suggest that the claimant's anxiety, depression or PTSD symptoms caused her to be aggressive and challenging towards colleagues, to slam drawers, telephones, files;

to gloat about putting the fear of God into mothers. This is an example of the claimant seeking to use her anxiety and depression diagnosis as an excuse for poor behaviour. The allegation is five months out of time.

Allegation 1 – Moving the claimant from Chorlton to Burnage in June 2017

304. There had been a number of allegations and cross allegations at Chorlton which had led the claimant's line manager, Maria Graham, to request a move out of the team. This led to formal complaints about the claimant from Teresa Solano-Olivares and Helen Whelan, and a decision was made to move the claimant out of the Chorlton team whilst the Dignity at Work investigation was ongoing. Tracey Forster confirmed that this was a usual step in such circumstances and the claimant was moved because it was acknowledged that it would be difficult for her to remain working in the team with individuals who had made the allegations against her, and at the time the claimant raised no concerns about the move the Burnage. The decision to move the claimant was not because she suffered from anxiety or depression or PTSD symptoms.

305. Specifically, in relation to the section 15 “something arising” claim, the respondent denies that hypervigilance (which the claimant defines as the claimant noticed everything and led to staff in the team wanting her out) was something arising in consequence of her PTSD, if she did suffer from PTSD. The reason the claimant moved to Burnage was to allow an investigation to be conducted. It is denied that hypervigilance or the claimant noticing everything is what led to the complaints against her.

306. It is clear from the complaints and evidence of Teresa Solano-Olivares and Helen Whelan that it was the claimant's poor and aggressive attitude and behaviour that upset her colleagues, and this predated any diagnosis of anxiety and depression, and indeed predated her father’s death. The claimant’s attempt to later use a diagnosis of anxiety and depression to explain away her longstanding inappropriate behaviour is unfortunate and should be rejected. This allegation is five months out of time.

Allegation 9 – Informing the claimant she would be subject to a disciplinary procedure if there were more complaints (October 2017)

307. The claimant mischaracterises what in fact happened, as described above for detriments 11-12. It is not accepted that the claimant had PTSD and that hypervigilance was something in consequence of it, and if it was that Louise Barrett acted in the way she did because of it. She acted as she did because she had received a number of complaints in a week from different people about the claimant's conduct, none of which had anything to do with alleged hypervigilance.

(a) A complaint from a mother (via a Health Visitor) about how the claimant had spoken to her – The claimant said the mother was rude to her.

(b) A complaint from a Health Visitor that the claimant had responded in a negative way when she had tried to hand over a piece of work – The claimant said she had a lot to do and could not listen at the moment.

(c) A complaint from an Outreach worker that the claimant was rude to a mother and had left her confused – The claimant complained it was the Outreach worker that was rude, not her.

(d) A complaint from a mother that the claimant had not gone through a questionnaire with her and had said, "your child is fine, I have what I need".

(e) The claimant had fallen out with Gill Bowser who felt unable to speak to the claimant alone.

308. If (which is denied) the claimant was treated unfavourably because of something arising from disability, such treatment was justified. Louise Barrett raised these issues with the claimant informally at an informal counselling meeting. She sought to put in place an action plan to stop matters escalating. The respondent had a right to manage performance issues, and this was a proportionate way of dealing with the matters which had been brought to the manager's attention. This allegation is a month out of time.

Allegation 10 – The claimant was told she would be subject to the capability process if she had any more time off (November 2018)

309. When the claimant had an abscess with vomiting in November 2018 she had exceeded the triggers under the respondent's absence management procedure (she had had 102 days' absence in the previous 12 months. As such her absence was reviewed at an informal meeting under the Managing Sickness Absence policy. Following the meeting she was sent a perfectly normal and reasonable letter recording her absence, the review and reminding her that an improvement in her attendance was required. Any subsequent episodes of absence may result in progress to the formal stage of the policy (1220G).

310. The claimant now alleges this constitutes direct discrimination or section 15 discrimination. It plainly was not direct discrimination. The claimant's absence that led to the meeting had nothing to do with her disability but rather was a period of absence due to vomiting. It is therefore denied that this was unfavourable treatment because of something arising in consequence of her disability. However, if it was it was plainly justified as a proportionate means of achieving a legitimate aim. The claimant had been absent for over 100 days in the last 12 months. Whether due to disability or otherwise the respondent was entitled to seek better attendance in the future and to warn the claimant that it might engage in the formal procedure if her attendance did not improve.

Reasonable Adjustments

311. This claim is significantly out of time. The claimant avers that all of the adjustments ought to have been made for her from an early stage following her father's death when she was at Chorlton. The claim is therefore at least a year out of time.

Noisy Environment

312. It is accepted that at times the environment in which the claimant was expected to work could from time to time be noisy, but it is not accepted that that put the claimant at a substantial disadvantage because of any disability. There was no medical evidence to suggest she could not work in a noisy environment and the Access to Work report refers to is based on the claimant's self reporting and is not prepared by a medical practitioner. Although the claimant and others did tell Louise Barrett art Burnage that the environment was noisy and she found it difficult to concentrate from time to time, she did not link that to a mental health condition.

313. The claimant alleged that she started on sumatriptan whilst at Burnage because the noise was acting as a trigger for her PTSD symptoms. Her GP records tell a different story (page 2666). This suggests she was prescribed it for visual disturbance, headaches and having had a similar episode many years ago. The claimant blamed her GP for not properly recording what she told him. If she was at a substantial disadvantage the respondent was not aware of it at any time prior to receipt of the Access to Work report.

314. When the Access to Work report recommended certain adjustments to deal with the noisy environment it sought to make the adjustments. There was some delay for various reasons in putting them in place, as explained in detail by Tracey Forster. The respondent, however, acted reasonably in seeking to procure the necessary items and all were eventually provided.

315. The claimant only asked Tracey Forster two questions about reasonable adjustments:

(1) “There was a delay in putting the adjustments in place, wasn’t there?” to which the answer was “yes”.

(2) “It took two years, didn’t it?” to which the answer was “no”.

316. It was not clear which adjustments the claimant was referring to nor where she got the two year period from, but she did not further challenge the respondent’s evidence.

317. In terms of the specific adjustments, the claimant was able to work in a less busy of the office and to use a quiet room if it was available. She was provided with expensive Bose headphones on her return to work at Cheetham to help with the noise. The respondent access for the Brain in Hand app and provided the claimant with a new phone to use it. There were some teething issues due to Access to Work not specifying the right product. The claimant was kept updated. The coping strategies/training could not be booked until the claimant returned to work, and it was organised as soon as reasonably practicable by the claimant direct. Disability awareness training was organised as soon as reasonable practicable given the claimant wanted to be there with the whole team.

318. At the meeting with Alison McCartney on 21 November 2019 it appears from the notes that the claimant's only remaining issue was the fact that the Brain in Hand app was not transferring properly to the phone.

<u>Allowing the team to whisper, ostracise the claimant, have a go at her, blame her and push her into a wall</u>

319. Even if these things were true, they were plainly not PCPs applied by the respondent, but they were not true.

320. In terms of the adjustments the claimant contended for:

(a) Mediation by a mediator – The respondent does not understand how this is said to be a reasonable adjustment to overcome disadvantage. In any event, mediation was carried out by Rohit Nanji. The claimant agreed to it at the time, made no objection to Mr Nanji, and did not request an external mediator. Rohit Nanji is a qualified mediator.

(b) The disciplinary process was commenced because of a recommendation made following a detailed investigatory process. Not commencing it would not have been a reasonable adjustment.

(c) Manging the team's behaviour more appropriately/staff awareness training – It is not clear what this means. It is denied it would be a reasonable adjustment that would avoid a substantial disadvantage caused by the alleged PCP.

Heavy caseload

321. The claimant said the caseload at Cheetham was fine, so this relates to Chorlton and Burnage.

322. It is not accepted by the respondent that:

(a) The claimant had a heavy caseload. She was busy like all her colleagues but was not the busiest. She raised some issues about the general workload in the team in 2016 and she had a short period of time off work with work-related stress in February to March 2017. In May 2017 it was noted that the claimant managed her own caseload and workload effectively. A new Health Visitor was due to start in May and caseloads were being looked at. In her evidence the claimant accepted that she did manage her workload effectively at that time.

(b) The claimant was put at a substantial disadvantage because of any disability. It is right that the claimant complained of work stress but that was primarily due to relationship issues not workload. She did raise workload issues at Burnage, but she did not link the same to her disability. When cross examining the claimant appeared to accept that there was no Occupational Health evidence to the effect that the claimant's workload was disadvantaging her because of disability and that adjustments should have been made.

(c) The respondent had knowledge that the claimant was placed at a substantial disadvantage. When the claimant raised concerns about workload it was about the workload of the whole team or the fact that the workload was generally high. It was not about her as an individual with mental health issues.

(d) The respondent failed to make reasonable adjustments. The claimant's workload was no higher than others and it was within the recommended limits. The respondent did recruit extra staff when it was able to do so. Lesley Barrett asked the claimant to prepare a list of high priority cases after the meeting on 5 October 2017 and the claimant failed to do so.

323. The respondent invited the Employment Tribunal to dismiss all of the claimant's claims.

Claimant's Submissions

324. The claimant said that she had raised genuine concerns about patient care and was targeted thereafter with a catalogue of abuse. The Trust had a public interest disclosure policy to protect anybody who raised concerns. The claimant had no safe place to work, she suffered hostility, swearing, slamming, difficult behaviour and that impacted on the claimant's mental wellbeing.

325. The claimant asserted that throughout the proceedings she had been consistent and not exaggerated. She denied making last minute changes, saying that the truth remained the same (unlike the respondent). At the outset Paula McAdam said she had not seen the statements of her colleagues but then said she had, and the claimant had concern about that suggesting there was collusion between the witnesses. In cross examination Helen Whelan accepted that she had discussed the case. The claimant asserted that this was evidence of coaching of witnesses and on many of the statements words within those statements were similar.

326. Alison McCartney had said she was not aware of the claimant's mental health conditions until November but in a meeting in June had mentioned it within Remploy.

327. There were contradictions in the respondent’s evidence. Helen Whelan said that she was a bad student, volatile, but looking at the paperwork said she was a good student (page 263) and it was not raised with the claimant at the time. She invited the Tribunal to find that Helen Whelan was not telling the truth.

328. In the witness statements there were nasty things and some nice things. The claimant was given a good report for revalidation, Ms Graham signing her off. In August 2016, the complaint that went to Ms Graham, the claimant was told there was a complaint about a GP saying that she was rude.

