# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms N Griffiths**

**Respondent:** **Essex County Council**

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

**On:** **10, 14 and 15 September and 30 November 2021**
**In chambers on 14 January, 31 January and 22 November 2022**

**Before:** **Employment Judge Jones**
**Mr M Rowe**
**Mr J Webb**

**Representation**
Claimant: Mr McKracken (counsel)
Respondent: Ms Mason-Thom (counsel)

# RESERVED JUDGMENT

1. **The complaint of disability discrimination succeeds.**

2. **The complaint of constructive unfair dismissal succeeds.**

3. **The Claimant is entitled to a remedy. A remedy hearing will be fixed as soon as the parties send in their dates to avoid.**

# REASONS

1. The Claimants brought complaints of disability discrimination and unfair dismissal. The Respondent resisted the claim.

2. The parties agreed a list of issues which were set out in the case management minutes from the hearing conducted by EJ Russell on 24 August 2020. These issues are set out in full at the end of this hearing when we come to our decision.

## Evidence

3. The tribunal had an agreed bundle of documents spread over four lever arch files. We had a witness statement from the Claimant. For the Respondent we had witness statements from Nahida de Leon, the Child in Need Reviewing, Professional Standard and Audit Services Manager; Paul Secker, Director of Safeguarding and Quality Assurance, who had responsibility for the CINRO service and who heard the Claimant's grievance; and Chris Martin, Commissioning Director – Children, Mental Health, Learning Disabilities and Autism, who dealt with the Claimant's appeal against the outcome of her grievance. All of the witnesses gave live evidence to the Tribunal.

4. The Tribunal made the following findings of fact from that evidence. The Tribunal only made findings on those matters that were necessary to enable us to decide on the issues in the case. We did not make a finding on every piece of evidence in the hearing.

5. The Tribunal apologises to the parties for the delay in the promulgation of these reasons and judgment. The Tribunal is aware that the delay was long and likely to be difficult for the parties in this matter. The time estimate for this case was woefully short of the time needed as it was estimated to be a 5-day case. It was reduced to 4 days when we started in September 2021. We adjourned to complete the evidence in November 2021 as this was the earliest date that was agreed. There were difficulties in fixing days for the Tribunal to meet in chambers. We met and concluded our decision on 22 November. The rest of the delay was due to pressure of work on the judge arising from the pandemic.

## Findings of Fact

6. The Claimant is a qualified social worker. Having worked for the Respondent in various teams in its Children and Families Service since 2004, the Claimant began working as a Child in Need Reviewing Officer (CINRO) on 15 January 2014. The Claimant resigned her employment and her effective date of termination was 10 February 2020.

7. The Respondent has approximately 7 FTE Independent Child in Need Reviewing Officers (CINRO). The CINRO team was newly formed in 2014. The primary role of a CINRO was to provide independent oversight (support, scrutiny and challenge) of the work of the social work teams in which they were placed, to ensure best practice was delivered to the most complex children in need and their families. The CINRO did this by working alongside operational case holding teams, providing case consultation, advice and guidance, chairing child in need meetings and reviews and ensuring that the plan of support to children in need and their families was being robustly delivered.

8. We find that each of the 7 CINROs sat outside the line management structure of the social workers in their team. This was in keeping with the need to be independent. The Respondent's Children and Families department operated with a 4-quadrant based structure – North, Mid, South and West and each

had a Director for Local Delivery who was responsible for the oversight of service delivery within their specific quadrant and who most likely was at the top of the line management structure within that quadrant. CINROs were part of the Quality Assurance and Safeguarding Service (QASS) which had its own Director for Safeguarding and its own line management structure. At the time the Claimant was employed, each CINRO was assigned to work within a specific quadrant. The Claimant was assigned to work in 'Mid' Essex. She did not sit with a team of CINROs her work was mainly relating to and working with the team at Mid Essex.

9. When the service was first set up in 2014 it was new to the Respondent and as far as the Claimant was aware, none of the Respondent's employees had prior experience as a CINRO. Ms de Leon was one of two CINRS Team Managers with responsibility for the management of 4 CINROs and 2 quadrants before she became the Professional Standard and Audit Services Manager.

10. The teams within the Children and Families department were made up of caseholders for children in need. They belonged to the Families Support and Protection Teams, the Assessment Team and the Children with Disability Teams. We heard that there could sometimes be tension between the CINRO and caseholders within the team or with their manager, as sometimes the team manager/caseholder disagreed with a CINRO's view as to how a case should be handled. The managers were in a more senior position than the CINRO, even though the CINRO had oversight of their work.

11. There were formal supervision sessions between the CINROs and their managers where a written record was made and sent to the employee, for agreement. The Respondent also recognised regular discussions between the CINRO and their manager as supervision, as well as practice observations/supervision which happened as part of a quadrant-based peer arrangement. The Claimant was supervised by her Team Manager, Kate Adams, from 2016. Ms Adams was supervised by Ms de Leon.

12. Ms Adams was off from work on sick leave during 2017. She began a phased return to work from sick leave on 2 February 2018. It is likely that while she was absent, the Respondent's quality assurance standards slipped due to Ms de Leon not having the time to carry out the necessary reviews and due to everyone having to cover for absent colleagues.

13. Ms de Leon's evidence was that she had been aware of the Claimant being 'emotionally fragile' in 2016, following a personal loss and a period of sickness during 2017, when she had surgery and a subsequent leg injury.

14. On 15 February 2018, in a 1:1 supervision with the Claimant on her return to work from sick leave, Ms Adams recorded that the Claimant was feeling *'much better in her emotions this year'.* Ms Adams identified issues with the Claimant's record keeping. It was recorded that the Claimant's online calendar was not being kept up to date and it is likely that she was asked to rectify that. In an email dated 22 February 2018, Ms Adams asked the Claimant to ensure that her open casefiles were up to date as a review of open cases had identified that there were some missing documents/case notes on Mosiac, which was the Respondent's electronic database. It was

recorded that the Claimant was asked to rectify that and to let her manager know as soon as it had been done. Those were the only issues Ms Adams raised with the Claimant in that meeting.

15. The Claimant's strengths were in the confidence and authority that she brought to the role and her passionate desire to achieve the best outcomes for children. According to Ms de Leon, the Claimant had strong assessment skills which were born from her experience of working for many years as a frontline case holding social worker. The only criticism from the Respondent was that the Claimant's record keeping, and administrative paperwork were not up to date and her calendar management could be improved.

16. Ms de Leon's evidence was that there had been problems embedding the CINRO service into Mid. There had been difficulty with the frontline caseholding team and their managers settling into a positive working relationship with the CINROs, the latest of whom was the Claimant. On 12 April 2018, a newly appointed Interim Service Manager from one of the teams in Mid, Ahana Kalluri, emailed Ms de Leon and Ms Adams to ask whether it was possible to meet to discuss some concerns that had been raised with her by Team Managers around the CINRO's involvement with the team. She thought that they may already be aware of those concerns as she had been led to believe that they were longstanding. The CINRO that she wanted to discuss was the Claimant.

17. Around the same time, in a supervision meeting with Ms Adams on 26 April, the Claimant raised with her some of the concerns that she had with working with the team at Mid. The Claimant felt that the social workers in Mid were feeling overwhelmed, defeated and appeared to have stopped trying to make changes for the children in need assigned to them. In the meeting minutes, the Claimant is noted as saying that she was feeling frustrated and unable to influence change. She felt that the service that she gave to the teams in Mid was undervalued. The Claimant was looking for suggestions for how she could do things differently to work better with colleagues in Mid. There were lots of new people there and it would have helped to have management support in developing those relationships.

18. The minutes of that meeting also recorded that the Claimant had peer observation on 17 October 2016 and 25 November 2016. She was due to be observed on 27 April 2017 by a new CINRO.

19. On 30 April 2018, Ms Kalluri emailed Ms Adams to put her concerns about the Claimant in writing. She indicated that she had had received general complaints from Team Managers about the quality of the CIN service Mid had received. She stated that when she asked them for specifics, they named the Claimant and detailed four allegations against the Claimant personally. She ended the letter by stating that she hoped it would be possible to talk once those matters had been considered and Ms Adams could offer some solutions.

20. The allegations ranged from: minutes not being uploaded on to the system within reasonable timescales, which meant that there were no CIN plans for the social work team to follow; to more serious allegations that the Claimant had an overly challenging approach within reviews which the team managers

perceived as aggressive and that she had caused families to leave the room in tears, stating that they never wanted to work with her again. There was also a specific complaint about the Claimant's practice in relation to a family which was alleged to have happened during the previous year. No dates were provided for any of the allegations.

21. Ms Adams was off sick on 30 April, so Ms de Leon responded to this email. She told Ms Kalluri that the Respondent was not aware of the concerns as they had not previously been raised. Ms de Leon asked that in future, issues should be raised immediately as they arise so that they could be addressed. She defended the Claimant against the allegation of being overly challenging and stated that she would expect the role of CINRO to create some healthy tension and queried why that was being seen as bullish and insensitive. She stated that if the caseholder/social worker had an issue with the way the Claimant conducted a meeting or interacted with a member of the public she would expect this to have been raised in the feedback form related to that case. The Respondent had not received a complaint about the Claimant's approach in any of the cases she had worked on.

22. In relation to the specific complaint relating to the family, Ms de Leon commented that as this had not been raised with the CIN management at the time, it was difficult to deal with it. Ms de Leon's evidence to us was that she pushed back to Ms Kalluri for further clarification. She did not actually say that did say that it would be helpful if in future matters were raised promptly so that they could be resolved as quickly as possible.

23. Ms de Leon also pointed out that there were issues with the practice of those who worked in Mid, which might have contributed to the difficulties that had been identified. There had been meetings to try to resolve those difficulties, prior to Ms Kalluri taking up her position, about which she might not have been aware. She concluded the letter by stating that there needed to be a conversation about how to improve the working relationship between caseholders and the CINROs. She stated again that it was important that any matters that did come up should be raised immediately with Ms Adams so that the CIN team could be proactive and address them immediately. Ms de Leon was trying to broaden the discussion away from focussing on just the Claimant and instead looking at the structural issues that she believed lay behind Ms Kalluri's complaint.

24. However, at the same time, Ms de Leon asked Ms Adams, as the Claimant's line manager, to review the Claimant's performance statistics and get back to her if they showed anything. She acknowledged that even if a formal complaint had not been raised, it was of concern to her that the Claimant's approach was not *'sitting comfortably'* with the social workers in Mid and this needed to be resolved. She also thought that the Claimant's character and personality may have played a part in the way she was experienced by her colleagues in Mid. She stated: *'I would like Kate to be forensic in her review of Nicola's performance data'* and also *'Nicola's personality and character plays a large part in this…as she can be direct in the way that she asks difficult questions…'*

25. Having checked the records, Ms Adams found that there had been no dissatisfactions or complaints raised against the Claimant since 2015. In her email dated 1 May 2018, after conducting a forensic review, she stated that in terms of CINROs performance overall, the Claimant did not stand out from the others. The main issue was that her paperwork was sometimes late. There was only one comment on a feedback form that *'a slightly softer approach would be better given the mother's mental health'* and that this was something for Ms Adams to take up with the Claimant in supervision.

26. On 17 May 2018, Ms de Leon, Kate Adams and Ms Hobbs met with Ms Kalluri. This was an informal meeting. Ms de Leon's understanding of the purpose of the meeting was a follow-up to her letter, to identify ways in which the working relationships between the CIN service and the Mid FS&P Teams could be strengthened. Ms de Leon continued in her attempts to broaden the discussion by setting out the history of the working relationships between the two teams - which she described as '*legacy issues'* – and noting that those issues may be impacting on the narrative Ms Kalluri was hearing from the team managers. All Mid CINROs had experienced similar challenges when working with the Mid teams. Ms Adams confirmed that, having evaluated the Claimant's performance statistics, there was no evidence of the specific incident with the family ever having been raised against the Claimant, or of anything else.

27. Ms Kalluri tried to bring the conversation back to talking specifically about the Claimant. Ms de Leon stated that any specific issues should be escalated using the proper channels and that it was not appropriate to raise issues about the Claimant without her being present or having the opportunity to respond and/or provide clarification. She instructed Ms Adams to inform that Claimant about the comments/allegations raised by Ms Kalluri and her team managers.