329. The claimant accepted that she and Bushra did have a banter, but Bushra’s email upset her because it said she was rude.

330. The claimant was not warned about her behaviours at the time of the complaints. When she saw Ms Fishwick in November it was only because there was a problem with the bad team leads.

331. Maria Graham is not telling the truth. Her teams were criticised in a CQC report subsequently and before the 26 October meeting; she had encouraged others to complain if they wished. The Occupational Health report with her name on it showed she was aware of the claimant's problems, but she said she did not think

that the claimant had a problem with her. The claimant had had to go to Occupational Health over the desk positioning.

332. The whole team were aware of the claimant's mental health issues because she had raised them on 24 May in a team meeting. Helen Whelan submitted her complaint the next day – the timing was telling. Not one of the team admitted to seeing an email that the claimant had sent to them all (although it was headed "Annual Leave") (page 359). Helen Whelan's motive was inconsistent. The claimant told her she had PTSD, panic attacks and she was struggling. Teresa Solano-Olivares admitted she was troubled and needed help and said she was vulnerable. The claimant was off for a long period of time with stress and anxiety, but the respondent chose not to investigate that further.

333. There were no adjustments, although the O'Neill report suggested that the claimant needed one-to-one meetings. That report disclosed the claimant's symptoms and in fact her line manager then moved into a lengthy disciplinary process in relation to her behaviour.

334. The Chorlton meetings and recommendations did not follow through to her new base. No reasonable adjustments were made for her, she was shouted at, she had a heavy workload and she suffered from the noise. Staff made fun of her name and all of this was reported before the October meeting. At that meeting she was told there were several complaints about her. She was still given a work capability plan. The claimant asked for help to support her. Complaints came from Ms Aves in passing comments, but this was not a true complaint. Outreach workers should not be asked to collect feedback.

335. The claimant's subsequent appeal confirmed the complaints came from some colleagues and not clients. In this regard the claimant would use Ms Whelan as a comparator.

336. The claimant raised concerns after she had made a complaint about Helen Whelan, who had declared that she was deeply worried about the claimant's child. The claimant believed this partly led to her disciplinary action. Nobody actually checked on the child and Ms Whelan said she did not know that there was a mental health lead. No-one offered the claimant support, they were more interested in getting her into trouble. It was a "get Keisha campaign".

337. Helen Whelan then went on to say that the claimant was mentally unwell and as such therefore the claimant considered herself an easy target. She was told she was difficult to manage. The claimant was grieving for the loss of her father at the time. Ms Whelan said she was oppressive, but the claimant suffered mistreatment which was unwanted by her, and sworn at in the workplace. The managers did not consider the misconduct policy and misinterpreted the claimant's behaviour as difficult because she was withdrawn. She pointed out that there was no case to answer for them but there was for her, and she was subjected to a disciplinary process. There was no consideration about her father dying in April 2016. She was told that she should make public interest disclosures, she had a duty to speak, and she then suffered retribution. She found it quite hard not to be angry, particularly when Teresa Solano-Olivares laughed at her.

338. Looking at the rickety drawers – others were broken and others used the claimant's drawers. Camilla Lewis rang Ms Forster and said there were broken drawers. This was retaliation by Ms Lewis. The drawers were broken, but she was being singled out. She had reported the drawers herself because of a safety issue. Apparently, the damage was then deflected onto the claimant i.e. she broke them purposefully.

339. Turning to Ms Aves, who does not remember anything about the naming "Keesha, Krishna, or whatever you are called". This was disrespectful by Ms Aves.

340. Mr Marsh and Ms King corroborate when was said about the claimant. Other staff were treated differently to her. At the outcome of the second investigation the whole team's behaviour was found to be wanting and the team was split up but it was all found to be the claimant's fault, according to the witness statements.

341. Ms Whelan and Teresa Solano-Olivares did not comply with recordkeeping and if it had been the claimant, she would have been disciplined. The claimant pointed out contradictions and exaggerations and she considered herself and Mr Marsh to be vulnerable employees.

342. The respondent criticised Mr Marsh even before he gave his evidence by suggesting that he was on call at the time he gave evidence and placed the respondent's practice at risk. This showed unreasonable conduct by the respondent in front of the Judge. There was as culture of bullying and fear in the Trust. The claimant was stopped from giving statistics to show how the Trust was run. Ms Forster said it was well lead and safe but the CQC report says that it was not, and whilst her managers knew about her behaviour at Cheetham in the summer, they did not know about the issues that she had raised in the summer of 2016, the year before: they were not involved in any detail. She was placed on a disciplinary and there was not a series of one-to-ones with Ms Graham. Ms Forster said she did not know about anything, but she was the person who sent the claimant to Chorlton.

343. The claimant was dealt with formally, her colleagues were not. Ms Forster left her suicidal. She asked to be moved from Burnage and was refused. She had a breakdown and was off work for six months.

344. The reasonable adjustments were paid for by the DWP but she was still waiting for the mental health programme. None of the staff were aware of mental health training for managers, and it still had not happened at the date of her evidence.

345. Ms McCartney issued a policy which disadvantaged the claimant. She had two days off with sickness with anxiety which caused her vomiting. They were not using the right policy to manage her. She was told she would be put on capability and she proved that she was ostracised for raising patient care issues. No risk assessment followed her, and by law that disadvantaged her. She had the bare minimum of one-to-ones.

346. Mr Sugarman's submissions were considered by the claimant. Mr Sugarman had accused the claimant of taking a kitchen sink approach. He pointed out that she was not legally qualified. She was accused of being deliberately untruthful, which she was not. She did not get on with all her colleagues and managers. Her lack of

witnesses was due to a fear culture. Shew struggled with mind fog and she genuinely did not know if she was Polish. Her mum was adopted, as was she. She had not been specific with dates because she had lost her diary and she felt she was painted black throughout. She had been a nurse for 30 years so why was she here in front of the Tribunal now? She was embarrassed by the sex discrimination claim and Ms Coleman making fun of her name. There was no excuse for that. It has damaged her career.

347. Mr Sugarman had taken advantage of the claimant's mental health in cross examination. (The Judge interjected at this point and asked for specifics and was met with absolute silence). (The Judge then checked with the claimant that Mr Sugarman had always ensured that she was on the right page in the bundle before asking the questions, and the claimant confirmed that was the case. She said that Mr Sugarman had intimidated her witness and finally that the decision would be up to the panel.)

Respondent's reply:-

348. Mr Sugarman replied with four points. The claimant had been distorting the evidence and arguments. By way of example, the document that she said she sent in May disclosing mental health difficulties was in a chain of emails. She suggests that on 24 May she disclosed mental health issues and the following day Teresa Solano-Olivares and Helen Whelan made complaints about her. In fact the email from the claimant was on 25 May and Teresa Solano-Olivares had complained on 24 May, the day before. The claimant was thus twisting the truth. She made a further misrepresentation about the evidence of Helen Whelan, whose comment about the "nutcases" was referred to. That was at a wholly different time when the claimant was a student., long before the claimant alleges she was disabled.

349. Helen Whelan had admitted that she had snapped and sworn at the claimant, according to the claimant, but Helen Whelan in her evidence actually said something different. She said she did snap at her at one time but does not admit to swearing at her. The claimant had morphed it into aggressive behaviour by Helen Whelan, and Helen Whelan admitting that she had sworn at her. The claimant misrepresents the truth. The claimant made fresh baseless allegations about the coaching and collaboration of witnesses, the instructing solicitors and counsel.

350. Ms McCartney had had to admit that she had made a mistake about a date and corrected it. This was morphed into "the counsel had coached the witnesses". There was no evidence in support of that contention. The claimant suggested that Louise Barrett had disappeared when giving her evidence and had actually been to the pub – there was no evidence in support of that contention.

351. Mr Sugarman had threatened disciplinary action against Mr Marsh, who was attending to give evidence at a time when he was supposed to be at an appointment without leave or cover. That was a gross distortion of the reality. Mr Sugarman had suggested Mr Marsh could give evidence in his lunch break. It was the Judge who asked if he would face disciplinary process. Mr Sugarman had replied that he could not be sure to confirm that.

352. The claimant had this twisted to misrepresent the truth. These were serious accusations without an evidence basis.

The Conclusions

353. We have generally preferred the evidence of the respondent witnesses over that of the claimant. We found the claimant to exaggerate, and refuse to accept responsibility for anything. Everything was somebody else's fault (including the Judge in drafting the List of Issues) but more to the point the claimant's account of various of the incidents changed dramatically between her initial alleged disclosure, through the investigation, through to her claim and then her evidence in Tribunal.

354. As an example of this we would refer to the Paula McAdam's alleged issues. We found that the respondent witnesses could be divided into three blocks based at each of the places where the claimant worked. They did their very best to account for their evidence. They accepted if they got something wrong. We saw no evidence of collusion (other than some of them having read others' witness statements at a point before they gave their evidence) and when they did read each other's statements it was commented upon in their witness statements.

355. We saw in particular no evidence of collusion between the three blocks of witnesses, each block of whom worked at a different site to the others. We refer then to Mr Marsh and Ms King, both of whom worked with the claimant. Mr Marsh now has his own claim in this Tribunal which we have not seen and have no detail about. Ms King was clearly disillusioned with the management of the Trust. She commented on the claimant's strong work ethic, safeguarding practice, tenacity in advocating for her clients. Those during the evidence in the case were never in doubt.

356. The real issues related to the claimant's behaviour within the team and with external colleagues. Ms King for instance could not throw light on what happened in the meeting on 5 February as she was not present. And she only worked with the claimant at Cheetham and therefore cannot account for the strikingly similar complaints made of the claimant at both Chorlton and Burnage. Similarly, Mr Marsh could only comment on Cheetham and in relation to the meeting on 5 February he gave a similar account to other witnesses other than to say that at times it was so noisy he could not hear what was being said. We have throughout found ourselves therefore preferring the evidence of the health visitors and managers who gave evidence on behalf of the respondent.

357. By an ET1 presented to the Tribunal on 21 March 2018 the claimant brought claims of detrimental treatment contrary to Section 47B of the Employment Rights Act 1996, harassment relating to sexual orientation (Section 27 EA) harassment relating to race (Section 27 EA) and disability discrimination (i) failure to make reasonable adjustments contrary to Section 20/21 Equality Act 2010 (EA) and direct discrimination (Section 13 EA), discrimination because of something arising as a consequence of disability (Section 15 EA) and harassment relating to disability (Section 27 EA).

358. There was an agreed List of Issues which the claimant then objected to at the start of the hearing. The claimant wanted to include a claim of disability discrimination (indirect) but this had not been discussed or included at the last preliminary hearing when the List of Issues was agreed. The respondent objected to it being included. The Tribunal agreed with the respondent in that it was too little and too late and in any event the allegations that the claimant wanted to deal with could

perfectly properly be dealt with under the claim of discrimination because of something arising in consequence of disability.

359. Our findings in relation to the agreed List of Issues were as follows. It is to be noted that we have followed the order set out by the respondent (which happens to be chronological) rather than that set out in the List of Issues which was not.

The protected disclosure claims

360. In each of these we have asked ourselves whether the claimant has established that information was disclosed by her which in her reasonable belief was in the public interest and which in her reasonable belief tended to show that one of the proscribed matters in Section 43B, namely (i) that a person had failed, is failing or is likely to fail to comply with any legal obligation to which they are subject and (ii) that the health and safety of any individual has been, is being or is likely to be endangered. To be protected it must be made by the worker in a manner that accords with Section 43C to 43H. Such a disclosure is protected. We reminded ourselves that the burden of proof is upon the claimant to establish on a balance of probability there was in fact and as a matter of law a legal obligation on the employer or other relevant person and that the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with that legal obligation.

Protected Disclosures 1 and 2 re. Camilla Lewis

361. The incident of May 2016 in an email and orally on 21 June 2016 to Maria Graham, the claimant's line manager. The incident itself had happened on 23 March 2016, two months before the claimant raised it and it related to a child with rolling eyes who had presented to Camilla Lewis as a health visitor and whom the claimant alleged had simply sent the child away. The claimant had not been present at the incident but had been told about it afterwards.

362. The claimant tried to explain how experienced Camilla Lewis was and that to send a child with rolling eyes away was a dereliction of Camilla Lewis's legal obligations.

363. A later investigation however established that Camilla Lewis had not sent the child away but had told the mother to go and seek advice from the GP. The GP had then referred the child to hospital. The rolling eyes were not an immediate issue, because both the hospital, the mother and the GP were already aware of the child's condition. Camilla Lewis was in her preceptorship and the other health visitors should be able to expect queries from her as she would not have all the answers. The claimant tried to present Camilla Lewis as highly-experienced but that was misplaced because she had in a previous career been a nurse not a health visitor.

364. Detriments 1 and 2 were raised as a complaint not as a public interest disclosure about a family (page 176). The claimant was reliant on the information she was given by Camilla Lewis about the incident. But her email which she says was a public interest disclosure described the baby not being referred to A&E or rapid access but being sent home. The claimant asserted that the child was later referred to A&E by an outreach worker. That account was not true.

365. In her evidence the claimant confirmed that the child was referred to the GP by Camilla Lewis and the GP referred the child to A&E who then referred on to a non-urgent referral to Ophthalmology. In her evidence the claimant changed her evidence to say the child was only referred to a GP because the claimant advised Ms Lewis to tell the mother to do it but that is an inconsistent with the account she gave to her line manager.

366. We found the fact that the claimant did nothing about this incident for two months before reporting it, and then changing her account in her evidence of why she reported it, means that the claimant has not established that it was her reasonable belief that the information she disclosed about Camilla Lewis and the child with the rolling eyes was in the public interest. Had it been, she would have raised it much sooner.

367. We find it more likely she did so because she had started to find Camilla Lewis to be bossy. This was the start of a pattern of complaint and counter-complaint between the claimant and other health visitors. We noted that Camilla Lewis actually asked to leave the team because of the claimant's own behaviour towards her. The claimant was subsequently recommended for disciplinary procedure in part because of her behaviour towards Camilla Lewis and others, although this did not transpire through the passage of time.

<u>Protected disclosures 1 and 2 re. Camilla Lewis – Advice about sleep</u>

368. On 31 May 2016 the claimant also provided information that Camilla Lewis apparently had said to a mother "It's not something I've looked into really" when asked about sleep issues. The claimant made an allegation that Camilla Lewis did not know the bare minimum regarding systems, policy, baby activity problems etc.

369. The claimant added to this in a meeting orally on 21 June 2016 saying that on 19 May the claimant and Camilla Lewis did a development clinic together and one of the clients asked for sleep advice. Camilla Lewis said she had not looked into the subject and turned to the claimant for help. The information provided was that Camilla Lewis still in her preceptorship had asked someone more senior (the claimant) for help. This does not suggest that health and safety issues were being or were likely to be endangered.

370. The respondent witnesses confirmed that queries might be expected from somebody at the beginning of their careers. Again, the claimant waited 12 days before she reported it. It is unclear still why the claimant thought that such information about a junior member of staff seeking assistance from a senior member of staff would be in the public interest to raise. The whole point about a preceptorship is that the individual health visitor can seek assistance and support from her more senior colleagues as she did in this case.

371. We found that to be a case where Camilla Lewis was showing good judgment and attempting to learn from the experience of the claimant. The claimant's subsequent disclosure of it was simply her raising issues about Camilla Lewis not because she believed that health and safety was being endangered.

372. In the meeting on 21 June 2016 the claimant complained about an insufficiently thorough hand-over in a case involving FGM (female genital mutilation).

Camilla Lewis had handed the case to the claimant and there had been a visit in the recommended time. The midwifery service were already aware of the family and the issues. The child had not yet been born. There was no suggestion that the child might come to harm because of the lack of swift hand-over. Maria Graham examined the situation and found no issue.

373. We find that the issue was raised by the claimant because of her dislike of the conduct of Camilla Lewis towards her as she perceived it.

374. In summary we do not find that the alleged protected disclosures numbered 1 and 2 relating to Camilla Lewis were protected disclosures. The claimant has failed to persuade us on the balance of probabilities that she made those disclosures in compliance with the provisions of Section 43B of the ERA. Whilst she did disclose information about Camilla Lewis we do not consider that in her reasonable belief it was in the public interest and that it tended to show one of the proscribed matters. In particular we note that Maria Graham did not find any issue. We did not consider that the claimant had a reasonable belief. If she had done so she would have acted with a great deal more speed than she did.

375. We therefore find that disclosures 1 and 2 were not protected and did not qualify.

376. The detriments raised by the claimant in relation to the above disclosures were detriments 1, 2, 3, 4 and 10. For the sake of completeness we will deal with these albeit in brief.

377. Three months after the claimant made the alleged public interest disclosures, the claimant gave evidence that on 15 November 2016 she raised the issue of Maria Graham her line manager mentioning that there had been a complaint in relation to one of the claimant's families, in front of other health visitors. Maria Graham is alleged then to have refused to give any information about it. She is also alleged to have warned the claimant not to record the conversation. On the claimant's account Maria Graham said that a complaint had been received from one of her families, not that it was about the claimant. In fact there had been a complaint from one of the claimant's families and it was not about her. Ms Graham has struggled to deal with this because she cannot recall anything about it. There was no complaint at the time of the incident and the claimant did not mention it on 25 August in a meeting she had with Maria Graham and when she did raise other matters.

378. The claimant at that stage told Maria Graham that she was feeling happy in the team. However after Maria Graham had raised queries about the claimant's own conduct the claimant then raised this matter. This all occurred about three months after the alleged disclosures.

379. Maria Graham could not account for it because she cannot remember any such incident, it is agreed that she was unaware of any mental health difficulty suffered by the claimant at that stage and even on the claimant's case it had nothing to do with her mental health. Maria Graham left the team in December 2016 so that must have been the end of her involvement with the claimant. The claimant does not suggest otherwise. This allegation was so vague that we found it difficult to make findings of fact. We found Maria Graham to be a stalwart and credible witness. Whatever happened we do not find the claimant's account about this to be credible.

380. We do know that there had been a complaint from one of the claimant's families but it was not about her. We do not have any evidence other than the claimant's own incredible assertion that Marie Graham warned the claimant not to record the conversation. There was simply no evidence of that. We do not therefore find detriments 1 and 2 to meet the threshold set under ERA 1996 Section 47B(1). There was no evidence that Maria Graham had knowledge of a protected act and that that protected act was the reason for any decision she made. We do not find she made any decision. We do not therefore find the employer needed to show a ground on which the act or deliberate failure to act was done. The respondent has satisfied us that the detriments did not occur.

Detriment 3 – unnecessarily referring the claimant to Occupational Health and Bushra Ramzan calling the claimant a "cheeky beggar".

381. The claimant asserted that she had been unnecessarily referred to Occupational Health. She simply was not telling the truth about that. She accepted in her evidence on oath that she had self-referred to Occupational Health. This was because the seating arrangement for the team was to be adjusted and the claimant did not want to move desks. She self-referred to obtain the support of Occupational Health. This was one example of the claimant's evidence not matching her case, and affecting her credibility. Self-referral cannot possibly be a detriment. The claimant then alleged that Bushra Ramzan called her a "cheeky beggar". That was denied by Ms Ramzan and we find that it did not happen. It was a further example of the claimant's evidence being set to match her case and the respondent satisfied us that this detriment did not occur.

382. Detriment 4 related to the claimant asserting that she was singled out for breaking her filing cabinet drawers. Most of her working colleagues who gave evidence said that she slammed her filing cabinet drawers. They were broken because of the ways in which she slammed the drawers. There were other problems with the locks on other cabinets but they were not the same as the issue of the slammed drawers. The claimant blamed others for accessing her drawers and damaging them. But the fact remains that the other witnesses said she slammed the drawers regularly and damaged them. None of the others were in the same state. In any event we are still unclear as to how the claimant said she was singled out. The drawers were replaced without issue, and she was simply asked to treat them more gently. The only reason she was "singled out" was because only her drawers were broken in that way. She was not disciplined. Maria Graham did not raise it with her. By then her line manager had changed to Becky Parker. There was no evidence that she was even aware of the alleged earlier disclosures some three months earlier.

Detriment 10 – the increased caseload – January to February 2017

383. In cross-examination the claimant accepted that the workload issues around this time were not because of any alleged protected disclosure. The workload issues were across the team. The claimant did raise workload issues about the team in December 2016. At the time she did not suggest she was struggling due to mental health issues.

Time issues

384. All of the above disclosures and alleged detriments occurred at Chorlton and therefore occurred before 13 June 2017 when she moved to a different team with a different management structure. There was no carry-over from the one to the other beyond the claimant being advised of the outcome of an investigation that had started at Chorlton whilst she was working at Burnage. That being the case there was a complete break and it cannot be said there was any form of continuance by the management between the two teams. The claimant moved to a different building, to a different line manager with different colleagues. We therefore find that all of the above were in any event out of time. We cannot say that it was not reasonably practicable for the claimant to bring her claims in time. The claimant did not persuade us to disapply the three months (plus extension for early conciliation) to suggest it was not reasonably practicable. She simply did not adduce any credible evidence to assist us in reaching a decision to extend time.