28. It is likely that Ms Adams felt uncomfortable doing so because she did not tell the Claimant about this exchange or about the serious allegations that had been made against her until much later. She later stated that she felt uncomfortable doing so because she did not have much detail to give to the Claimant. On 3 July 2018, during a 1:1 supervision session, Ms Adams told the Claimant that complaints had been made against her by her colleagues in Mid and by a service manager. Ms Adams did not show her the email dated 30 April from Ms Kalluri or tell her what the allegations were, who had made the complaints, what period they related to or whether they had been or were going to be investigated. The Claimant was not given any detail on the complaints.

29. In the supervision meeting, Ms Adams told the Claimant that there were times when she could be perceived as '*intimidating'* in team meetings and that her presentation style has resulted in '*defensiveness'* from her colleagues. In the supervision notes she wrote *'Nicola needs to think about ways she can challenge that does not create defensiveness'*. The Claimant was not given an example of when she had caused defensiveness or with whom.

30. It was recorded that Ms Adams intended to attend a team meeting of service managers in Mid, later in July. The minutes stated -

*'Should any issues be raised about Nicola or any other CINRO in Mid, KA will request specific examples so that this can be further discussed.*
*Nicola needs to ensure that she is visible in the team rooms makes herself available for consultations and continue to meet with her peers, Jackie and Deirdre.'*

31. Later that evening, Ms Adams sent the Claimant a record of their supervision discussion. The Claimant was unhappy with it as it did not accurately reflect their discussion. She raised this with Ms Adams by email. She also expressed concern that Ms Adams had been talking to service managers (two rungs of seniority above herself), attending team meetings and speaking to her colleagues in Mid about her, without her being aware of it. She felt like she was being investigated by the Respondent. The Claimant was unaware of anyone having made any complaints about her since she started in the CINRO post. She ended the email by stating *'I would think I have the right to feel safe at work'.*

32. Following the Claimant's comments, Ms Adams reviewed the supervision record and sent a revised version to the Claimant. It is likely that Ms Adams agreed that her original note did not accurately reflect their conversation and that is why she agreed to change it. We find that the points regarding the team in Mid's perception of the Claimant remained. The Claimant was content that the second version of the minutes was an accurate record of the meeting although she remained unhappy about its contents.

33. The Claimant wrote to Ms Adams by email on several occasions following their meeting on 3 July, to ask for further information about the complaints. She was really worried about it and felt like she was in the dark about something that was being discussed by others around her. The Respondent did not give her any further information at this stage. At the same time, as a result of the complaints, she was told that she needed to change her practice.

34. On 17 July, Ms Adams told the Claimant by email that there was further information but that she could not share it with her yet. That email gave no information but the way it was written was almost guaranteed to make the Claimant worry. Ms Adams was referring to a recent complaint raised by Sally-Ann Millar, team manager in Mid, which had been forwarded to Ms Adams on instruction of Ms Kalluri. In it, Ms Millar raises 3 specific complaints about the Claimant in relation to her interaction with two families. In the supervision note on 154, it is recorded that Ms Adams told the Claimant that there was another issue, raised by a team manager in Mid, regarding the Claimant's practice. Also recorded was that Ms Adams did not have the name of the family concerned although she had the name of the caseholder. It seemed strange to us that cases were not named after the family concerned. Ms Adams was to meet with the team manager to get more details and then speak to the family.

35. Emails sent on 19 July 2018, between Ms Adams and Gillian Hobbs, who was another team manager around this time, show that Ms Adams was concerned that the Claimant's stress levels may cause her to be signed off by her GP. She wanted to provide the Claimant with more information about the complaints as she recognised that it was not easy to know that people who are working with you are also complaining about you but not know who

is doing so. Ms Adams also stated that she might need to work out a better approach to the Claimant. Hobbs response was *'No, I think she needs to reflect more and learn from the feedback'*. The Claimant did not see the emails until she submitted a GDPR request in June 2019.

36. On 24 July a further meeting was held between Kate Adams, Gillian Hobbs, Ahana Kalluri and the team in Mid. The meeting started with a general discussion about working relationships but quickly descended into a discussion mainly focussed on the Claimant. The managers from Mid talked about their perceived difficulties with Claimant, in terms of her approach and its impact. Both Ms Adams and Ms Hobbs felt uncomfortable about this. Ms Adams tried to shut down the conversation and indicated that they were not there to talk about individuals and that any individual issue should be raised directly with the Claimant and then, if it could not be resolved, with her manager.

37. On 27 July, Ms Adams met with Sally-Ann Millar. They agreed to draw a line under what had happened historically. Ms Millar gave Ms Adams the names of the two families where there had apparently been recent concerns raised around the Claimant's approach in CIN meetings. Later in the day, Ms Adams met with Claimant and gave her some details regarding those recent concerns raised by Ms Millar. The Claimant was told the names of the families but not the details of their complaints. In response, the Claimant immediately provided copies of the families' feedback forms and confirmed that she had chaired a meeting for each family on the same day, 4 July. While the Claimant was trying to recall what happened with these families and what she was supposed to have done wrong, Ms Adams advised her to make an effort to improve relationships with Sally-Ann Millar and her team of social workers and to sit in their team room. The Claimant found it difficult to accept that the issue was with her. She was also concerned that Ms Millar's tendency was to escalate any concerns about her, straight to senior management, without first raising them with her.

38. It appeared to the Claimant that the managers had discussed it between them and decided that she needed to make an effort to build bridges with Ms Millar and her team; whereas the Claimant did not agree that she had done anything wrong in the first place. This was all before the Respondent had conducted any investigation into Ms Millar's allegations. Ms Adams did later go on to speak to the two families concerned to investigate Ms Millar's allegations.

39. The Respondent admitted in submissions that the way in which the initial complaint from Ms Kalluri was handled was the opposite of the way it should have been.

40. In an exchange of emails between Ms Adams and Ms de Leon, copied to Ms Kalluri and Ms Hobbs, it was decided that the Claimant's intentions were good but might be misunderstood because she can sometimes be '*harsh and chaotic'* and that in future, Ms Millar's team would be encouraged to raise issues directly with her if something happened, so that they could be addressed. They agreed to treat these complaints as historic and to draw a line under them. The Claimant was not copied into those emails.

41. Ms Adams proposed that she would undertake some further observations of the Claimant's reviews.

42. Ms Adams then began her investigation to determine what actually happened in the two cases referred by Ms Millar. The Claimant was not copied into or included in those emails. Ms Adams stated in her email that she had briefly discussed this with the Claimant. We find it likely that what she discussed was her intention to speak to the parents and her advice that the Claimant should regularly sit in the room with Ms Millar's team and try to build relationships with them. This was something requested by Ms Millar as she *'wanted to get to know'* the CINROs assigned to her team. Ms Adams did not tell the Claimant any more details of the complaints against her.

43. This situation was a continuing source of extreme stress for the Claimant. Although there was no evidence of wrongdoing, the Claimant concluded that the managers must have decided that she was partly responsible for the earlier complaints from the team in Mid, because they determined that there needed to be changes to the Claimant's practice. The Claimant was not told what she had done wrong in these two cases but at the same time, she was being told that she needed to make an effort to improve relationships with Sally-Ann Millar and her team members; at least one of whom she could reasonably guess had made complaints/raised concerns about her that had not yet been investigated. The Claimant was conscious that the person could make another complaint about her. This was an additional source of stress and anxiety for her.

44. In the meantime, the Claimant continued to attend daily meetings with many staff members and with families. The Claimant continued to work with Ms Millar and the rest of the team. She tried to focus on work but was conscious that she did not have clarity about the complaints against her. Although she had been told that they involved a service manager, colleagues and her team, she did not have any further details and was not sure whether they were from colleagues, from families or from social workers who observed her practice. At that time, it was not clear to her that there were two separate complaints. This all played on the Claimant's mind and began to affect her personal life so that she began to avoid spending time with friends and family or with colleagues as she began to experience strong feelings of shame.

45. Ms Adams put additional supervision meetings in the calendar in August 2018, for her and the Claimant. When the Claimant enquired whether she should attend supervision in August as they already had supervision booked in for September, she was told that Ms de Leon had proposed that these additional sessions take place. Both the Claimant and Ms Adams cancelled one arranged supervision session between July and November.

46. The Claimant valued her supervision sessions as CINROs do not work in teams but in isolation. They do not have daily contact with their managers. The Claimant did not have her own office but would work closely with the Mid Quadrant team.

47. The Claimant was feeling stressed about the complaints that had been made. She was also aware that some of her social work colleagues at Mid were aware that something was happening with her as they told her that they had been asked their opinion of her. Some expressed support and others questioned her.

48. Ms Adams' investigation did not conclude until 7 September, which meant that the Claimant experienced that level of stress and anxiety about all of this between July and September 2018. The Claimant could not understand how complaints from two families could have been escalated to Ms de Leon when she had not previously been told about them, no one had approached her about them at the time and no one showed her a completed *'have your say'* document, which was the mode of complaint that families were supposed to use. We were told that the Respondent has leaflets and literature in every room and displayed all over the walls in its buildings; telling clients and users how to complain if they are unhappy with the service they received. It would also have been their social worker's responsibility to ensure that they understood their rights and to support them to follow the complaints process.

49. On 7 September, Ms Adams emailed her investigation report to Ms de Leon, Ms Kalluri and copied it to the Claimant. The report included the Claimant's comments as feedback. It is likely that it recorded the Claimant's feedback when she was told about Ms Adams' investigation. The Claimant was still not told what had happened in relation to the initial complaints/concerns raised by Ms Kalluri. In September after the Millar investigation concluded, the Claimant checked the children's social care records and noted that there was no record of either family having raised any concerns about her practice.

50. At the end of July, possibly triggered by the complaints about the Claimant's service, the Respondent conducted a review of how it evaluated complaints and compliments and how staff felt when they receive a complaint or a compliment. Gillian Hobbs sent the Claimant a form to complete as part of that review process. The Claimant completed her review form and set out details of her experience of being involved in this complaint process. She provided details of the anxiety and stress the whole process had caused her. She stated that she had been placed in a vulnerable position as she had not been told who had complained and the substance of the complaints. The Claimant used words/phrases such as '*anxiety provoking'*, '*powerless'*, '*professional anxiety'*, and '*paranoia'* in the description of her experiences of being the subject of a complaint. In the section describing the support she received from management while dealing with a complaint, the Claimant used words/phrases like '*disappointing'*, '*hurt'*, and *'not consistent'*. The Claimant ended her review by setting out a list of learning points for the Respondent and for herself from the experience.

51. Gillian Hobbs emailed the Claimant to acknowledge receipt and told her that it was 'very thought-provoking'. The Claimant gave her consent to the feedback form being forwarded to Nahida de Leon and Ms Adams. Ms de Leon's evidence was that she became emotional when she read the Claimant's account of her experience.

52. There was a dispute between the parties in the hearing about whether Ms de Leon telephoned the Claimant when she read this feedback/review form. The Claimant did not recall receiving a call and her evidence was that it would be unusual for Ms de Leon to call her on the phone. We find it unlikely that she did as there is no evidence of the call apart from Ms de Leon's evidence. Also, Ms de Leon's evidence was that she was not aware of how upset the Claimant had been about the handling of the Sally-Ann Millar complaint and the Kalluri complaint until she was told of Ms Hobbs' supervision session with the Claimant on 23 November. That suggests to us that she did not telephone the Claimant at the end of July, on receipt of this feedback. We find that no further action was taken on the contents of the Claimant's review form even though it would have been clear to whoever read it that the Claimant had been adversely affected by the way the Respondent handled the complaints from Mid about her practice.

53. Ms de Leon considered that while she may not have had the information in the beginning, it was likely that the Claimant now knew the details of the complaints against her. In fact, the Claimant was aware of the details of the complaints from Ms Millar but not the detail of the original complaints from Ms Kalluri. Ms de Leon confirmed that she checked with HR to see if there was any specific guidance on handling complaints made internally by staff about other members of staff but there was no policy fitting that description. There was a general policy on handling complaints.

54. Arising out of the Claimant's experience with the complaints raised by Mid, Ms de Leon's evidence was that there was some work done between Kate, Gillian Hobbs and herself on developing a CINRS guidance document which set out some practice principles in relation to how the Respondent should handle the escalation of issues between the CINR service and operational teams. The Claimant was not told about this piece of work.

55. We find that Ms Adams was now more actively observing the Claimant in her work. She attended a meeting that the Claimant was chairing, without prior notice, which further unsettled the Claimant. It is likely that Ms Adams was following up on one of her actions points in her email of 27 July 2018 to Ms de Leon, which was to undertake some further observations of the Claimant's reviews. Ms Adams also observed the Claimant on 13 August 2018.