Public Interest Disclosure number 3 on 17 January 2017 (page 196(b))

385. The claimant sent an email on 17 January 2017 about poor recordkeeping by one colleague in one case. The mother had given birth in November of 2016 and was marked as depressed. In a telephone consultation she had noted that she felt worse. The hard copy notes did not make reference to the mother's depression. However there were electronic notes and when checked by Teresa Solano-Olivares she noted that had the claimant looked at the electronic system she would have seen that there had been visits to the family in any event.

386. The claimant's email indicated that the mother would therefore be unaware of any support services and she was "a bit concerned". This was discussed face-to-face with her. None of the Chorlton team who gave evidence were aware of the issue. The claimant had not raised it with them. And it was a "non-event". The mother had been fine. There were no adverse consequences and one discrete failure to document by one colleague in one case was unremarkable.

387. The claimant suggested that nothing was written in the records despite the birth. However, there was recorded an EPDS score which is given after the birth. We find the claimant therefore did not have a reasonable belief that the health and safety of the mothers had been or was likely to be endangered. This was simply the claimant at the time remarking on a mistake. There was no likelihood of health and safety being endangered when the electronic notes included the balance of the evidence showing that the family had been the subject of health visitor visits.

388. The claimant discussed it face-to-face and the team remained unaware of the incident. That being the case it cannot be said that any of the team reacted to the disclosure by causing the claimant detriment.

Detriment 7

389. It was alleged that Paula McAdam had pushed the claimant into a wall in May 2017. She asserted it was a deliberate assault. She has given a variety of accounts for this assault. On 3 July 2017 she complained that Paula McAdam was guilty of "hitting me and pushing me into a wall purposely and swearing at me". However by the time the case had reached the Tribunal that was not part of her claim. There was a subsequent investigation. The claimant said it did not happen just once and Paula McAdam used to push her quite hard as a joke but for me it was a personal

attack. She said it was a regular occurrence through the time they worked together in her evidence to the Tribunal.

390. When asked why she did not tell Paula McAdam to stop she said she would have done but could not remember. She did not raise it with Paula McAdam. She also said Paula McAdam had pushed her into the wall, came charging through the door and purposely pushed her into the wall.

391. However in the Tribunal the claimant said both she and Paula McAdam were coming through the door, which is not glazed, at the same time. She dismissed that as an accident, saying she knew it was deliberate because Paula McAdam did not apologise. However in an earlier account (page 430) the claimant said that Paula McAdam did say she was sorry.

392. The claimant then changed her account and said that Paula McAdam did apologise but that it was not genuine.

393. On 20 September 2017 (478) the claimant had then said that Paula McAdam had hit her twice in the office and purposely banged into her causing her to hit the wall and hurt herself.

394. In the correspondence before the claim the claimant again revised her account and said that Paula McAdam had thrown her into a wall. The claimant did not even mention this incident in her witness statement.

395. Paula McAdam gave evidence that she is a foot shorter than the claimant and considerably lighter. She simply said this did not happen. The claimant asserted that it was witnessed by Teresa Solano-Olivares and Helen Whelan and they found it amusing. Both of those health visitors denied witnessing anything.

396. The claimant did not complain about this assault until 3 July 2017 (two months later). She asserted that she did not raise it because she was ground down to the ground, there was no point in mentioning it because nobody listens. We did not find that credible, because she had at around that time raised a series of other complaints. We find this account to be fictitious, it did not happen as described.

397. We can fully accept the claimant's perception is that all of her allegations happened as she says they did, but in reality we find they did not. We noted that Claire Jackson investigated the incident and concluded it did not happen as well. This incident not only did not happen, but coloured our view of the claimant's evidence, leading us to find that she was less reliable in her account giving than that of the 12 witnesses (health visitors and nursery nurses) who gave evidence on behalf of the respondent. This cannot further have been because the claimant had allegedly made disclosures to Maria Graham. Paula McAdam gave clear evidence that she had no idea about the Camilla Lewis allegations.

<u>Detriment 8 – Around May 2017 allegedly the claimant was shouted at and sworn at</u>

398. The claimant alleged that Helen Whelan, Teresa Solano-Olivares and Paula McAdam shouted and swore at the claimant. It is alleged that Helen Whelan wandered around the office telling patients to "fuck off and die". Once she said "I've not been sat on my arse all day" to the claimant. Once she said "for fuck's sake"

when typing. The claimant in her evidence was reluctant to accept that none of these were addressed at her. She was warned about failing to answer questions in a straightforward and clear manner when cross-examined. She was warned that it could affect her credibility.

399. During the investigation into these allegations Helen Whelan accepted that she had said to the claimant "I've not been sat on my arse all day". Both she and Teresa Solano-Olivares denied swearing at the claimant.

400. Teresa Solano-Olivares accepted that she swore from time to time in the office. (It is often in her native Spanish).

401. The claimant's own evidence was that Teresa Solano-Olivares only swore at her once when she had complained about people whispering about her after the Manchester bombings and Teresa Solano-Olivares is alleged to have said "fucking sick of this". Teresa Solano-Olivares denied that completely and we found her credible on the issue.

402. Paula McAdam in the investigation and in the Tribunal accepted that she did swear at work, never swore at the claimant. The claimant's case changed in her evidence and now said that on a daily basis when putting down the phone Paula McAdam would say "fuck off and die".

403. When interviewed as part of the investigation the claimant said that she had regularly said "Fuck off and get a life". She did not say that in Tribunal and it was denied by Paula McAdam.

404. The claimant's initial account was incredible. In her evidence she said she found it offensive because it was being said when her father was dying in a hospice. Her father we found had been dying in a hospice in April 2016. This would suggest that the swearing occurred before that and hence before her first public disclosure alleged.

405. In any event the claimant did not start at Chorlton until after April 2016. On her case this happened in May 2017. It is also inconsistent with what had been happening in the summer of 2016 with the claimant asking to borrow Paula McAdam's credit card from a holiday, and having parked her car on Paula McAdam's drive, and had a lift to the airport. On the claimant's pleaded case swearing is alleged to have happened in May 2017. But there is no evidence to link it to any public interest disclosures about Camilla Lewis which had happened nearly 12 months before or to the email in January 2017 about Teresa Solano-Olivares. On the account she gave in evidence swearing occurred before she had made a public disclosure while her dad was in a hospice.

406. We find the claimant to have been utterly incredible on this issue and do not find the facts were as set out by her. We support the account of Claire Jackson which is that Paula McAdam did swear in the office and on one occasion Ms Solano-Olivares did so but these were not because the claimant had made a public disclosure or they believed that she had, and there is no evidence that they swore directly at her. They were simply swearing in the office and this conduct was considered inappropriate and they were asked to stop.

Detriments 5 and 6 – the decision to investigate the claimant's behaviour and then subsequently to move her – June 2017

407. The claimant was found to be behaving inappropriately at work, being aggressive, intimidating and unapproachable. Formal complaints had been lodged about her. In particular by Ms Solano-Olivares and Miss Helen Whelan. The investigation was not because of any alleged public interest disclosure but because there had been complaints by her colleagues about her. In particular Teresa Solano-Olivares had first of all lodged a grievance and then added a formal bullying and harassment grievance on 8 June 2016.

408. On 26 May 2017 when the claimant had appeared to gloat about frightening a schoolteacher mother and a parent in one go (killing two birds with one stone) Helen Whelan lodged a complaint about the claimant.

409. The two witnesses, both totally credible and independently of each other entered their grievances/complaints. There is no evidence to suggest that the two ladies complained because the claimant had raised three concerns to Maria Graham a year earlier about Camilla Lewis or because the claimant had raised an issue about the note-taking of Teresa Solano-Olivares in January 2017.

410. Neither Teresa Solano-Olivares nor Helen Whelan were aware of any of those complaints. Both of them did believe that the claimant had caused Camilla Lewis to leave the team, not because of any protected disclosure but because of the claimant's inappropriate behaviour towards her.

411. Was the decision to carry out an investigation because of a protected disclosure – no. Becky Parker had received two serious complaints about the claimant's behaviour from two health visitors. They were investigated under the Trust's Dignity at Work Policy. The reason for the investigation was because the complaints fell within that Policy.

412. During the investigation the decision was taken to move the claimant. We heard evidence that that was normal given the issues that had been raised. The claimant in cross-examination accepted that the reason for the investigation was that the complaints had been made about her. We were satisfied that that was the reason for both the investigation and the move. Nothing to do with any earlier alleged disclosures.

413. Claire Jackson carried out an investigation into the claimant's complaints, and also those of her colleagues against her. During the investigation she found a lot of evidence to support the claimant's inappropriate behaviour from a number of different sources.

Detriment 9 – Louise Barrett not doing a risk assessment in June 2017 to January 2018

414. Louise Barrett became the claimant's line manager on her move to Burnage on 14 June 2017. We heard evidence that the claimant was happy there at first (page 334). She thought that the management was better until such time as she was criticised. She now says that she suffered a detriment at the outset because there was a failure to undertake a risk assessment. In cross-examination and

reluctantly she accepted she did not ask for a risk assessment, did not suggest it was necessary and had had a risk assessment done three weeks before her move. We do not find therefore that this was a detriment and we are satisfied that even the claimant did not think so. It is even a further stretch to suggest that it was a detriment undertaken by the claimant's line manager whom she was describing as a great team lead, because the claimant had raised concerns about Camilla Lewis over a year earlier or Teresa Solano-Olivares' failure to enter one entry in the hard copy notes of a mother.

Public Interest Disclosure 4 – email letter to the Chief Executive June 2017

415. The claimant asserted in her evidence that she had sent an email or letter to the Chief Executive in June 2017. The Chief Executive said she had never seen it but during the course of the hearing and at a later date a letter to Jill Heaton dated 11 July 2017 was disclosed.

416. It complained about a little part of her treatment whilst at Chorlton but nothing else. Not only did Jill Heaton not receive that, at the time, but the claimant did not include it in the initial bundle of agreed documents nor in her substantial addendum (an entire folder of documents) even though this is one of the public interest disclosures that she asserts caused her to suffer detriments.

417. We do not find as a matter of fact that an email or letter was sent to the Chief Executive in June 2017. On the balance of probability we find that the letter to Jill Heaton dated 11 July 2017 was either not written at the time or not sent at the time and in any event does not match the evidence of the claimant that it was sent in June 2017. There is no evidence and the claimant has not suggested that there is, that any of the witnesses alleged to have subjected her to detriments were aware of the letter.

418. The claimant has been unable to provide us with any evidence to suggest that the letter featured as the reasons for the claimant's detriments. The letter the claimant said was a cry for help. She alleged physical and mental abuse over a period of 12 months she had suffered managers' derogatory comments.

419. Her grievance was about the way she was being treated not the disclosures that had been made. "They are bullying me". We do not find however that the letter was written at the time the claimant said it was or in the alternative that it was sent to the Chief Executive who had no knowledge of it. Had it been a genuine public interest disclosure we would have expected the claimant to have included a copy of it either at the outset or certainly in her extensive supplemental bundle. We noted the respondent did not have a copy of it and was unable to trace receipt of it. We do not find that the claimant has established on the balance of probabilities that she made such a disclosure in the first instance.

Public Interest Disclosure 7 – alleged daily complaints about making fun of the claimant's "Polish" name – July 2017 to January/February 2018

420. Even if we had found there to have been public interest disclosures we are satisfied that the team at Burnage had no knowledge of any disclosure made during this time by the claimant to her employer. In any event we find no evidence that anyone made fun of her "Polish" first name. There is further no evidence that it

happened daily. Where it had happened, with two individuals, they both gave evidence which was clear in Beverley Coleman's case that she mispronounced several names including the claimant's and that having done so by mistake and having had it drawn to her attention once, she then practised the claimant's name quietly and privately so that she would not make the same mistake again. She did not do so because of any disclosure (she was unaware of anything) but because English is not her first language and she often mispronounces words.

421. This was supported by several of her colleagues. The other incident related to the claimant's name being automatically adjusted by autospell on a computer and the writer not spotting it before the email was sent. This was checked by the individual's line manager and found to be correct. We found there was no evidence of any fun-making of the claimant's name. This was a very good example of the claimant deliberately misinterpreting something that had happened and making herself less than credible.

Detriment 13 – The away day in September 2017

422. Louise Barrett had already started to arrange this she believes before the claimant had transferred to the team. She had sought a room in which some training could take place for the team. It just so happened that the training day was arranged to take place in Chorlton. It had no bearing on what the claimant had said over a year before about Camilla Lewis and others over a year before. She was unaware of the claimant having any issues with returning to Chorlton at the time. Once the claimant had raised the issue saying she did not want to go she was advised that it would take part in a different part of the building with a different entrance, she did not have to attend although she was encouraged to do so, she could be escorted into the building by one of her colleagues. The claimant then confirmed she would be okay attending and did so. The respondent suggested in closing that the allegation was a nonsense. We can add nothing to that.

Detriments 11 and 12 – The informal counselling meeting on 5 October 2017 (page 497).

423. In early October 2017 the claimant's line manager had received a complaint about the claimant and then she received more complaints (up to four) within the same week. They were all from different people. They were all about the claimant's behaviour. She had not had to deal with such a situation before and she sought help from HR. They suggested an informal counselling meeting within the Trust's Performance Management Policy. The claimant met with her on 5 October and they discussed the issues.

424. The claimant was described as challenging and difficult and counterclaiming with complaints about her colleagues. She was described as going on the offensive. This was a turning point at Burnage. In her evidence the claimant agreed that some of the allegations were discussed and that she did not remember whether others had been or not. We find that to be particularly incredible because the claimant had a very good memory generally for anything that had gone wrong and which had upset her. We heard evidence and saw the minutes acknowledged by the claimant which show that the meeting not only dealt with the complaints that had been raised but also with positive feedback. It is worth mentioning at this stage that colleagues

(including Ms King) acknowledged that the claimant was a hard worker. The management concerns were all about her behaviour.

425. However after the meeting the claimant was sent a document with an action plan in it. She was told that the purpose of the meeting had been to identify areas for improvement and also ways in which she could be supported. She was warned that if she did not bring her conduct up to standard it could result in progression to a formal procedure. She was not told that she would be subject to disciplinary process as she alleges.

426. There is no suggestion at all that the claimant's line manager knew about alleged public interest disclosures made in a different team about different people 15 months earlier. The claimant gave a different reason for the actions during her evidence saying that she had made a complaint about Gill Bowser. We found that the claimant became challenging and difficult as part of a pattern of behaviour which had been seen in her previous team. If somebody raised a complaint about her or challenged her behaviour, she went on the offensive.

427. The action plan had been described as to last for three months and part of it was to ensure that she did not have any further complaints or that if she did they would be reviewed. She was asked to ensure that her caseload was up to date by the end of the following week. The letter arrived with the claimant the week before the claimant was due to go away. Her manager was not aware of that as the holiday had not been mentioned on 5 October. In evidence we were advised that had she raised it with her manager she would have been given an extension of time.

428. This was not a detriment but merely the normal toing and froing of a member of staff with their manager when there has been a problem which needed to be resolved. There is no doubt that had the line manager been wanting to reflect the disclosures that occurred over a year earlier, she could have started a formal disciplinary process. The fact that this was dealt with informally and gently persuades us that it was not a detriment because of an earlier disclosure.

429. The claimant now however considers that she was bullied and harassed by her previously described great team leader. We agree with the respondent's assertion that the following alleged disclosures were not the product of a reasonable belief in public interest health and safety issues or a failure to comply with a legal obligation but motivated entirely by an approach that required an attack being the best form of defence.

<u>Public Interest Disclosure 5 – December 2017 – the rum cake</u>

430. A rum cake had been brought into the office to be shared over lunch, the rum having been included in the ingredients before it was baked and therefore probably the alcohol had evaporated. We do not find that the claimant raising this as an issue suggested she had a reasonable belief that consuming a slice of the cake was going to endanger anybody's health and safety or that it did. She had no knowledge of how the cake had been made and we find it incredible that she could have believed that the health visitors eating a slice of cake at lunchtime could have caused a reasonable belief that it was in the public interest to disclose this to the employer. This typified the claimant's way of turning a minor and community-spirited issue into

a perfect storm of allegations. The claimant's belief, if she held it, was not reasonable.

Public Interest Disclosure 6 – Rachel Thomas's Dublin trip

431. This is not a public interest disclosure. Rachel Thomas had asked her line manager if she could go to Ireland whilst off sick with a broken ankle. She was given permission to do so.

432. The claimant became aware that Rachel Thomas was flying out of the country whilst on sickness absence and raised the issue which she now says was a public interest disclosure with her employer. We find that the claimant had no reasonable belief that she was disclosing information that tended to show health and safety was being endangered by somebody with a broken ankle flying out of the country.

433. She tried to suggest that she considered Rachel Thomas to be guilty of fraud. The claimant could not provide any evidence or support for the suggestion that health and safety was being endangered when she was cross-examined.

434. We do not know what the legal obligation was that the claimant thought was likely to be breached. She did not check whether Ms Thomas had permission for the trip. Her belief cannot have been reasonable. How could it be in the public interest? – this was an issue about one colleague taking a holiday whilst on sick leave. We do not consider the claimant to have had a reasonable belief. A reasonable belief would have been formed if she had investigated further and established that Ms Thomas did not have any permission to take a holiday whilst on sick leave. We further fail to see how that could be in the public interest.

Public Interest Disclosure 8 – poor standards of recordkeeping by the team between December 2017 and January 2018

435. The claimant did raise issues of recordkeeping to Louise Barrett during that period. Other staff raised them as well. They were using a new electronic system and a lot of recordkeeping issues came to light. The claimant however had provided no details about the deficiencies in recordkeeping that she says were public interest disclosures.

436. Not every defect could lead to a suggestion that there was a health and safety endangerment or a breach of a legal obligation. The claimant alleged there were emails upon which she relied, but she did not provide those emails to the Tribunal.

437. Louise Barrett in her evidence said that the issues raised by the claimant were relatively minor, such things as a missing signature or NHS number. The claimant herself confirmed that was the nature of the issues raised. However such minor day-to-day issues on the introduction of a new electronic system could not possibly meet the test for a public interest disclosure and we find there was no such public interest disclosure.

Detriment 14 – Decision to discipline the claimant in February 2018

438. Claire Jackson's investigation report into what had happened before recommended that two allegations against the claimant proceed to disciplinary hearing. Tracey Forster considered that appropriate.

439. She explained to the claimant she was going to make arrangements for there to be a disciplinary hearing but gave the claimant a right of appeal first. The claimant did appeal. Tracey Forster was an impressive witness who explained that her decision to discipline the claimant was based on the evidence that Claire Jackson had found. She did not reach it because the claimant had made one or more public interest disclosures. The claimant in cross-examination accepted that she did not think Ms Forster had made this decision because of any public interest disclosure "she didn't know the full story".

440. Before the Tribunal reached its conclusions, it took two days to refresh and read the case again. The claimant referred us to an email in the bundle which had not been referred to during the hearing and we have read it and considered its relevance. We took account of the claimant's comments but did bear in mind that they were made once the case had been closed, with no reference to it during the cross-examination or in chief by her or the respondent. Had it been referred to at the time it would not have impacted on our decision.

441. This was similar to the statistics on harassment which were not referred to in the case but were included in the claimant's additional bundle. On a number of occasions during the evidence the claimant expressed concern that she was unwell and unable to continue. On each occasion she was given time out of up to a day to recover and refocus before we proceeded.

442. We consider that she had every opportunity to refer us to any document or any evidence that she wished to do so during the case. Tracey Forster's evidence was that there should be a disciplinary procedure based on the outcome of the investigation report. There was no evidence that she did so because of any other reason and indeed she denied it was because the claimant had made one or more public interest disclosures. The claimant accepted that in cross examination. We therefore find that there was no detriment to the claimant here.

<u>Public Interest Disclosure 9 – 5 February 2019 – Meeting at Cheetham</u>

443. By now the claimant has left Burnage and joined the Cheetham team. Here she met up with Mr Peter Marsh and Ms King. The claimant relies on two public interest disclosures made on 5 February. In the meeting she was offered the opportunity to raise anything she wanted to do as were the rest of the team. It is unclear whether the disclosure therefore was to her employer or simply to her colleagues.