56. The Claimant's managers were entitled to observe her work as they were entitled to observe any of her colleagues. However, we find that the circumstances which existed at the time - with the outstanding complaints and the comment made about her being intimidating - made her worry about her job.

57. On 30 August, the Claimant had a meeting scheduled with one of the two families who she had been told had complained about her. The Claimant was anxious about this meeting as she had not been told the outcome of the investigation into the complaint or what the family had been told or how she was supposed to manage her relationship with them.

58. We find that there were no supervision meetings between the Claimant and Ms Adams in August, September or October 2018. Although the Respondent initially denied this, it was subsequently confirmed by Ms Adams. The Respondent produced documents labelled '*Supervision Minutes'* from those months but we find that what happened was that Ms Adams would produce draft/skeleton minutes for her direct reports - before the supervision sessions had actually happened - with the intention of filling in the details of what was said/discussed/agreed; after the meeting. In an email Ms Adams confirmed that she had prepared notes for supervision meetings and omitted to delete them when supervision did not happen.

59. Ms de Leon's evidence was that in October 2018, in a meeting with Ms Adams, they discussed CINRO's performance and concerns that they had about the Claimant's practice. We find from the supervision notes in the bundle which related to February and May 2018, that apart from a delay in the Claimant uploading skeleton plans and review recommendations, no other substantive issues had been raised with her and the Claimant appeared to be achieving all the targets and performance indicators set for her. The contemporaneous documents do not show her standing out from other CINROs at this time. The February supervision confirmed that her reports were sent out ahead of time and she closed cases ahead of the time limit of 20 working days. In February, the Claimant had some outstanding case notes/missing documents that she needed to upload to Mosaic. This was picked up in the 1:1 supervision session in May with Ms Adams, in which it was minuted that the Claimant had completed a large amount of the missing data highlighted to her before. The Claimant did not have any supervision sessions between July and November 2018. The Respondent knew that around this time the Claimant was emotionally fragile.

60. We therefore find it unlikely that there were problems with the Claimant's practice over the 12 months to October 2018, as described in Ms de Leon's witness statement. If that had been the case and if there had been serious issues that gave the managers '*concerns'* over her practice, as described by Ms de Leon, it would have been mentioned in Ms Adams' supervision notes before July 2018 and in the supervision undertaken by Ms Hobbs with the Claimant in November 2018.

61. Ms de Leon arranged for Gillian Hobbs to meet with the Claimant for supervision, as Ms Adams was off sick. They met on 23 November 2018. The Claimant poured her heart out to Ms Hobbs as they knew each other having worked together previously. The Claimant explained how upset and worried she was and concerned for her job. She explained that social workers were either avoiding her or acting worried and supportive to her; both of which she found embarrassing. A couple of social workers had told her that they had been asked for their opinion on her and they asked her why that was.

62. The Claimant told Gillian Hobbs that she was confused as to how this had all come about. She was aware of the complaint that Ms Adams told her about on 3 July. Ms Hobbs told the Claimant that the first complaint had been made by Ahana Kalluri. This was the first time that she had been told who had raised the initial complaint against her. She had been made aware of the complaints from Sally-Ann Millar from Ms Adams, when they were

investigated. The Claimant told Ms Hobbs that she was fearful for her job and that this had led her to seek legal advice.

63. Although Ms Kalluri had been sent a copy of Ms Adams' investigation report into the Millar complaints she had not responded to it to confirm that she and/or Ms Millar were happy with the investigation and that was the end of the matter, or to raise any further concerns. They discussed this lack of a response from her. The Claimant stated that she felt let down by management and had little trust and faith in her manager, given the delays in information being shared with her and after being told that there were complaints about her conduct from team members but not being given the details for months. The Respondent would have been aware from this meeting that the Claimant wanted a response from Mid/management that the outcome of the investigation was accepted.

64. The minutes noted that the Claimant stated that she was actively looking for a job as she did not feel that the CINRO role could develop her further as a practitioner and she did not feel that she had been treated fairly and supported by management. She agreed that the written record of the 1:1 could be shared with Ms de Leon and Ms Adams.

65. It is likely that Ms Hobbs contacted Ms de Leon after this meeting to let her know how upset the Claimant had been about how the complaints had been handled. In particular, she told her that the Claimant was upset that she had been given limited details about the complaint and that this had left her with increased levels of anxiety due to not knowing who had been complaining about her and what about.

66. On 26 November Kate Adams held a supervision session with the Claimant. They were both very upset over what had happened. It was hard for them to talk during the session as they were both so upset. The Claimant initially believed that Ms Adams had colluded with the complainants in preference to defending her. Their relationship was strained after the investigation that Ms Adams conducted into Ms Millar's complaints. Following Ms Kalluri's complaint, Ms de Leon had asked Ms Adams to observe the Claimant and this had also unsettled her. However, the Claimant came to realise, as they talked in this and subsequent meetings, that Ms Adams was also upset about the complaints and the whole situation.

67. Ms Adams' efforts to meet with the Claimant again that week were unsuccessful as the Claimant did not feel able to discuss the matter again. It is likely that she forwarded her correspondence with the Claimant to Ms de Leon as Ms de Leon wrote to them both proposing a meeting in which the Claimant would have the opportunity to go through all the documents so that she could see the actions the Respondent took and the full picture. She asked Ms Adams to create a brief timeline and for Ms Hobbs to produce the notes of her supervision meeting with the Claimant. She intended to create a folder with all the relevant documents.

68. Although by this time the Claimant was struggling with anxiety, depression and sleep issues; and not keen to have more meetings discussing the complaints from Mid, she agreed to attend this meeting. She was not off sick at the time. Ms de Leon was the service manager and her evidence was that

she was aware of the Claimant's emotional fragility at the time. It is likely that she hoped that an opportunity to see the whole timeline and all the documents might help explain what had happened and might help the Claimant as one of her complaints had been about being kept in the dark about what had happened. At this point, the Claimant had a good working relationship with Ms de Leon, and she trusted her, which is why when Ms de Leon telephoned to invite her to this meeting, she agreed to attend.

69. The meeting took place on 11 December between the Claimant, Kate Adams, Gillian Hobbs and Nahida de Leon. During the meeting the Claimant became tearful when the managers went through the timeline. She was visibly upset. They talked about the complaint which had been investigated and proved to be unfounded. The meeting summary prepared by Ms de Leon recorded part of the discussion as follows:

> *'Nicola described how not being informed of the detail of the situation by Kate had had a profound effect on her mental health. That the way in which the situation was described to her by Kate was cryptic by referring only to "a service manager in mid, and complaints raised by mid team managers and families." This left Nicola not knowing the extent of the problem, that potentially everyone was talking about her. The result of this was for Nicola to withdraw from her work, feel intimidated and that she was unable to proceed with any confidence in her working relationships. And that this anxiety and upset continued all the way through the enquiries Kate undertook, mainly fuelled by not knowing what was going on and with whom, fearful so as not to aggravate the situation. Nicola confirmed that she had been so upset and worried that she had sought legal advice. Nahida explained that Kate's intention was to support her and in fact she had felt strongly that this was an unjustly positioned approach from Ahana and the mid managers who had been named - that she had advocated strongly on Nicola's behalf throughout the set of circumstances. Kate talked us through with Nicola and apologised for the impact of this approach but had not known how best to deal with the situation and had approached it the best way that she could. And that she would like to resolve this with Nicola going forwards if she can.*
>
> *We also talked about the importance of specifics when describing situations, i.e. the names of the managers involved, instead of just saying mid managers – this eliminating the potential for questions/speculation.'*

70. They talked about the FS&P meeting in July 2018 that Ms Adams and Gillian Hobbs attended where the Claimant had been openly spoken about despite their efforts to keep a wider focus. Ms Adams felt that the way the conversation changed in the July meeting left her feeling that the Claimant was being targeted. The Claimant was also given details of the complaint from Ms Millar relating to the two families. It transpired that when pressed for details, Ms Kalluri confirmed that her complaint likely dated back to 2015/2016. Ms de Leon read out the original complaint from Ms Kalluri and passed a copy of the email to the Claimant for a brief look before she took it away. The Claimant felt that she had not been given sufficient opportunity to read it. She was also not given a copy to take away.

71. Ms Adams shared that she had felt uncomfortable sharing information with the Claimant, in relation to the first complaint, when the information she had been given was scant. Ms de Leon acknowledged that that the limited information that had been passed on had caused the Claimant immense stress and difficulty.

72. There was no statement in the meeting that there were issues with the Claimant's practice, if that was the case; nor were there any clear statements made that there were no such concerns and that Ms Kalluri and Ms Millar's complaints were unfounded and the investigation reports findings were accepted. This added to the Claimant's stress and anxiety as she felt that there was a possibility that her managers considered that there were issues with her practice. Because of that, we find it unlikely that this meeting gave the Claimant the reassurance that she was seeking from her managers or made her feel secure in her position.

73. One of the action points arising from the meeting was for Ms de Leon to contact Ms Kalluri. Another was for the managers to commit to writing a guidance document that would outline how in future the Respondent would support staff through complaints raised internally or from families. The Respondent also confirmed that it was necessary to have supervision sessions as they present opportunities for communication between staff and management. Supervision sessions should not be routinely cancelled or moved around.

74. Following the meeting and at the end of 2018/beginning of 2019, the Claimant was suffering with her mental health and increased anxiety. She was having difficulty sleeping and had begun drinking alcohol as a way to unwind in the evening so that she could get to sleep. The Claimant was so stressed that she forgot to renew her HCPC registration which meant that she was unable to work independently with families. This meant that she had to be supervised by colleagues in doing that work, which was a source of embarrassment for her.

75. On 14 December Ms de Leon emailed Ms Kalluri to enquire why there had been no response from the Respondent's investigation into the two issues raised by Ms Millar. She stated:

> *'a significant amount of time and energy and concern was put into enquiring with regards to what was presented as an issue of conduct by a member of the service, and we feel at the very least a response would be courteous…Would you mind providing the update/response please Ahana as this is extremely important for Nicola who was very upset with the set of circumstances and what seems to be dismissiveness …… seems to be an unfounded/evidenced set of circumstances. I would really appreciate of you could assist with resolving this please Ahana.*
>
> *I guess as it stands, it feels a little that Nicola has been targeted without due cause and I know that she would like some acknowledgement to conclude this matter. I hope you understand that from Nicola's point of view who was extremely affected by this set of circumstances. I would really appreciate if you could assist with resolving this please Ahana.'*

76. In her response, Ms Kalluri stated that there had been no attempt to target the Claimant and that she had not intended to be dismissive of the Claimant either. She did not say that the team accepted the findings of the investigation and instead, stated that while she could see that there was a context to the complaints, she was not *'doing a U-Turn or disregarding Nicola's views of this piece of work'*. Ms Kalluri agreed that it would be useful to have a regular channel of communication between PSAS and the FS&P teams, to prevent further miscommunication. Ms de Leon encouraged Ms Kalluri to speak directly with the Claimant and gave her the phone number; but despite agreeing to do so, Ms Kalluri did not phone the Claimant. The Claimant was not told about this exchange between the managers.

77. Ms Adams agreed that it would be useful to meet and discuss Ms Kalluri's response but by now she was becoming anxious about discussing matters to do with the Claimant in her absence. On 17 December she responded to Ms de Leon to say that while she agreed that a meeting would be helpful, she wanted the Claimant included as she did not want to unintentionally fall into the position of conversations being held about the Claimant, without her knowledge.

78. The Claimant had agreed to assist colleagues in the South Quadrant as the CINRO assigned to that area was away on secondment. This was a temporary arrangement. There was no note in any of the Claimant's supervision notes with Ms Adams or Ms Hobbs that the Claimant had asked to move or that the Respondent had offered her a move to a different post. We find it unlikely that this was the start of the Claimant transferring to South quadrant as the post was not vacant. However, we also note that the situation was constantly changing and there may have been a time when a permanent transfer was being considered.

79. However, on 10 January at a supervision meeting with Ms Adams, the Claimant confirmed that she was looking for another job within the Respondent, not because she was interested in a new job but because she felt that she should change jobs because of the complaints. She had applied for a job in the Special Guardianship Service (SGS). Ms de Leon recalled her as having expressed a desire to work in the Emergency Duty Service from as far back as 2018.