444. There was a chair to the meeting however and that chair was a manager.

445. The first public interest disclosure the claimant raised in that meeting she says was when she explained that people did not speak to her and she was ostracised and she was uncomfortable coming to work. In particular she said that nobody said hello to her when she arrived at work. She was asked if she said hello to anybody else and she said no. There was no evidence from any member of that team in that meeting that the claimant raised anything other than that people did not

say hello to her and she did not say hello to them. We could not find any reasonable belief in the public interest element to this disclosure. This was her complaining about the way her colleagues treated her and confirming that she treated them in exactly the same way. She could not possibly have held a reasonable belief in a public interest issue here.

446. In fact she could not even remember describing this as a public interest disclosure in the case management hearing where the List of Issues was produced.

447. The second alleged public interest disclosure in that meeting the claimant said she raised was the issue of a failure to hand over patients when a staff member is sick. All of the respondent witnesses confirmed in evidence it was not said then but it was raised a week later in another meeting. It is to be noted that the claimant's own witness, Peter Marsh, did not say that in his statement and the claimant's written evidence does not refer to it.

448. In oral evidence the claimant could not remember saying it in that meeting either, merely saying it had been 'mentioned at some point'. There is no reference to her raising it in any written form. Her comment was that it did happen and "it's in the bundle somewhere – you find it". We do not consider that the first of the disclosures made in the meeting relating to who said hello and to whom could possibly amount to a breach of a legal obligation and in the second that it simply did not occur either in that meeting (although it may have happened at some point) but the claimant has not provided sufficient evidence for us to be satisfied that there was a public interest disclosure at any time..

449. <u>Detriment 15 in the same meeting 5 February</u>

450. Peter Marsh, the claimant and all of the other witnesses in the meeting confirmed that the start of the altercation was the claimant saying "That corner is like a playground" and then telling Donna Hill she was a trouble-causer, dangerous and spoke to the team assistants 'like shi't. The claimant did not deny that she said those things in that meeting and whilst there may be one or two words different in the memory of all of the team members present they are consistent in confirming that the claimant was the aggressor by making those comments.

451. Donna Hill who had joined the meeting late had not heard the conversation about the claimant and others not saying hello to each other, was in distress. Even Peter Marsh, the claimant's own witness confirmed that Donna Hill responded to the claimant's comments

452. . Donna Hill in distress said that the claimant needed to leave or leave the team. The claimant accepted in cross-examination that Donna's behaviour was because she had raised concerns about playground behaviour. Mr Marsh said the room exploded when the claimant made her playground comment. It is hard to understand how such a comment made in response to the claimant's playground comment could be seen to be a detriment.

453. Donna Hill had not been present when the alleged public interest disclosure had been made at the start of the meeting and so was unaware. It is blatantly clear from all of the witnesses who were present and gave evidence at the Tribunal that the alleged detriment was actually Donna Hill acting in the way she did because of

the way she had been spoken to immediately before that by the claimant. Tracey Williams described the situation as “awful, uncomfortable, unprofessional and nasty”. The claimant’s response to that in evidence was that what she had said needed to be said.

454. We noted that Donna Hill had left the meeting in tears as subsequently two others did. She was very distressed but not aggressive. Whether Donna said “You should leave” or “You should leave this team” is a matter for debate. Some witnesses heard one, some heard the other and made the assumption that “you should leave” referred to the team. We have preferred the witness accounts as genuine. They all heard “You should leave”. Some believe they heard “this team” and others assumed that that was what was meant

455. . We find that this was not a detriment but a genuine reaction from a distressed member of staff to an extraordinarily aggressive comment from the claimant. We do not find the detriment made out. The reaction was caused by the claimant, and bore no relation to any disclosure which Donna Hill had not heard in any event

Detriment 16

456. This is what the claimant described as a series of complaints from members of staff against her which occurred after the meeting on 5 February 2019 and related to that meeting.

457. Later she referred to one addition lodged by Jennifer Rowlands in August 2019 (six months later). The detriments the claimant said were because the public interest disclosures she had made in the meeting of 5 February 2019 but the reality was when we heard from the various witnesses that they had all been upset by her conduct in that meeting and they each felt they wanted to make a complaint (page 2529a-b, and 1836a).

458. All the respondent witnesses who had been in the meeting and who made complaints said the same that this was not because of what the claimant made disclosures about, but about her behaviour towards in particular Donna Hill. The claimant did not cross-examine Donna Hill or Tracey Williams suggesting that their complaints were malicious or motivated by protected disclosures.

459. Jennifer Rowlands in August 2019 (2670a) said she thought the claimant was targeting her by giving her too many tasks to do in an inappropriate way and then criticising her for responding to the claimant in a similar way. This clearly had nothing to do with any public interest disclosure that had been made in the February. There is no doubt that the claimant made the comments she did in that meeting and that Donna Hill responded to those comments. The complaints that follow all corroborated each other and were in connection with the claimant’s behaviour not because it was suggested that the claimant had made a public interest disclosure.

460. We conclude that none of the alleged disclosures made by the claimant were protected. In none of them has the claimant satisfied the burden of proof to establish on the balance of probabilities that there was in fact as a matter of law, a legal obligation or other relevant obligation on the employer or other relevant person in each of the circumstances relied on and the information disclosed tended to show

that a person had failed, is failing or was likely to fail to comply with any legal obligation to which they were subject.

461. The claimant having failed to do so, therefore, and there not having been any protected disclosures, it follows that the claimant cannot have suffered detriments done on the ground that such protected disclosure had been made. The claimant has failed to establish a protected disclosure

462. . She has also failed to establish that she was subjected to a detriment. We note however it is for the employer to show the ground on which any act or deliberate failure to act was done. It is clear that for those detriments that we have not found to be purely fictitious, the balance were done because of the claimant's own behaviour.

463. We turn in general then to the time limits. Under Section 48(3) of the ERA the claims have to be brought within three months beginning with the date of the act or failure to act to which the complaint relates or where the act or failure is part of a series of similar acts or failures within three months of the last of them. It cannot be said here that the acts were part of a series.

464. They occurred at three separate locations, three separate teams. The detriments said to have occurred at Chorlton are all out of time and they did not link to the detriments that then occurred allegedly at Burnage or at Cheetham.

465. That being the case anything that occurred by way of a detriment that was more than three months plus early conciliation extension, was out of date in any event.

466. The claimant has not satisfied us that it was not reasonably practicable for the complaint to be presented within three months or such other period as the Tribunal considers reasonable. The burden lies with the claimant to persuade the Employment Tribunal to disapply the primary limitation period. We heard no evidence at all to justify a conclusion that it was not reasonably practicable for the complaints that are out of time, to be presented in time.

<u>Sexual Orientation Harassment</u>

467. The claimant describes herself as bisexual and describes a number of allegations of harassment i.e. unwanted conduct which she says was a violation of her dignity or created an offensive environment and which related to bisexuality.

468. The first allegation was the suggestion that Helen Whelan had said "How do women do that to each other" in November 2016. The claimant did not complain of this when it happened although she believes it was around November 2016. She at the end of November 2016 made a complaint to Karen Fishwick that she was being bullied but again made no reference to the alleged comment from Helen Whelan. Nor did she mention it in her bullying and harassment grievance or when she was interviewed by Claire Jackson as part of the major investigation. She eventually mentioned it on 26 July 2017 after complaints had been made about her and she had been moved to a different team.

469. She mentioned that she was being targeted on the grounds of her sexual orientation, but she still did not mention this allegedly very upsetting incident. Cross-examined she could not explain why she did not raise it. At first she suggested she did not want people to know she was in a same-sex relationship but in fact then went on to admit she had been quite open about it in the team and that there had been open discussions about her relationship.

470. There was no reference to this incident in the claimant's own witness statement (although there was a reference in the Further and Better Particulars of Claim). The comment the claimant said was made in a busy café sitting at a table with Helen Whelan and others including parents and other colleagues. In her appeal against the Claire Jackson findings, she said that she had heard a conversation in which Helen Whelan had said it but her account to the Tribunal was that it was said to her and others at the table. She was unable to tell us how it had arisen but she believed that Helen Whelan was talking about lesbians having sex in disgust and that Helen Whelan had said it deliberately to upset the claimant.

471. She did not cross-examine Helen Whelan about it and Helen Whelan in her witness statement denied saying such a thing. Helen Whelan in her evidence explained that the claimant had chosen to tell her she was bisexual, even before the claimant had told her mother but Helen Whelan was entirely supportive. She had no issue with the claimant's orientation which she was aware of and she was supportive. There was never any conversation at any time about the mechanics of sexual relations between same-sex couples.

472. The respondent asserted that this allegation was fabricated to build a case and we are invited to make a robust finding to that effect. We find it incredible that had it been said, the claimant did not raise it immediately as she was so sensitive to issues of this nature. The claimant has not satisfied us that this incident happened at all.

473. <u>Allegation 2 – Daily negative comments about the claimant's facial appearance and clothing through to June 2017</u>

474. This again related to Helen Whelan. The claimant suggested she made upsetting personal comments about her facial appearance and clothing on a daily or regular basis through to June 2017. Again the claimant said nothing about this at the time. When she complained to Karen Fishwick on 30 November, in her bullying and harassment grievance or when interviewed by Claire Jackson.

475. The claimant asserted that this had been going on since her father was poorly, that is pre-April 2016 and the first time the claimant made reference to anything resembling that was fifteen months later when in an email dated 26 July 2017 (page 433) she said "I do feel I was targeted because of my sexual orientation and how I look as Helen often made reference to this".

476. It was far from clear in the claimant's evidence what she was alleging Helen had made reference to and Ms Whelan denied it completely. We find it incredible that Ms Whelan had been saying this allegedly every day for months and months and the claimant did not raise it. This suggests to us that Ms Whelan's denial is the more credible position than the claimant's assertion. In the claimant's appeal against the grievance findings on 22 February 2018 her evidence changed. She said that

Helen Whelan whispered in the next room about how she looked and about her characteristics as a gay person.

477. That is very different to the allegation that was made to the Tribunal that the comments were direct to her about how she looked. There was no reference to this in the claimant's own witness statement and what came out in cross-examination was a different picture again. The claimant said not that Helen Whelan had been making comments about her facial appearance and what she was wearing but rather she would say "you look rough".

478. The claimant could not explain what she meant by that in relation to her sexual orientation and this was a very different allegation to that that had been made in the pleadings. We find this to be another example of the claimant's evidence changing so radically that it cannot be credible.

Allegation 3 – the Idris Elba photograph – May to June 2017

479. This is described by the respondent as a scandalous, fabricated allegation. The claimant did not include any detail in her witness statement. In evidence the claimant said that there had been a discussion about Idris Elba in the office and that Teresa Solano-Olivares had shown her a picture on her phone of a completely naked Idris Elba. She placed a picture in her supplemental bundle of a digitally enhanced naked Idris Elba – which could only be described as pornographic.