80. They talked about Ms Millar's refusal to discuss a case with the Claimant and her preference to instead discuss it with her service manager. It was decided that the Claimant should email her again and ask her how she would like them to proceed with the case. At this point the Claimant was open to trying to continuing to work with Ms Millar.

81. However, the Claimant felt unsafe around her colleagues in Mid as even when there was an investigation into the allegations made against her, which found no issues with her practice; the managers and the relevant team in Mid did not respond to accept/acknowledge the outcome.

82. In the supervision meeting notes their discussion on the issues facing the Claimant was recorded as follows:

*Nicola and KA (Ms Adams) discussed how the recent situation had impacted on her emotional wellbeing and on her view of herself as a practitioner. Nicola is feeling very fragile at the moment and has identified how this has impacted on her practice. i.e.: being worried about how she writes things and how they may be received. Nicola has sought help from her GP and counselling sessions to help her deal with the impact on her wellbeing. Nicola feels that she was targeted in the Mid and this was the observation of KA, which was discussed in the meeting with Nicola and Nahida in December. KA again apologised for her part in how the events unravelled and accepted that the situation was not dealt with in the best way by the service. KA and Nicola would like to put this aside and continue to develop a more positive relationship where Nicola feels able to ask for support, and builds up trust within the relationship. Nicola feels that NDL (Ms de Leon) could have pushed this back to Ahana for evidence of her complaints before any investigation was undertaken involving TM and this may have avoided the situation bigger and more drawn out. This situation has caused Nicola to feel that she needs to start a new job and has made an application as above.*

*Nicola and KA will keep the communication flowing and Nicola will keep KA informed about how she is feeling. Nicola will be accessing the counselling services within Essex County Council for continued support.*

83. She told Ms Adams that she was feeling fragile and was worried that she was being targeted. Ms Adams agreed to let Ms de Leon know that the Claimant had still not heard from Ahana Kalluri.

84. Also, in January the Claimant met Ms de Leon for a coffee at the County Hall. She indicated that she would rather not have Ms Adams continuing as her line manager. It is also likely that the Claimant stated that she did not want to give in to what people were saying about her. She was conscious of being talked about by colleagues behind her back. Ms Adams was sensitive to the Claimant's concerns about being kept in the dark and being talked about. In her email correspondence with Ms de Leon and Ms Hobbs around this time, Ms Adams stated that she was going to copy the Claimant into correspondence and/or inform her of the action that had been suggested.

85. The Claimant was told that she was going to receive a phone call from Ahana Kalluri and that there would be a letter from Paul Secker saying that the Respondent had every confidence in her as a practitioner. The Claimant felt quite optimistic about this, but the Claimant never received that letter.

86. It is likely that the promise of the letter and the anticipation of a telephone call from Ms Kalluri made the Claimant feel optimistic about work and led her to tell Ms de Leon that she no longer wanted to transfer to another quadrant but wanted to continue working in Mid.

87. It was not until 22 January 2019 that Ms de Leon initiated a conversation between the Claimant and Ms Kalluri by phoning her and passing the phone to the Claimant so that they could speak. Ms de Leon then left the room so that she was not present for the call. It is likely that the Claimant told Ms Kalluri that she regarded her behaviour as bullying and that she was responsible for the Claimant being investigated for months and that the

situation had made her unwell. Ms Kalluri apologised for how the complaint had affected the Claimant. However, the Claimant felt that Ms Kalluri was dismissive of her experience and that she did not take responsibility for the outcome of the complaint, including its effects on the Claimant's health. She gave the Claimant details about one of the complaints but failed to engage with the Claimant about the actual substance of the issues raised and did not acknowledge that Ms Adams' investigation had cleared her of any wrongdoing.

88. Ms Kalluri stated that her team would have managed the situation differently. She felt that this was an informal complaint that had been mishandled. Ms Kalluri took no responsibility for how the matter had escalated although she had been partly responsible for that when she decided to raise it with the Claimant's reporting manager rather than raising it with the Claimant herself or by asking the social worker concerned to speak to the Claimant about it. The Claimant found the conversation to be unpleasant and it failed to reassure her about continuing to work in Mid.

89. On 22 January 2019, Ms de Leon sent the Claimant an email summary of the discussion at the 11 December meeting. The Claimant did not agree that it was an accurate record of the meeting. She emailed Ms de Leon to ask for a copy of the initial email from Ms Kalluri. Ms de Leon refused to let her have it as she believed that it would not help to resolve matters and was likely to re-open the issues. She was also worried about the legal and confidentiality implications relating to the contents and the effect that reading it may have on the Claimant's mental health. She attempted to answer some of the Claimant's questions on the history of the complaints against her. Ms de Leon acknowledged the communication issues that the Claimant was experiencing with her attempts to discuss work with Sally Ann Millar and that Ahana Kalluri's response had been less than expected. She reminded the Claimant that she was entitled to raise a grievance. She also stated that the Respondent had every confidence in her approach and fully supported her in the efforts to achieve the very best outcomes for the children and families she worked with.

90. As she knew that the Claimant was contemplating raising a grievance, Ms de Leon decided that it might be more appropriate to reveal to her the contents of Ms Kalluri initial email complaint, within the grievance process. She was also aware that the Claimant's mental health was fragile. Ms de Leon also wanted to seek advice from her Director, Paul Secker, about all of this. Ms Kalluri reported back to Ms de Leon on her conversation with the Claimant. She stated that she had apologised to the Claimant for not raising the complaints with her first before going to her manager's manager. Ms Kalluri also wanted to speak to her Service Director, Russell Coward, about the fact that Ms Millar did not contact the Claimant following receipt of Ms Adams' investigation, with her response to the outcome. Nevertheless, it was significant that Ms Kalluri noted that the Claimant indicated that she thought that while communication between the Claimant and Mid was fractured at present, it could be repaired. Ms Kalluri agreed with that but believed that it could only happen after a discussion between all concerned, facilitated by a senior manager. It is likely that this was the first time that both Mr Secker and Mr Coward had been told of this situation.

91. The Claimant submitted her first grievance on 3 February 2019. In the days leading up to doing so, we saw emails from the Claimant to Ms Adams trying to get a referral from the Respondent to its 'Employee Assistance Line' which offered counselling and confidential support to its managers. The Claimant was at work but clearly felt in need of counselling and emotional support. A revised grievance, following getting some legal advice was sent to the Respondent on or around 27 February 2019.

92. In her grievance the Claimant outlined the following complaints: Firstly, a grievance against the managers in Mid (FS&P) team, in particular, that Ahana Kalluri and Sally Ann Millar and others, had made spurious allegations against her and bullied her. She referred to them ignoring the outcome of the investigation into the complaints they raised. She stated that they had behaved maliciously towards her. In her revised grievance she also named other practitioners at Mid. Secondly, she complained about the manner in which Ms de Leon, Ms Adams and Ms Hobbs managed the investigation of the complaints made against her.

93. The Claimant complained that she was still unsure of the exact nature of Ms Kalluri's complaints because although she was briefly shown the email, she had not been given a copy or an opportunity to properly consider it. Ms de Leon had refused to give her a copy. She stated *'as an employee I am entitled to know the details of complaints made about me and have the right to respond. I have not had either opportunity'.*

94. The Claimant complained that she should have had details of all the complaints made against her and had the right to answer them.

95. She wanted to know why Ms Kalluri and Ms Millar had not raised any concerns they had about her practice, directly with her, before going to her manager's manager. The Claimant recounted the history of the complaints from 3 July when she was told of a complaint by a service manager, but not given any details, to 11 December, when she was first told that the original complaint had been made by Ms Kalluri, and that it was different from the ones raised by Ms Millar. She referred to Ms Adams telling her on 3 July that she was '*intimidating and created defensiveness'* and that her *'team colleagues experienced problems with'* her, without giving her any examples or details. She was promised feedback after Ms Adams' attendance at the meeting in July, but none was forthcoming. The Claimant stated that in the meeting on 3 July, she felt that Ms Adams had made up her mind about her guilt. The Claimant also complained that Ms de Leon, Ms Adams and Ms Hobbs colluded with the complainants as they withheld the details of the complaint from her. They also failed to raise a complaint to senior managers about the conduct of the meeting on 24 July when the managers from FS&P spent time in the meeting personally attacking the Claimant who had not been there to defend herself.

96. The Claimant stated that she felt personally attacked by the complaints, rather than them being about her professional social work practice. She recounted having to contact Ms Adams on a weekly basis, from 3 July to ask whether there were any more details but not being given any until 27 July she was told about complaints from Sally Ann Millar relating to two families. She outlined the effect of the delay in Ms Adams' investigation on her sleep,

anxiety and paranoia levels and her belief that Ms Adams investigation outcome had been ignored by all the parties.

97. The Claimant stated that she was upset that those who had made complaints never acknowledged that the investigation had cleared her of wrongdoing and wished her well. She found that quite hurtful. The Claimant complained that from October 2018, she had been asked to start attending meetings in Mid again, even though there had been no acknowledgement by those who raised the complaint, of the outcome of the investigation. She did not feel that there had been any resolution and she remained aggrieved. The Claimant complained that she had no supervision between July and November 2018.

98. She gave details of her conversation with Ms Kalluri on 22 January in which Ms Kalluri began by apologising for the distress she had caused her but then went on to justify her actions. She told the Claimant about one of the complaints and the Claimant remembered that this was a family she worked with in 2015. She stated that she found it ludicrous that this issue was only being raised in 2018. She was concerned that these practitioners had held negative views about her and her practice since 2015, which she had not been aware of. She referred to her request to Ms de Leon for a copy of Ms Kalluri's original email complaint so that she could see exactly what had been alleged against her and Ms de Leon refusal to give it to her.

99. The Claimant outlined the severe effects that she believed all of this had on her mental health, such as being prescribed Prozac and seeking counselling. As an outcome to her grievance, the Claimant wanted an independent person to be appointed to carry out a review of what had happened and explain it to her. She wanted a proper opportunity to respond to the allegations and vindication once she was cleared of them. She wanted to know who specifically had raised these complaints and to have a safe working environment. She also wanted the Respondent to clarify the process for making complaints so that she could in turn be clear of her rights and responsibilities.

100. It is likely that the Claimant revised her grievance after getting some legal advice. The revised grievance was sent to the Respondent on 26 February. In that document, the Claimant added her belief that the complaints and the manner in which they had been investigated had made her continued employment untenable.

101. The Claimant sent her grievance to her line manager, Ms Adams. The Claimant agreed that Ms Adams could forward it to Ms de Leon and Paul Secker, Director of Safeguarding and Quality Assurance. The Claimant was clear that she wanted the grievance addressed by HR rather than Ms de Leon or anyone else in the line management structure as she felt that events had showed her that Ms de Leon, Ms Adams and Ms Hobbs had '*limited ability to influence the behaviour of those who instigated the complaint'* (page 293B)

102. The Claimant was told that she had to attend an informal meeting with Paul Secker before she could proceed with the grievance. It is likely that Mr Secker thought that he could persuade her to drop the grievance or at least agree to an informal process. The Claimant was clear that she wanted her grievance to be addressed formally as she had spent some time meeting with managers

about the issues raised and nothing had been resolved for her. it was around this time that Mr Secker arranged for Anita Kemp to conduct the investigation into the Claimant's grievance.

103. In a meeting with Ms Adams on 8 February the Claimant informed her that she had been prescribed Fluoxetine (Prozac) for low mood and sleep issues. She had also fallen down at home and torn her hamstring. She attended the meeting on crutches. Ms Adams confirmed that she had referred the Claimant to the counselling services. They also discussed whether it was the right time to refer the Claimant to Occupational Health (OH). They discussed the following week's work pattern and agreed that the Claimant was able to work from home.

104. On 12 February, Ms Adams reminded the Claimant that she was due to attend a case discussion that day, at Mid with Sally Ann Millar and Ms Kalluri's manager, Mr Coward. The Claimant stated that she had not accepted the meeting invite and had not been expecting to attend as her assessment of the case was similar to that of Ms Millar and the social worker involved. She also felt that it was unreasonable to expect her to attend this meeting because she had raised a grievance against Ms Millar which had not yet been addressed. The Claimant could only recall one time in the six years that she had been a CINRO where she had to attend a case discussion with managers and their service managers. The Claimant stated in her emails that she was also due to attend hospital for an appointment and was not due in work that day and that even if she attended, she did not have much to contribute as she had had minimal input in the case. The Claimant suspected that this was an attempt by managers to try to facilitate a discussion between her and Ms Millar to try to rebuild their working relationship, under the guise of a discussion about a case. The Claimant felt that as she had raised a formal grievance, it was no longer appropriate to try to do this.

105. Ms Adams met with Paul Secker on 7 February. They planned to meet again during the following week to discuss the Claimant's grievance.

106. In a supervision meeting with Ms Adams on 22 February, Ms Adams confirmed that she would put the Claimant on an action plan for sickness and performance. The Claimant felt that this was unfair as she had continued to work while being investigated and this had taken a toll on her abilities due to anxiety and depression impacting on her concentration and health. Ms Adams confirmed that she understood the Claimant's perspective and would take advice on this. Ms Adams also referred the Claimant to the counselling service.

107. In the notes from the supervision session on 22 February, it was recorded that the Claimant had been off sick for 12 days since April, which triggered the start of the Respondent's sickness management procedure. They agreed that it would be appropriate for the Claimant to be referred to Occupational Health and Ms Adams confirmed that she would make the referral straightaway. They would also follow the steps outlined in the policy.

108. The minutes record that the Claimant did some work for the South Quadrant in the period under consideration, while continuing to work with Mid. She had recently refused to attend the meeting with Ms Millar, which they discussed.

The Claimant felt that there should be a plan that prevented her from having contact with them while her grievance was addressed. She was having difficulty continuing to work in a quadrant where complaints had been made against her. She was also unhappy about the length of time being taken by the grievance.

109. Ms Adams told the Claimant that she was sometimes hard to contact by phone and that her managers were having to always resort to email which was less immediate and not always a helpful way to communicate. The Claimant confirmed that when she is feeling upset she does not want to talk and that may account for her not responding immediately. Ms Adams expressed understanding around the impact of this situation on the Claimant emotional health and her feelings around how she is viewed as a professional.

110. It was recognised that the Claimant's current performance had dropped. The Claimant believed that her performance was fine before July 2018 and that any issues emerging now were related to her increased anxiety and low mood due to the grievance and the lack of resolution on this and her relationship with Mid.

111. They discussed the quality assurance process which was being overseen by two managers, Ms Hobbs and Ms Adams, with Ms de Leon as the service manager. The Claimant was sending her reports direct to Ms de Leon. As there had been little quality assurance taking place, Ms Adams reported that she had decided to quality assure the Claimant's cases and they discussed some of them.

112. They discussed how to reflect any recent changes in her performance, in her appraisal. The judgment of whether or not she met her objectives that year – 2018/20189 - would be discussed between her managers, Ms Adams, Ms Hobbs and Ms de Leon in order that *'a balanced view is given regarding all CINROs performance and their personal circumstances before the final decision is made.'* The relevant performance indicators were attached. They decided that the Claimant and Ms Adams would meet fortnightly to support an improvement plan.

113. The Claimant met with Mr Secker on 25 February and in an email to Ms Adams on the following day, she provided a summary of what they discussed (page 317).

114. In the email the Claimant confirmed that they had discussed her current working situation and in particular, Ms Adams' expectation that the Claimant should continue to attend meetings with Ms Millar before the grievance investigation had concluded - which she considered to be unreasonable. She stated that she did not hold malicious feelings towards Ms Adams but felt that their working relationship had been complicated by Ms Adams' management responsibilities. The Claimant stated that she was conflicted by her aspirations to continue working, her responsibilities towards children, on the Respondent's behalf and her frailty as a result of the current situation. The Claimant repeated her belief that it was unusual for her as the CINRO to attend such a meeting and that when in the past she had suggested that there should be such a meeting, they have never taken place. Ms de Leon's

evidence was that this was incorrect and that CINROs would attend that type of meeting. The Claimant reminded Ms Adams that in December 2018 she had offered Ms Millar and the social worker the opportunity to have discussion on the same child and they had declined. At the time, Ms Millar stated that she was going to discuss the case with her service manager instead. The Claimant was unclear as to why this had changed so that she was required to attend a meeting on 12 February.

115. The Claimant believed that this was an attempt to portray her as uncooperative and *'to evidence that you are acting in good faith to negate aspects of my grievance'*.

116. She was clear that she was not worried about coming in to contact with Ms Kalluri as she was a service manager and they were therefore unlikely to come into contact.

117. The Claimant confirmed that she would accept the Respondent's action plans for performance and sickness.

118. On 4 March 2019, having already discussed it, the Claimant emailed Nahida de Leon to confirm in writing her request to be supervised by Gillian Hobbs as she was finding it difficult to work with Ms Adams. Whenever they met for supervision, they would both become tearful and upset and the Claimant would sometimes be angry with her. The Claimant believed that Ms Adams had not protected her from the complainants in Mid Quadrant. Ms Adams also felt that this would be a better arrangement for the Claimant, given the ongoing strained relationship between them. The Claimant has since changed her mind about Ms Adams, following perusal of documents obtained through her Subject Access request. At the hearing she confirmed that she now appreciated that Ms Adams had tried to support her.

119. The Respondent agreed the Claimant's request and Ms Hobbs took over her line management. Their first meeting was on 13 March 2019. At that meeting they discussed the report from an Occupational Health (OH) assessment the Claimant had a few days earlier. The OH opinion was that the Claimant did not come within the protection of the Equality Act as she did not yet have a long-term condition. However, the report confirmed that the Claimant had seen a significant increase in work related stressors since 2018 and that she was experiencing reduced sleep, difficulties in concentration, increased worry and low mood. She had seen her GP and commenced medication and counselling as well as putting in a number of self-help measures. She confirmed that work related issues remained a high source of stress for her. This had led to the Claimant feeling more fatigued and impacted on her concentration, although she reported that this symptom had improved. The OH recommended that the Respondent carry out an individual risk assessment, the aim of which would be to facilitate the implementation of appropriate strategies to address the perceived workplace stressors. The OH also recommended that the Respondent organise weekly meetings with the Claimant for approximately 4 – 6 weeks to assess her progress. Also, that there should be continued flexibility with work and working from home in order to assist the Claimant in managing her higher levels of fatigue. The Respondent was advised to consider additional breaks if necessary, to monitor her workload to ensure that it is manageable and to be flexible to

enable the Claimant to attend counselling appointments. They should also consider options for arranging professional supervision as that was likely to assist in rebuilding her confidence.

120. A copy of the OH report was sent to Ms de Leon's line manager, Paul Secker.

121. On 21 March 2019, the Claimant made a GDPR request for a copy of the original complaint made by Ahana Kalluri in February 2018.

122. Following on from the discussion about Quality Assurance with Ms Adams in February, the Claimant was due to have a Quality Assurance (QA) meeting with Ms de Leon on 13 March. She was unable to make that meeting and suggested to Ms de Leon that they meet instead on 27 March, as she was due to be at Essex House to meet with Ms Hobbs for a 1:1 supervision. The Claimant was clearly expecting to attend two separate meetings that day. She emailed both managers separately about changing venues and times. The QA session was booked for 12.00 – 12.30 and the supervision session was booked for 12.30 – 14.00hours.

123. Prior to 27 March, as part of the QA process, Ms de Leon sent three of the Claimant's reports back to her, indicating that she wanted to discuss them with the Claimant. Ms de Leon had made some handwritten notes on the three reports. The Claimant was asked to read through the reports and prepare some feedback on them. In her email to the Claimant on 26 March, Ms de Leon told the Claimant that she wanted her to *'review your own reports as a starting point'* to their discussion and *'we can reflect on your observations tomorrow'*.

124. Before the Claimant arrived, Ms de Leon and Ms Hobbs discussed the Claimant and what they considered to be issues with her performance. They decided that it might be better for Ms Hobbs to take over the QA process with the Claimant and that they could explain the handover process to the Claimant if Ms Hobbs came to the QA meeting at 12.00. The Claimant was not told about this and Ms de Leon did not ask her if it was okay for her to attend her supervision or inform her that she would be attending it. It was a surprise to the Claimant to have both managers in the meeting. The meeting quickly escalated as she was on the defensive and felt bombarded with questions from the beginning. Although Ms de Leon stated that she had decided to have this joint meeting to support the Claimant, it is highly unlikely that the Claimant felt supported by it.

125. The Claimant felt that she was being accused of incompetence in preparing the reports. Ms de Leon pointed to sections and asked the Claimant about them. It is likely that the meeting became heated. Ms de Leon raised with the Claimant that she had used incorrect names in the reports and that when she stated that this had only happened because she was unwell, Ms de Leon challenged that and stated that previous managers from 2010 and 2018 had complained about her doing so. The Claimant denied that that had ever happened before and Ms de Leon asked her to prove it. In the hearing, it was the Claimant's evidence that she had asked the social workers in Mid to assist with any information missing from the reports. She readily confirmed that she was not '*good'* at paperwork and had been frequently late with uploading reports on to the system.

126. The Claimant was also upset because she had sent these reports to Ms de Leon in January, before sending them to the families and had not been told at the time, that there was any issue with them. As far as she was concerned, she would have preferred to have been told about these errors at the time so that they could be corrected or amended as necessary. Ms de Leon agrees in her witness statement that the conversation broke down and that the Claimant did not hear any assurances that she tried to make and the meeting *'ran away'* from her. It is likely that they both raised their voices at each other. The Claimant left the meeting in tears.

127. The meeting ended without the Claimant getting any supervision. At the time, the Claimant was holding around 10 cases. The usual caseload for a CINRO is around 20 cases. In 2017, her caseload over the year ranged between 11 – 16 families and in 2018, it was between 10 – 25 families. The caseload was reduced to 10 at the end of 2018 to assist the Claimant. It would have been clear to anyone that what the Claimant needed at the time was some supervision.

128. The meeting on 27 March had a negative impact on the Claimant's mental health. She called in sick on 1 April 2019. She also emailed both Ms de Leon and Ms Hobbs on 2 April to notify them of her absence due to ill-health and to complain about their handling of the Quality Assurance session on 27 March 2019. In the complaint, the Claimant referred to Ms de Leon's decision to attend her supervision, despite the fact that the grievance was against her. She also raised the fact that the reports had been completed in December 2018/January 2019, when she was unwell and before she had been prescribed anti-depressants. She acknowledged the spelling and grammatical errors in the reports but felt that Ms de Leon was hinting at something more fundamental being wrong with them, which she did not share in the meeting. This upset the Claimant and further damaged her confidence in her abilities at work.

129. This was in effect the Claimant's second grievance. In it, the Claimant alleged that she had been victimised for raising a grievance and for being unwell and that the errors highlighted were ones made while she had been unwell. She expressed a lack of confidence in Gillian Hobbs continuing to supervise her after this meeting as Ms Hobbs had not objected to Ms de Leon attending the meeting. The complaint ended with the Claimant asking how Ms de Leon intended to have her supervised as in her opinion, Ms Hobbs could not continue to do so.

130. Ms de Leon made sure that her manager, Paul Secker, was aware of the meeting on 27 March and of the Claimant's subsequent complaint. She also confirmed with the Claimant that the QA process would be effectively put on hold until the conclusion of the grievance process.

131. On 5 April, Mr Secker wrote to the Claimant to confirm that the issues that the Claimant raised following the supervision meeting would be added to the grievance investigation which was scheduled to begin later in April. He also confirmed that Ms Hobbs would continue to supervise the Claimant.

132. The Claimant continued to send copies of her reports on families to Ms de Leon after the meeting on 27 March. In correspondence with Ms de Leon on 4 April, the Claimant stated that she would prefer if feedback on her work would be given to her in writing rather than in a telephone conversation, which was Ms de Leon's preference. The Claimant said that she felt that she could not trust the people she was working with and she did not feel that she was being treated fairly. Ms de Leon acknowledged the Claimant's feelings and expressed hope that they could move on from this situation in time as this was not the way she wished to support CINROs.

133. Anita Kemp, head of Strategy, Planning and Performance, agreed to investigate the Claimant's grievance. She met with the Claimant on 3 May 2019. She met with Ms de Leon on 23 May 2019.

134. Mr Secker met with Ms Kemp in April 2019, to brief her on the grievance. They had a general discussion about the grievance and the Claimant's later complaint regarding the meeting on 27 March. The Claimant indicated that she was content with this course of action and with his decision that Gillian Hobbs should continue to line manage her.

135. On 20 May the Claimant told Ms Kemp that she had made a GDPR request to see the original complaint made by Ahana Kalluri to Ms de Leon. She asked Ms Kemp to let her have a copy but Ms Kemp refused, on the advice of HR as it might contain private information about other people. The Claimant did not understand that as Ms Kemp was also bound by confidentiality. She asked if the document could be redacted. The Claimant felt that as the information in Ms Kalluri's complaint was about her, she should be allowed to read it. The Claimant was also still trying to get a copy through the Subject Access route. The Claimant raised additional concerns in her email to Ms Kemp on 20 May, prior to their meeting later that day.