480. Those who had been present at the discussion about Idris Elba being the next potential James Bond were all adamant that the picture that was shown to the claimant to identify Idris Elba as a potential new James Bond, had him fully-clothed in black tie and suit. There was nothing similar about that to the image that was included in the claimant's supplemental bundle. Her inclusion of the image can only be described as scandalous. The claimant alleged that the completely naked picture she was shown caused her upset and disgust. We have found on the facts that she was not shown a picture of a naked Idris Elba but of him fully-clothed.

481. We noted that the claimant did not raise that incident when she was complaining about the team in July 2017 and further when she was interviewed by Claire Jackson as part of the investigation.

482. When asked about that in cross-examination the claimant said she has difficulty remembering things especially under duress. Claire Jackson's investigation involved interviewing 30 witnesses including the claimant at length when she raised many, many other things, but not this.

483. It seems an unlikely image to have forgotten if true. It is fair to say that Teresa Solano-Olivares was very upset about this allegation. She said it did not and never would have happened and in fact when shown the image the claimant said "Eugh, he's black". The claimant asked Teresa Solano-Olivares about it saying "Do you think you showedvirtually' naked picture. The photograph that she included in the bundle as similar was far from virtual. Idris Elba was shown without a stitch on him, his private parts having been digitally enhanced. Our findings in this regard were that the claimant was shown a picture of Idris Elba in order to identify him as a potential new James Bond, the claimant not recognising his name. However, we find that he was fully clothed in the image that was shown to her and we find this to have

been a complete fabrication on her part. Even worse was the fact she then went on to make a comment about his race in a derogatory tone. We assume that the pornographic image was included in our bundle for shock value. All it did was to confirm our own thoughts that the claimant was capable of both misinterpreting the truth and asserting falsehoods. Her view was that she had been shown a naked image to distress her because of her sexual orientation. We find this to have been some sort of cry for attention or spiteful allegation against Teresa Solano-Olivares and we deprecate conduct in this regard. There was no evidence at all of discrimination or harassment against the claimant because of her sexual orientation.

Racial Harassment

484. The claimant makes no allegation of racial harassment at Chorlton. She says that from the time she started in Burnage in July 2017 Ruth Aves, Sue Thompson and Beverly Coleman made fun of her Polish name, referring to her as "Kisha, Krishna, whatever your name is". She asserts that Beverley Coleman did it every day and they found it funny and were giggling about upsetting the claimant. The respondent's case was that what she said was untrue. The claimant was pleaded on the basis that the harassment was because she was Polish or perceived because of her name to be Polish.

485. In the earlier case management discussion with EJ Slater when the List of Issues was being drafted the claimant told EJ Slater that she had just found out she was partially Polish. At the hearing the claimant said that her mother was part Irish but she did not know the rest of her mother's heritage as she was adopted so the position was therefore that she might be Polish not that she was.

486. On the evidence there was no perception within the team that the claimant's name of Krisha was Polish. They knew it was unusual but not where it may have come from and the claimant did not ever tell anybody her name was Polish. There was no evidence we found that anyone made fun of her name.

487. Beverley Coleman mistakenly got the claimant's name wrong. We heard evidence that she gets many names of people wrong and that there had been a light-hearted conversation about it with the claimant saying "I am not some Indian god (having been called Krishna). Beverley Coleman made a mistake and gave evidence that she had done so. When the claimant created her chronology of events as asked for by her manager in November 2017 she said Ruth Aves and Sue Thompson got her name wrong. She did not mention Beverley Coleman.

488. Her answer in cross-examination to this was 'perhaps I was protecting her I have no idea'. We found it incredible that anyone made fun of her name particularly on an everyday basis. She understood she told us in her evidence that although her mother was partially Irish, because her mum was adopted she might have had Polish origins as well.

489. We found that the claimant just had an unusual name which people struggled to pronounce. We noticed that Beverley Coleman in her evidence (who is of black Jamaican origin) was genuinely distressed that she was perceived as behaving in a racist manner. When the claimant cross-examined Beverley Coleman he did not put it to her that she was lying in her evidence. She also did not put it to her that she

had persistently said “Kisha, Krishna whatever your name is” or that her mistake had anything to do with a perception of the claimant being foreign.

490. The claimant did raise Beverley Coleman’s failure to get her name right with her line manager casually in conversation once or twice. It was not a regular complaint and there was no suggestion it was connected to the claimant being Polish, foreign or even having a non-English name.

491. Once Beverley Coleman had been advised of the problem she immediately started to practice and rehearse the claimant’s name in private until she got it right and then was able to continue to call the claimant by her correct name.

492. Ruth Aves did not persistently get the claimant’s name wrong. As explained in the evidence on one occasion autocorrect changed Krisha to Krishna and Ruth did not spot it. It was tried again by Ruth and her manager by inserting Krisha as the claimant’s name in a blank document and sure enough autocorrect changed it to Krishna.

493. The claimant now says this was going on daily but at the time she was confirming that she was happy in the Burnage team (24.7.2017 page 334). On 22 September 2017 at page 432 she said the team was lovely. The claimant did not complain about being upset about it, that she was being belittled or being discriminated against. She told her line manager that Beverley had got her name wrong possibly once or twice and that once Ruth had spelt her name incorrectly in an email.

494. It is a very different position to the one in which she set out her case where this was happening daily and people were making fun of her name. The claimant and Beverley Coleman had had a happy, friendly relationship and Beverley Coleman was shocked by the allegations. In her evidence the claimant changed her case. Instead of saying she was treated less favourably not because she was perceived to be Polish but rather because she was perceived to be foreign. Bearing in mind her surname was Wilson and there was no suggestion that she was anything other than white British at work that seemed incredible to the Tribunal. We found no evidence in support of the claimant’s claim that there was any unwanted conduct which had the purpose or effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We found one example of Beverley Coleman mispronouncing the claimant’s name and one example of a mistype in an email. The claimant has failed to show that the conduct had the purpose or effect either of violating her dignity or of creating the proscribed environment. Her evidence is simply incredible.

Disability Discrimination

495. The respondent accepted from the outset that the claimant was a disabled person at the material time because of anxiety and depression. The claimant also asserted that she had PTSD or PTSD symptoms. The claimant alleged in an email on 25 May 2017 (412) that she was having therapy for PTSD. She also told Louise Barrett something similar on 15 June 2017 (1046). She also told Louise Barrett that it was under control. She did mention hypervigilance either as a symptom whether controlled or otherwise. Her earlier Occupational Health report from 4 May 2017 (page 240) referred to work-related stress not PTSD, anxiety or depression. The

claimant said she told Louise Barrett that she was struggling with PTSD in July 2017. Louise Barrett denied that that had been the case and that the claimant did not seek to link the difficulties she was having to any mental health issues.

496. In an email from 7 November 2017 she raised the issue of noise as an issue but the claimant did not link the issue of noise to her mental health at all. The first mention of PTSD in the claimant's GP records was in March 2018 which records "She thinks she has PTSD and is asking for a referral for EDMR". This was two days after she had made contact with ACAS about bringing a tribunal claim.

497. There was no GP confirmation of the diagnosis. And in January 2007 her GP records show that she was referred back for counselling because of bereavement issues and anxiety not because of PTSD. The claimant accepted in her evidence she has not seen a psychiatrist or clinical psychologist. The evidence of PTSD is based on her own assertions and her counsellor Norma James who reported that she has suffered with PTSD-like symptoms.

498. A counsellor is not appropriately qualified to make such a diagnosis. It is noted that Ms James does not make reference to hypervigilance or a tendency to notice everything as part of the claimant's symptoms. The claimant herself relates to hypervigilance as a PTSD symptom. However the claimant has been proved over and again to both exaggerate and misinterpret situations.

499. We therefore find that the claimant has not persuaded us that she suffered with PTSD as a disability or with PTSD-like symptoms as a disability. We accept the respondent's position that the claimant was not thus disabled other than as conceded by the respondent. We heard no credible evidence nor saw any documents to confirm that the claimant suffered with a disability based on hypervigilance or a tendency to notice anything. And we were satisfied that the claimant did not have these impairments and they did not have a substantial adverse effect on her day-to-day activities.

Knowledge of Disability

500. The respondent agrees that they knew the claimant was disabled by reason of anxiety and depression but only from when they received the Access to Work report. Previous absences had been labelled as work-related stress. The claimant did refer to having PTSD herself on 25/5/2017 but it was missed by everybody because the reference was placed under an email which was headed 'Annual Leave'. She told Louise Barrett in June 2017 that she had PTSD and anxiety but she did not suggest she was disabled by it or had a problem with it. She made no reference to any link between noise, workload or anything else. We were referred to the case of **IPC Media Limited v Millar [2013] IRLR 707** by the respondent. We remind ourselves that Underhill P held that an act or omission can occur because of a prescribed factor as long as that factor operates on the mind of the putative discriminator (consciously or subconsciously) to a significant extent. There was nothing to operate on the mind of the putative discriminator

Allegation 3 - Teresa Solano-Olivares, Helen Whelan and Paula McAdam ostracising the claimant daily from May 2016 to June 2017

501. The respondent's evidence in relation to this shows evidence of benign behaviour by the three ladies inconsistent with ostracising the claimant. None of them knew she had any form of disability. They did keep her at arm's length because of her aggressive behaviour. At a time when the claimant alleges she was being ostracised by them, the claimant invited Paula McAdam to come and meet her new kitten (July 2016).

502. In August 2016 the claimant parked her car at Paula McAdam's house, Paula McAdam gave her a lift to the airport to go on holiday and while on holiday she asked Paula McAdam if she could borrow a credit card to hire a car.

503. Helen Whelan had known the claimant from supervision in 2012 and when they started working together in March 2015 they had a good relationship.

504. Teresa Solano-Olivares was wary of the claimant and would avoid small talk but she always remained professional as she explained. Throughout this period none of the three health visitors concerned were aware that the claimant had any form of disability. They could not therefore have discriminated against her or harassed her because of it. She was treated with caution because she was aggressive, difficult and challenging.

505. Allegation 8 related to Paula McAdam saying "I don't do weeping willows" daily up to June 2017 – the claimant believing that this related to her. Paula McAdam did not say "I don't do weeping willows". She did use the phrase weeping willows but to describe the mothers whom she was helping who were having difficulty breastfeeding. It was not related to or directed to the claimant. Paula McAdam was unaware of the claimant crying a lot or at all and during the complaints that were made by the claimant about Paula McAdam she did not complain about her using that phrase. Paula McAdam was completely unaware that the claimant had any sort of disability.