136. The Claimant confirmed that she had never been told that the complaints raised by Ms Kalluri came from social workers. She had been told that they came from the family members. She confirmed that there was no record of complaints on the Respondent's Mosaic record system.

137. The Claimant confirmed in the email that she did not feel that it was possible for her to continue to work in this department as she lacked trust in their ability to support her during her work activities.

138. The Claimant met with Ms Kemp a few times to discuss her grievance. On 5 June 2019, Anita Kemp set out some initial recommendations in an email to Ms de Leon, copied to the Claimant. She had not yet published her full report. Having observed the Claimant in their meetings, Ms Kemp felt that she was too ill to return to work and advised that the Claimant should consider extending her sick leave and not returning to work that Thursday. She advised that Ms Adams should look into the possibility of the Claimant accessing an advocate to help her to negotiate her return to work. Nothing came of that suggestion as HR indicated that they did not know what role an advocate could perform and that no such facility was available for the Claimant to access.

139. On 8 June, the Claimant met with Ms Kemp who gave her the recommendations arising from her investigation. Also, on the same day, the Claimant was provided with the information that she requested as part of her GDPR requests; including the initial complaint from Ms Kalluri. The Claimant found it upsetting to read Ms Kalluri's complaint and Ms de Leon's assessment of her as someone who could be '*insensitive'* and '*bullish'* and that her character/personality played a large part in this. She also noted that Ms de Leon's reaction was to advise Ms Adams to be '*forensic'* in her review of the Claimant's performance data which suggested that she believed the complaint. The disclosure from the GDPR requests was really upsetting to the Claimant.

140. The Claimant was dissatisfied with the grievance investigation because Ms Kemp did not investigate the initial complaint from Ms Kalluri. She did not speak to the social workers involved, although she did speak to Ms Kalluri and to Ms Millar. It was Ms Kemp's view and that of the Respondent that as Ms Adams had exonerated the Claimant from the allegations contained in the complaint, there was no need to investigate it further. However, Ms Adams had only investigated Ms Millar's complaint. The Claimant was unhappy about this and raised it with Ms de Leon on 11 June. The Claimant felt that serious allegations had been made about her by social workers and as they had never been asked to explain these allegations, it was possible that they could do so again, without any justification. She also suspected that the Respondent had orchestrated it so that she only received these documents after the grievance investigation had concluded so that she could not complain about the contents during the investigation.

141. Ms de Leon attempted to reassure the Claimant that as the matters referred to in the initial complaint were old, she had advised Ms Kalluri that in future, any incidents must be raised quickly so that they could be addressed. She told the Claimant that the Respondent focussed on the complaints raised by Sally Ann Millar and did not investigate the earlier complaint.

142. We find that the Respondent's position about this was confused as they stated that as the original complaint was old, they had not investigated it and in effect, put it aside. However, at other times such as in the meeting with managers on 11 December 2019, the Claimant was also told that Ms Adams had investigated the issues raised in it and found that there was nothing there. This is separate from the complaints from Ms Millar which were raised in late July 2018.

143. Ms Kemp produced written statements from her meeting with Ms de Leon, Ms Kalluri, Ms Adams, Ms Hobbs as well as the Claimant. Ms de Leon was not happy about the contents of the statement produced in her name and sent to her for review. Ms Kemp was happy to incorporate any corrections that she wished to add. Amendments were also made by Ms Hobbs to her statement.

144. Although the Claimant had been told that Ms Kemp would include in her investigation the Claimant's second grievance complaint about the conduct of the meeting on 27 March, it was not included in her final report, produced on 25 June 2019 and she did not investigate it.

145. In the Claimant's correspondence with the Respondent's HR following receipt of the Subject Access disclosure, she expressed a belief that the documents showed that the management team did not value her as a practitioner. In the email dated 16 June 2019, she stated that the way they behaved towards her had caused her anxiety and affected her confidence. She felt unable to return to work.

146. Although it had been explained to her why Ms Kemp had not investigated the original complaint, she was still upset about it. She had only just received the written copy of the allegations and was upset by what had been alleged and that the people who made them had been able to do so without being required to substantiate them and with no consequences. She considered that she had been defamed by her social work colleagues and that the Respondent had not taken sufficient action to support her.

147. Mr Secker met with Ms Kemp on 25 June to discuss the grievance, the allegations and the investigation. We did not have any notes or record of their discussions. Following their discussion, Ms Kemp published her report.

148. In her report summary, Ms Kemp confirmed that the CINRO service, i.e. Ms De Leon and Ms Adams/Hobbs; the Claimant's managers, accepted that they had not shared the complaints in a timely and transparent way with the Claimant, which meant that even at the time of writing the report, the Claimant still did not have information of what the exact complaints were or the investigations. She stated that the CINRO service had *'challenges with ensuring that Nicola was managed in an appropriate way. They spoke about her being a maverick, less organised and forthright in the way she interacts with people. They know of circumstances where this kind of behaviour from Nicola had caused offence to others within their own service. It was unclear if this had ever been discussed with Nicola. The 3 managers (from the CINRO service) interviewed all spoke about the challenge in managing a team of people who work remotely and only meets once a month*.'

149. Ms Kemp recorded in her grievance outcome that the managers at Mid team who raised the complaints had not expected them to go as far as they had. Ms Millar did not accept the outcome of Ms Adams' investigation and was never challenged about that.

150. Unfortunately, Ms Kemp did not decide whether the Claimant's grievances were upheld or not upheld. Instead, her approach was to set out the findings of her investigation in the hope that it would clarify matters for the Claimant. She acknowledged that this did not address the management issues that had been identified in the grievance process, which were – inconsistencies in the way the Claimant worked, her being deemed as a maverick; her not attending meetings and her directness/bluntness. Ms Kemp listed those in the report even though she had not investigated them and did not know if they were an accurate description of the Claimant.

151. The grievance report was upsetting to the Claimant and on 3 July 2019, she put in an appeal against the outcome. She was aggrieved that Ms Kalluri denied being at the meeting on 24 July 2018. Because she was interviewed first, it was not until Ms Kemp interviewed Ms Hobbs and Ms Adams that she would have been aware that Ms Kalluri's recollection was incorrect. Ms Kemp

did not go back to Ms Kalluri to challenge her recollection and this was not addressed until the appeal hearing. The Claimant was upset by this and this was the meeting where the personal nature of the issues raised by the team in Mid became apparent because Ms Kalluri resisted attempts to divert the discussion to one about relations between Mid and the CINRO team and kept bringing it back to a discussion about her.

152. The Claimant was also upset about the allegations set out above and in Ms Kemp's conclusions from Ms Hobbs and Ms de Leon about her ways of working. She felt that this was an attempt at justifying their approach to the complaints from Mid, especially as these matters had never been raised with her before.

153. The Claimant felt that the Respondent had not properly investigated her complaints in the grievance. On 28 August 2019, she met with Ms Kemp to discuss the grievance process and report.

154. One of the matters she raised in her appeal was that her complaint about the supervision session in March 2019 had not been included as part of the grievance. She considered that Ms Kemp had not interviewed all the relevant people and that she should have interviewed the individual social workers so that they could justify or explain the serious complaints that they made about her. She was concerned that Ms de Leon and Ms Hobbs made further complaints about her and her practice, which were new to her. She also contested the accuracy of the notes of her interview with Ms Kemp.

155. She felt that Ms Kemp should have recommended disciplinary action and/or training for those who made allegations against her which were then found to be false. The Claimant referred to being the victim of organisational bullying and victimisation.

156. She also stated that in December 2018, she had asked to be moved from Mid Quadrant to the South Quadrant and that this had been refused because the position in the South Quadrant was as a secondment which could not be filled by permanent staff. It is likely that the Claimant did not recall withdrawing her request in January 2019. The Claimant stated that in January 2019, she applied for a job as a SGO (Special Guardianship) assessor. In March 2019, she requested a change of managers and agreed a fortnightly supervision to try to overcome her anxiety and confidence issues that she had acquired as a result of these complaints. The Claimant confirmed that she had accessed services provided by her GP, the Respondents' employee counselling service, and also paid for private counselling.

157. As her desired outcome, the Claimant asked for an independent person to consider her appeal and for her to be able to attend an appeal meeting with a mentor, as recommended by the OH advisor. She asked for a response to the expectations she outlined in the appeal and for that to be prioritised over resolutions with staff and managers. The Claimant did not believe that it would be possible for her to move to resolution with staff and managers before being satisfied that the Respondent had conducted a proper review of what had caused her to raise the grievance, they understood what had happened, including the implications; and remedies were in place to ensure that this never happened again.

158. The Claimant was advised by her GP that because of the effect this was having on her mental health, she should not attend any meetings with the Respondent unless she was accompanied. Also, she should ask for an agenda for any meeting.

159. On 12 August 2019, the Claimant met with Paul Secker to discuss her appeal and she was allowed to be accompanied by her daughter.

160. A final version of the notes of the meeting was agreed between the Claimant and Mr Secker. Mr Secker agreed that had he been in her position, he would have wanted the social workers to be interviewed too. He understood her frustration at Ms Kemp's investigation failing to be clear about which parts of her grievance had been upheld or not upheld. He also agreed that the Claimant should have been told about any concerns about her practice. He expressed an opinion that, given the time that had passed, it would now be difficult for anyone to investigate whether there had developed a particular viewpoint within Mid Quadrant about the Claimant and her methods of practice going back to 2015.

161. It is likely that Mr Secker was hoping that this meeting would negate the need for an appeal hearing and that he could resolve matters with the Claimant. He directed the discussion onto what the Claimant wanted to come out of the appeal. He indicated that it was unlikely that it would be possible to go back to 2015 and that it was more likely that the grievance appeal would look at whether the grievance had followed the appropriate process.

162. They also discussed the Claimant's return to work. By that time, the Claimant had been off sick for 9 weeks and felt unable to return. She confirmed that she was interested in returning to work but only felt able to do so if there were supportive managers there. She was concerned about the comments that Ms Hobbs and Ms de Leon had made about her practice in their statements to Ms Kemp, which she felt demonstrated that they thought negatively of her. She referred to the Respondent's staff talking about her behind her back.

163. She mentioned that she would bring proceedings in the Employment Tribunal if the appeal outcome was not what she expected and did not lead to a further investigation. Mr Secker was concerned about the time all of this was taking and stated that he was prepared to find alternative arrangements for her to enable her to return to work. He proposed that she return to the CINRO service but be managed by someone from outside the service. He reminded her that due to the length of time that she had been off sick, her pay would soon reduce, which meant that they should try to find a solution soon. He was prepared to explore the possibility of re-deployment. They discussed the Out of Hours service, which he thought would be a real possibility. The Claimant was concerned that she might still have to deal with cases that belonged to a manager from Mid who had criticised or complained about her.

164. Having thought about their discussion, the Claimant emailed Mr Secker on 13 August to inform him that she did not consider the proposal to remain a CINRO with a different manager was a realistic proposal. In his response, Mr Secker noted the difficulties the Claimant would most likely experience if she returned to her role as a CINRO.

165. As the Claimant confirmed that she wanted to proceed with her appeal, Chris Martin, Commissioning Director, Children, Mental Health, Learning Disabilities and Autism, was appointed on 15 August to arrange and conduct an appeal hearing. He understood that his job was to respond to the details of the Claimant's appeal and not to re-run the initial grievance.

166. On 29 August Mr Secker emailed the Claimant to advise her that he was referring her back to OH as she continued to be on sick leave. He also wanted her to send in regular sick notes and to maintain weekly contact with him. Mr Secker stated that he was willing to explore all options to enable the Claimant to return to work and that he was also willing to implement any steps recommended by OH. During their correspondence Mr Secker also stated that if the Claimant was to seek alternative employment, he would be able to provide her with a reference which included that her end-of-year appraisals had always been 'fully met'.

167. The Claimant's further correspondence with Mr Secker shows that she was resolute in her belief that the only fair way of concluding the grievance was if an investigation was held into the allegations against her. She felt that the Respondent's responses so far had been thoughtless and punitive and colluding with bullying and that if that was left unaddressed, it would mean that the Respondent was unable to keep her safe at work. She referred to her intention to bring proceedings in the Employment Tribunal if this was not properly addressed.

168. They met again on 11 September so that Mr Secker could conduct the risk assessment that had been originally recommended by the OH report in March. He had previously emailed the Claimant on 5 September with three possible options for her return to work and to help her regain her confidence. The first option was for her to be given alternative line management. He acknowledged that this might be difficult. The second was for the Respondent to implement any steps that OH recommended, including a gradual return to work, continued flexibility with working from home, breaks and allowing her to attend counselling appointments. The third option was to explore re-deployment opportunities within the Respondent, if that was what the Claimant wanted. The Claimant responded to ask how he considered that she could return to work as a CINRO given the nature and the amount of issues that had been raised, even though unfairly and without evidence, against her and the number of people involved. She stated that she would not be able to make any decisions about her continued employment until she had the outcome of her grievance appeal.

169. Mr Secker signed off the risk assessment on 11 September and concluded that

> *"in fact, there is validity to some of the issues raised within the grievance, and it is accepted that it would be very difficult to expect Nicola to re-join the Child in Need Reviewing Service as things stand. I have recognised and explained to Nicola that this is a very exceptional situation, and that alternative management arrangements would be put in place to support Nicola's return to work as a CINRO in another quadrant. The initial investigation into the grievance is completed; the grievance appeal is*

*about to be investigated; consideration of re-deployment of Nicola to alternative post(s) is being undertaken; referral to Occupational Health has been made (this is a re-referral).”*

170. As the Claimant’s wages were about to reduce because of the length of time she had been off sick, she had to take out a loan to cover her mortgage and other essential bills.

171. The OH report concluded that the Claimant was feeling better and that she was on medication to manager her anxiety and stress. It stated that the Claimant was well enough to return to work. The report suggested that management action to address and resolve the workplace issues, with the Claimant’s participation, was the best way to help her return to work. On receipt of the OH report Mr Secker felt that as the grievance appeal was in process, all he could do was to continue to explore redeployment options with her and keep in contact with her in general and about the grievance investigation. Mr Secker was effectively acting as the Claimant’s line manager and had been doing so since around June 2019. He was her only point of contact with her department. She also had contact with HR and with Mr Kemp and later Mr Martin, in relation to her grievance.

172. There was some delay in getting a date for the grievance appeal in the diary as Mr Martin had work commitments and the Claimant was off sick. The Claimant’s grievance appeal was held on 4 October 2019. The Claimant clarified in that meeting that she felt that the social workers who had made the original complaint to Ms Kalluri should be interviewed and that they should be challenged on the allegations they made. Mr Martin felt that the Claimant was combative and that she approached most meetings with suspicion and not in a conciliatory fashion. It does not appear to us that he considered that she felt that her professionalism had been reproached and that she felt the need to defend herself against some serious allegations, which had so far been unsubstantiated and not investigated.

173. In his conduct of the appeal Mr Martin interviewed the social workers, Ms Millar, Ms Kalluri, Ms de Leon, Ms Hobbs, Ms Adams and the Claimant. He also considered the work that the Claimant had been doing - in addition to her duties as a CINRO - on the Out-of-Hours rota and whether this had had a negative impact on her work. This had not been part of her appeal and was not something that had been mentioned by her managers or her colleagues during the grievance process.

174. On 30 October, Mr Secker contacted the managers of the Emergency Duty Service (EDS) who run the Out-of-Hours service about the possibility of redeployment for the Claimant as an Out-of-Hours Social Worker in EDS. He considered that she was an experienced out-of-hours locum as by that time, she had undertaken 220 shifts in a 4-year period, in addition to her day job. It was agreed that she was respected and valued by EDS and it was unlikely that she would be returning to the CINRO service.

175. On 31 December the Director responsible for the EDS service emailed Mr Secker about the possibility of the Claimant working there. Unfortunately, there was no suitable vacancy for the Claimant to be redeployed into. Also, the social workers who were employed into the team needed to undertake

formal mental health assessments and needed to be Approved Mental Health Practitioners (AMHP). Mr Secker was told that there was a training opportunity open to a Children and Families worker who would like to train to be an AMHP, which would be available at a cost to the Respondent. They discussed whether the Respondent should pay for the Claimant to undertake the training and therefore the role or whether she should have to go through a process to get it. Mr Secker's recollection of this discussion was that he considered that this was an exceptional situation and that as this was redeployment, the Respondent should be prepared to pay for the necessary AMPH training for the Claimant. Mr Secker raised this with the executive director.

176. To the Claimant's disappointment, a meeting arranged for 19 December with Chris Martin for her to be told the outcome of the grievance appeal was cancelled and she did not receive the written outcome until 22 January 2020. The outcome was that she had not been bullied and that the complaints made against her had not been malicious. Mr Martin considered that the Respondent could have handled the whole matter better.

177. Prior to publishing the final report, Mr Martin had consulted HR as to whether there were grounds for disciplinary action to be taken against anyone involved in the Claimant's case. After discussion with HR he decided that he would not recommend that any such action be taken against anyone. In his live evidence, he did not consider that there had been performance criticisms of the Claimant by colleagues/managers who referred to her as chaotic, abrupt and direct. He felt that some of these characteristics could be an asset in this job. He also did not interview the team managers and the Family Centre manager as he believed that the social workers were able to provide the information that he needed and had been the focus of the Claimant's attention. It is possible that Mr Martin spoke with Mr Secker during the grievance appeal investigation about the role of the CINRO and the applicability of the recommendations he was about the make. We find that he had a lot of assistance from the HR advisor assigned to this grievance, but it is likely that the decision on the grievance was his.

178. Mr Martin upheld the following parts of the Claimant's grievance: - that someone independent should review her appeal and that the complaint about the March supervision had not been investigated as part of her grievance, as had been promised. Also, that the grievance meeting notes had not been sent to her for approval before it was considered an accurate record of the meeting. He also upheld the Claimant's complaint that it had taken 5 months before she was given the grievance outcome and that the performance concerns that were raised in the grievance by her managers had never been raised with her, had never been escalated or turned into a performance management process.

179. He partially upheld the complaint that the allegations against her had been handled poorly and inappropriately and that training should be given to those involved. He did not recommend disciplinary action as he considered that the complaints had not been made maliciously. He agreed that details of the complaints/the complaints themselves should have been shared with her in a timelier fashion and that the way this had all been handled had left the Claimant in the dark, which had had a detrimental effect on her.

180. He also upheld the Claimant's point that she had not had much management support in terms of supervision in 2018. He agreed that her supervision had been inconsistent, partly due to Ms Adams' ill-health and that the Claimant's managers should have been more robust in challenging the postponement or cancellation of meetings. We did not hear of the Claimant cancelling many meetings. There were meetings that she was unable to attend due to her ill-health. Mr Martin considered that the work that the Claimant was doing for the Out-of-Hours service may have affected her day to day practice, although this was not a matter brought up by her managers at the time.

181. He did not uphold the Claimant's complaint that Ms Kemp had not properly followed process. He failed to appreciate the Claimant's concerns that her managers – Ms de Leon, Ms Adams and Ms Hobbs – had described her in negative terms which had affected her mental health as it had been unexpected and as far as she was aware, unwarranted.

182. He also did not uphold her complaint that she had been the victim of bullying, harassment and victimisation. He noted that Ms Millar had refused to accept that the outcome of Ms Adams' investigation exonerated the Claimant and recommended that she be spoken to about this and told that her position was unacceptable. He explained in live evidence that he considered '*bullying'* to be associated with a course of conduct that was pre-meditated and he did not consider that what had happened with the Claimant fitted that description. He agreed that the Claimant could have been better supported and that further adjustments could have been planned for and put in place to support her as part of the implementation of the recommendations of the OH report. He also thought that that process may have been hampered by the Claimant being off sick shortly after the OH report was produced.

183. He recommended that the Claimant should meet with all relevant parties and Mr Secker so that the findings could be explained, and an action plan devised so that *'good practice could be implemented and embedded in the future.'* He also made some recommendations which included that some kind of restorative work should take place between the Claimant and her colleagues, most likely through mediation with an independent body. He recommended that if the Claimant felt able to return to work, redeployment opportunities should be explored. He did not go any further in relation to work as he considered that Mr Secker was dealing with that aspect.

184. He also made wider recommendations for the service, such as strengthening policies and guidance on managing employees, resilience training for CINROs and the introduction of set, time limited training programmes that make the CINRO team and the social work teams work together thereby strengthening their operational relationships. He recommended that the Respondent should consider either using independent investigators or freeing up its internal investigators, to ensure that the work is done as quickly as possible.

185. The Claimant was disappointed by the outcome of the grievance appeal. By this time, she really wanted disciplinary action taken against the social workers who had made what she considered to be malicious complaints against her without foundation which had caused her a long period of anxiety,

stress and absence from work, thereby jeopardising her career. She did not believe that this had been addressed adequately in the appeal outcome. She felt unable to attend a scheduled meeting on 24 January 2020 to go through the report with Mr Secker and Mr Martin. The meeting was rearranged for 10 February. Mr Secker also confirmed with her beforehand that he would also be prepared to discuss the Claimant's future employment on 10 February. The Claimant attended this meeting with her daughter.

186. HR advised Mr Secker that it would be beneficial for him to have offered the Claimant a back to work meeting before 10 February but he decided that he would wait and do it all on that day.

187. The Respondent was aware that the Claimant's sick pay was due to expire on 14 February. It is likely that the Claimant was also aware of this. HR was asked to enquire about all potential vacancies and redeployment opportunities that they could discuss on 10 February. Going into that meeting, Mr Secker was aware that there was a range of senior practitioner roles that were vacant at the time. it was not clear to the Tribunal whether the Claimant had been told about them before the meeting. There were two roles in the Out of Hours service, it was not clear to us whether they were open to the Claimant, given what Mr Secker had been told about the other role he had enquired about a few months earlier, at the end of December. The other roles were based across Family Support and Protection, Children in Care, After-Care and the Family Centres. Most of these were front-line operational services, which the Claimant was qualified to do but had not done for some time.

188. The meeting on 10 February was between Paul Secker, Chris Martin, the Claimant and her daughter. Mr Martin apologised for the length of time taken to consider the Claimant's grievance. He went through the findings of his report with the Claimant. This was a difficult meeting for everyone. The Claimant felt that Mr Martin had upheld the more obvious points and had not gone far enough. She felt that he was partly blaming her for what happened as he considered that she had not been '*resilient'* enough. He did think that some managers needed training but he was unable to compel them to do so as that was Mr Secker's responsibility. His recommendations would be passed to Quality Assurance to consider and implement, where appropriate. The participants in the meeting have not been able to agree on a set of minutes.

189. Immediately after the meeting, Mr Martin left and the Claimant had a separate meeting with Paul Secker about her continued employment. There was a dispute between the parties as to whether Mr Secker made concrete offers of jobs at this meeting. Mr Secker stated that he would be prepared to put adjustments into place to support her return to work as a CINRO. It is likely that Mr Secker did not agree that the complaints made about her by colleagues in Mid and the statements made about her to Ms Kemp would have damaged her reputation within the Respondent and make it difficult for her to continue as a CINRO. Mr Secker said that it was unlikely that she would be able to work for the Out of Hours Service as she did not have the AMHP training and her ill-health might make it a difficulty for her to obtain that qualification. In live evidence he told us that he had got approval for the funding for the Claimant to do this training and that he made that clear to the

Claimant in this meeting. This was not in his witness statement and the Claimant disputed that it had been said. We find on balance that there were discussions of possible jobs, as there had been in the risk assessment meeting but that there was no firm job offer or redeployment opportunity made.

190. The Claimant was aware that the way in which the CINROs worked had changed since she had been off sick. She was vaguely aware of the changes as the discussions about this had started before she began her sick leave but she was not aware of the detail. The Claimant felt that her position had been made untenable by the complaints made against her and what she considered to be the victimisation she had suffered after the made the complaint.

191. The Claimant informed Mr Secker that she had decided to resign her employment and that she would be bringing a complaint against the Respondent for constructive unfair dismissal. The Claimant returned her laptop, work phone and her ID card. She had attended the meeting with those items.