<u>Allegation 2 – Maria Graham misleading the claimant about a complaint in August 2016</u>

506. This was dealt with on the facts under detriment 1 above. However, to reiterate, we found that Maria Graham did not say there had been a complaint in public and that she was not going to talk about it. It simply did not happen. In any event this was around August 2016 and Maria Graham was unaware of any mental health issues with the claimant. Even if she had been and on the claimant's case it had nothing to do with the claimant's mental health or hypervigilance. Maria Graham left the team in December 2016 and could not therefore have been involved in anything after that time.

<u>Allegation 7 – Helen Whelan referring to the claimant as a "nutcase" November 2016</u>

507. We find this did not happen. Helen Whelan did not know that the claimant was disabled and the claimant's evidence was totally inconsistent with the rest of her evidence. It was not mentioned in the claimant's witness statement nor in the complaint she lodged on 16 November 2016 nor in the email on 30 November 2016 (page 178). Helen Whelan said it did not happen. The claimant said she did not know when it happened. She then changed her mind and said that what Helen Whelan in fact said was that "We get all the nutcases at Chorlton". She was not then

saying that the claimant was a nutcase. In cross-examination of Helen Whelan the claimant put the allegation and Helen Whelan denied it. Helen Whelan did not at the time know that the claimant had any form of disability, particularly anxiety or depression.

Allegation 4 – Paula McAdam pushing the claimant into a wall in May 2017

508. This is the same as detriment 7 referred to in the public interest disclosure claim above. We have found on the facts this did not happen. If we are wrong about that and it did, the claimant appears to suggest that it was because she whistle-blew and had a disability. We do not find that credible. Paula McAdam was unaware that the claimant had a disability and so cannot have treated her less favourably or harassed her because of it.

Allegations 5 and 6

509. Maria Graham was aware that the claimant had anxiety but she had left in December 2016 and she had not passed that on to anybody else so none of the rest of the team knew of the claimant's disability. The claimant suggests that the something arising is the behaviour but does not give any detail of that. If it is the behaviour that led to complaints about her then the respondent witnesses have proved otherwise.

510. There is no suggestion in the medical evidence that the claimant's anxiety or depression caused her to be aggressive or challenging towards colleagues, to slam drawers, slam down telephones, files or to gloat about putting the fear of God into mothers. The claimant according to the respondent is seeking to use her anxiety and depression diagnosis as an excuse for poor behaviour.

511. The Tribunal agrees with the respondent in this regard. It is clear that it was completely normal for anybody who had serious allegations made against them and who are the subject of an investigation to be moved between teams and it was so with the claimant, regardless of any disability. She was moved from Chorlton to Burnage in June 2017. It is noted that she did not complain at the time and in fact expressed pleasure in being at Burnage with a manager whom she considered to be far superior to the situation that had been in place in Chorlton. She was moved because of the complaints not because of her disability. The complaints were not as a matter of fact because of any hypervigilance noticing everything but because of her behaviour which began before she had a diagnosis of anxiety and depression and before her father's death. Her move to Cheetham was at her request.

Allegation 9 – In October 2017 she was threatened with a disciplinary procedure if there were further complaints

512. This is another example of the claimant misinterpreting or reinterpreting the facts. Her line manager had acted to meet with her in an informal way after she had received a number of complaints in a very short space of time. It was nothing to do with the claimant's disability and the outcome was not that she was threatened with a disciplinary procedure but that she was offered support and action plan to avoid complaints for a period of three months. It was only if she missed that target that the new complaints would be reviewed and may lead to disciplinary action, not that they would. There was not threat. This had nothing at all to do with the claimant's

disability of anxiety and depression. The claimant herself does not suggest that her conduct was impacted by her disabilities in this regard.

513. The complaints were to do with the way in which the claimant communicated with people and the claimant's response to those was that it was the individuals with whom she was communicating who were rude not her. There is no evidence that this rudeness arose from disability and that the claimant was treated unfavourably because of it. She had informal counselling. Louise Barrett attempted to put a gentle action plan to stop matters getting worse and it was a proportionate way of dealing with matters which had been brought to the line manager's attention.

Allegation 10 - The claimant being told she would be subject to the capability process if she had any more time off in November 2018

514. The claimant had time off in November 2018 with vomiting. She had by then had 102 days' absence in the previous 12 months and had triggered the respondent's absence management procedure. She was reviewed at an informal meeting under the Sickness Absence Policy and sent a usual template letter recording her absence review and reminding her that she was required to improve her attendance and that any subsequent episodes of absence may result in progression to the formal stage of the Policy (1220g).

515. The claimant's absence at the time was nothing to do with her disability but was for a period of absence due to vomiting (later she attempted to suggest the vomiting was as a result of her anxiety and depression (although she later tried to say in her submissions to the Tribunal that the vomiting may be because of her mental health conditions). She did not however mention at the time that that was the case, which again does not assist her credibility. It was not unfavourable treatment because of something arising in consequence of disability. The respondent argues and the Tribunal accept that it was justified in any event as a proportionate means of achieving a legitimate aim. Whatever the reason for the claimant's absence the respondent was entitled to seek better attendance and to give the claimant due notice that it might engage in more formal process if attendance did not improve.

Reasonable Adjustments

516. All of the adjustments arose shortly following the death of the claimant's father in April of 2016.

The noisy environment

517. The claimant worked in an open plan office with others all using computers and telephones. The respondent accepted that the environment could be noisy. There is no medical evidence to suggest the claimant was placed at a disadvantage because of the noise. There is no medical evidence to suggest she required peaceful surroundings. The Access to Work's report (page 899) mentioned it but based on the claimant's self-reporting. It was not prepared by a medical practitioner.

518. The claimant and others told their line manager at Burnage that the environment was noisy and the claimant said she found it difficult to concentrate from time to time but she did not suggest at that time that it was linked to a mental health condition. The claimant alleged that she was started on Sumatriptan whilst at

Burnage because the noise was acting as a trigger for her PTSD symptoms. Her GP records however (page 2666) suggest she was prescribed it for visual disturbance and headaches and had a similar episode many years ago. There was no mention of noise or hypervigilance or hypersensitivity in her records.

519. In cross-examination the claimant typically said that her GP had not properly recorded what she had said. Prior to the Access to Work report the respondent was totally unaware of any substantial disadvantage.

520. The Tribunal doubts about whether there was a duty at that stage to make adjustments but noted the respondent did do so in any event. Access to Work recommended adjustments to deal with a noisy environment and the respondent made the adjustments.

521. There was delay in obtaining some of those adjustments but the respondent at least tried to help and to follow the recommendations of Access to Work. The claimant was allowed to work in a less busy part of the office and to use a quiet room if it was available. She received noise-cancelling headphones after some delay which was well-explained by the respondent in terms of the ordering system. The respondent eventually arranged access for the Brain in Hand app and provided the claimant with a new iPhone to use it. Access to Work made it difficult for the respondent to resolve this particular adjustment but eventually it worked for the claimant. The claimant eventually returned to work on 18 June when strategies training to help her cope. And also suggested disability awareness training for the team which was organised after some delay. It was unclear how this could help when the team were unaware of the claimant's disability in any event. By 21 November 2019 the only remaining outstanding issue was that the Brain in Hand app was not transferring properly (but the claimant did explain that she was able to use this on her personal iPhone).

<u>Allowing the team to whisper/ostracise the claimant, have a go at her, blame her and push her into a wall</u>

522. None of these were PCPs applied by the respondent. None of them were true. We have dealt with the facts in relation to all of these incidents under the detriments above and our view did not change when we looked at them in relation to the claimant's disabilities. The adjustments the claimant sought were mediation by a mediator. It is unclear how the claimant was disadvantaged by the use of an in-house mediator. She did not object to Mr Nanjji at the time the mediation was undertaken by him and at the time she did not request an external mediator. The Tribunal noted that although the claimant was unaware at the time, Mr Nanji is a qualified mediator.

523. The disciplinary process was to begin after a recommendation following a detailed investigatory process by Claire Jackson which involved interviewing more than 30 witnesses. The claimant said it would have been a reasonable adjustment not to begin that disciplinary action. It did not begin as it was placed on hold pending her appeals. In fact it did not because her appeals took so long that eventually the Head of HR concluded that the disciplinary action was too late. and would not proceed.

<u>Managing the team's behaviour more appropriately – Staff awareness training</u>

524. The claimant wanted management to sort her perceived slights from the team. As a matter of fact we did not find there to have been any so the respondent was under no duty to make any reasonable adjustment in that regard. There were no slights, there were incidents of very poor behaviour by the claimant and despite that the team soldiered on. Maria Graham in particular did deal with issues that the claimant raised. The claimant was never satisfied with the action that had been taken.

The heavy caseload

525. The claimant said that the caseload at Cheetham was alright so this must relate to the caseload at Chorlton and Burnage. She raised the issue of the caseload of the team and made no suggestion that she was being picked out or that as a disabled person she should have had a lower caseload. She raised issues of the general workload in 2016 and then after time off with work-related stress in February/March 2017 mentioned it in May 2017 when her line manager noticed she managed her own case and workload effectively, and the claimant agreed with her.. There was due to be a new health visitor in that May and caseloads were being looked at. The claimant was told to escalate if she had workload pressures. She did not do so. The claimant accepted in her evidence at tribunal that she managed her workload effectively.

526. The claimant did complain of work stress primarily due to relationship issues not workload. She did raise workload issues at Burnage but did not link the same to disability. When cross-examined she accepted that there was no Occupational Health evidence to the effect that the claimant's workload was disadvantaging her because of her disability or that adjustments should be made.

527. It was always the workload of the whole team which was generally high which she raised concerns about. It was not about her, her workload and her mental health. Her workload was no higher than others and it was within recommended limits. The respondent was trying to obtain extra staff when it was able to. In the meeting on 5 October 2017 the claimant was asked to prepare a list of her high-priority cases. She failed to mention to her line manager that she was going on leave the following week and the list was never prepared.

528. In conclusion we are dismissing all of the claimant's claims on the facts. In addition many of the claims were out of time, in particular all of the Chorlton claims and most of the Burnage claims. However, we have dismissed the claims on the facts which we assume will enable the claimant to understand why we have made the above findings.

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Employment Judge Warren
Date: 23 December 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
23 December 2022

FOR THE TRIBUNAL OFFICE

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