192. On 13 February Mr Secker wrote to the Claimant to ask her to confirm that she wanted to resign and setting out the adjustments that he was willing to make to allow her to remain an employee. The Claimant confirmed her decision to resign in writing. The Respondent provided a reference for the Claimant and she began a new job a few days after the end of her employment. She had enquired about agency work a few days earlier and had requested references and exclusion from the Memorandum of Co-operation. That is an agreement amongst local authorities in the South-East of England about not allowing permanent staff to leave one of these authorities to access agency work. The Claimant was given the exemption and started agency work in Luton. When that job came to an end, she went on to work in a local authority in London. These jobs required the Claimant to travel extensively whereas working for the Respondent meant an easy commute to work as the Claimant lives in Colchester. The Claimant has had to stay in hotels or take up additional accommodation to do these jobs as she needed to go into the office on a few days a week. The Claimant continues to apply for permanent work.

193. The ACAS conciliation process began on 11 February 2020. The ACAS Certificate was issued on 13 February 2020 and the Claimant's ET1 claim form was issued at the Employment Tribunal on 24 April 2020.

194. The Tribunal applied the following law in assessing the issues in this case.

## Law

195. The Claimant made complaints of constructive unfair dismissal, indirect disability discrimination, and of failure to make reasonable adjustments. The Respondent resisted the complaints.

*Constructive Unfair Dismissal*

196. The Claimant's complaint is of constructive unfair dismissal. Section 95(1)(c) of the Employment Rights Act 1996 states: -

> "*The employee terminates a contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers' conduct".*

197. The circumstances in which an employee would be entitled to terminate her contract would be where the employers' conduct amounted to a repudiatory breach of contract.

198. The leading case of constructive dismissal remains the case of *Western Excavating Ltd v Sharp [1978] ICR 221 (CA)* where, as Lord Denning stated:-

> "*If the employer is guilty of conduct which is a significant breach going to the root of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminated the contract by reason of the employer's conduct. He is constructively dismissed"*.

199. The Tribunal was aware of the case of *Post Office v Roberts [1980] IRLR 347* where it was held by the EAT that the conduct by the Respondent which amounted to a repudiatory breach of contract need not be deliberate or intentional or prompted by bad faith.

200. An employee can also rely on a breach of the implied term existing in all employment contracts that the *'employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee', Malik v BCCC SA* [1998] AC 20, 34H – 35D (Lord Nicholls). A breach of that implied term is inevitably a fundamental breach and a repudiation of the contract.

201. The test of whether there has been a breach of the implied term is objective, and not dependent on the employee's subjective view.

202. A course of conduct can amount to a breach of the implied term. Individual actions may not in themselves be sufficient but taken together can have the cumulative effect of such a breach, *Lewis v Motorworld Garages Ltd* [1986] ICR 157 CA. In such a case, the last incident relied on does not need to be serious or a breach in and of itself. Indeed, it need not even be blameworthy or unreasonable but it must contribute, however slightly, something to the breach of the implied term even if not significant. The *'last straw'* cannot objectively be trivial. See *Lewis* and also *Omilaju v Waltham Forest LBC* [2005] ICR 481.

203. The Tribunal has to consider whether there has been reasonable and proper cause for the conduct that the Claimant objected to.

204. If the '*last straw'* is objectively trivial, the Tribunal has to consider the last act that contributed to the conduct amounting to the breach. If there was no affirmation after it then the Claimant would have established a breach. In the case of *Williams v The Governing Body of Alderman Davies Church in Wales Primary School* [2020] IRLR 589 EAT, HHJ Auerbach referred to the Court of Appeal's decision in *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978 where Underhill LJ gave the following guidance:

> *"In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*
>
> *(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
>
> *(2) Has he or she affirmed the contract since that act?*
>
> *(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
>
> *(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)*
>
> *(5) Did the employee resign in response (or partly in response) to that breach?*
>
> *None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy".*
>
> ***[32]** This helpful guidance assists Tribunals to navigate through one particular possible permutation of the branches of the decision tree. Some other possible permutations are relatively straightforward. If the answer to Underhill's LJ question two is "yes", then the claim of constructive dismissal must fail. If the answer to question three is "yes" then the Tribunal should proceed to question five.*
>
> ***[33]** As I understand it the parenthetical "if it was" following question four, conveys that it is an affirmative answer to that question that will also take the Tribunal to question five. However, what if the answer to question four is "no"? That is the scenario with which this ground of appeal in the present case is concerned. The answer is, that if the most recent conduct was not capable of contributing something to a breach of the* Malik *term, then the Tribunal may need to go on to consider whether the earlier conduct itself entailed a breach of the* Malik *term, has not since been affirmed, and contributed to the decision to resign.*
>
> ***[34]** In my judgment this is the correct analysis as a matter of principle, and indeed is in line with what has been said by the Court of Appeal in previous authorities. It is the correct answer in principle because, so long as there*

*has been conduct which amounts to a fundamental breach, the right to resign in response to it has not been lost, and if the employee does resign at least partly in response to it, constructive dismissal is made out. That is so, even if other, more recent, conduct has also contributed to the decision to resign. It would be true in such a case that in point of time, it will be the later conduct that has "tipped" the employee into resigning; but as a matter of causation, it is the combination of both the earlier and the later conduct that has together caused the employee to resign.*

205. There are other kinds of breaches which have been regarded as breach of the *Malik* term or a fundamental breach such as a reduction in or a failure to pay wages, breaches of the duties to provide a safe system of work, to provide a proportionate disciplinary sanction, to follow fair disciplinary procedures; and to provide prompt redress of grievance.

206. Discriminatory conduct will usually be a fundamental breach of the *Malik* term on its own. If the employee is making a cumulative case that there is discriminatory conduct that materially influences the conduct that amounted to the breach (*Williams*) or was a sufficient influence on it but occurred earlier in time or before affirmation; it would still contribute to it.

207. However, a breach of the Equality Act is not always a repudiatory breach. The tribunal would need to consider and decide on that.

208. A repudiatory breach cannot be remedied (See *Buckland*).

209. If the tribunal decides that there has been fundamental breach of contract or breach of the implied duty of trust and confidence, the tribunal then has to consider whether the employee has accepted the breach or affirmed the contract.

210. After any repudiatory breach the employee has a choice, either to affirm the contract and continue to work, or to accept the breach, resign and treat themselves as dismissed. If there is a '*last straw'* and no affirmation after it, the claimant can refer to earlier events (see *Lewis* and *Williams* above).

211. An employee will be held to have affirmed a contract where (with knowledge of the breach) he acts in a manner inconsistent with treating the contract as at an end. In *Bashir v Brillo Manufacturing Co [1979] IRLR 295* it was held that delay in itself is not sufficient to be considered as affirmation of a breach of contract. The employee needs to actually do the job for a period of time without leaving, or some other act which can be said to affirm the contract as varied. Whether or not he has affirmed the breach would depend on the circumstances in each case.

212. Delay in resigning after the breach, is not, of itself affirmation, but may be evidence from which we could infer affirmation because, by working and receiving a salary, the employee can be said to be doing acts consistent with further performance of the contract and therefore affirmation of it. *WE Cox Toner Ltd v Crook* [1981] ICR 823 EAT, in which the court also stated that '*….. if the innocent party further performs the contract to a limited extent but at the same time makes it clear that he is reserving his rights to accept the repudiation or is only continuing so as to allow the guilty party to remedy*

*the breach, such further performance does not prejudice his rights subsequently to accept the repudiation'.*

213. If the tribunal's decision is that there has been fundamental breach contract/breach of the implied term of trust and confidence and there has been no affirmation of contract or the employee has accepted breach, the tribunal then has to decide whether the employee has left at least partly in response to the breach.

214. If there is a repudiatory breach, the employee must show that s/he resigned at least partly in response to the breach or that it was the effective cause or principal reason for leaving, in order for the claim to succeed. *Nottinghamshire County Council v Meikle* [2004] IRLR 703 CA.

215. If there is a constructive dismissal, the tribunal then needs to consider whether it was unfair. Firstly, the tribunal has to decide what is the reason for the dismissal i.e. what was the reason for the conduct which amounted to the breach? In *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445 CA, it was stated that it is open to the employer to show that such dismissal was for a potentially fair reason. If it does so, it will then be for the tribunal to decide whether the dismissal for that reason, both substantively and procedurally, fell within the range of reasonable responses, and was fair. Clearly, if the conduct is disputed, it would be difficult for the employer to say it had a good reason for the conduct.

*Indirect disability discrimination*

216. Section 19 of the Equality Act 2010 (EA) prohibits indirect discrimination, which it describes as follows:

> '(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant *protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –*
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) It puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

217. *Disability* is one of the relevant protected characteristics.

218. The Supreme Court held in *Essop and others v Home Office (UK Border Agency): Naeem v Secretary of State for Justice* [2017] IRLR 558 that there is no requirement for an explanation of the reasons why a particular PCP puts one group at a disadvantage when compared with others. It is enough that it does. Indirect discrimination, unlike direct discrimination, does not require a causal link between the characteristic and the treatment but does require a causal link between the PCP and the particular disadvantage suffered.

*Provision, Criterion or Practice (PCP)*

219. The Claimant relied on 2 PCPs as follows:

    a. A requirement to continue in the same team pending the outcome of a grievance;

    b. Not providing the subject of a complaint with full details of the complaint at an early stage and/or not permitting the subject of the complaint to participate in the investigation.

220. The Respondent denied that it applied the PCPs in the above terms to the Claimant.

221. In relation to the first alleged PCP it is the Respondent's case that the Claimant was not required to work in the same team pending the outcome of her grievance. In relation to the second alleged PCP, it is the Respondent's case that although the Claimant was not given the full details of the complaints against her at an early stage, this cannot be properly regarded as a PCP. The Respondent submitted that what happened with these complaints was the opposite of what should have happened and was not part of its procedure.

222. The question for us objectively, is whether, if these PCPs were applied, the Respondent has complied with its obligations or not.

223. The EAT in *SoS for the DWP v Alam* [2010] IRLR 283 outlined the questions to be asked as follows: - (i) Did the employer know both that the employee was disabled and that his disability was likely to affect him in the manner set out in the Act. If the answer is no, then (ii) ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in the Act.

224. The Tribunal was assisted by the *Equality and Human Rights Commission Code of Practice on Employment (2011) (CoP)*. An employer must do all it can reasonably be expected to do to find out whether an employee has a disability which places him at a substantial disadvantage. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially *(CoP paragraph 5.15).* Employers can often prevent unfavourable treatment which would amount to discrimination arising from disability by taking prompt action to identify and implement reasonable

adjustments (*CoP paragraph 5.20*). If an employer has failed to make a reasonable adjustment which could have prevented or minimised the unfavourable treatment, it will be very difficult for it to show that the treatment was objectively justified. *(CoP para 5.21).* Even where an employer has complied with a duty to make reasonable adjustments in relation to the disabled person, they may still subject a disabled person to unlawful discrimination arising from disability. This is likely to apply where, for example, the adjustment is unrelated to the particular treatment complained of *(CoP para 22).*

225. The duty to make reasonable adjustments is an objective duty which therefore does not depend on the employer's subjective decision as to whether or not it considered that it was under a duty or as to the steps that could be taken. The Code of Practice at paragraph 68 suggests the following factors may be taken into account:

    (a) Whether taking any particular steps would be effective in preventing the substantial disadvantage;

    (b) The practicability of the step

    (c) The financial and other costs of making the adjustment and the extent of any disruption caused;

    (d) The extent of the employer's financial and other resources;

    (e) The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

    (f) The type and size of the employer

*Burden of proof*

226. The burden of proving the discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also, because it relies on the drawing of inferences from evidence. Section 136 of the Equality Act 2010 addresses that and follows on from the cases of *Igen v Wong* and other authorities dealing with the shift in the burden of proof. Section 136 provides that:

    *"(1)..*

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

    *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

227. In the case *Laing v Manchester City Council* [2006] IRLR 748, tribunals were cautioned against taking a mechanistic approach to the proof of

discrimination in following the guidance set out above. In essence the Claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination. The tribunal can consider all evidence before it in coming to a conclusion as to whether or not a Claimant has made a prima facie case of discrimination (see also *Madarassy v Nomura International plc* [2007] IRLR 246).

228. In every case, the Tribunal has to determine why the Claimant was treated as she was. This will entail, looking at all the evidence to determine whether the inference of unconscious or conscious discrimination can be drawn. As Lord Nicholls put it in *Nagarajan "This is the crucial question"*. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

229. Inferences can also be drawn from surrounding circumstances and background information. The Tribunal must consider the totality of the facts.

230. How the burden of proof principles are to be applied was dealt with in the case of *Bethnal Green and Shoreditch Education Trust v Dippenaar* [2015] UKEAT 0064/15; referred to us by the Respondent. In that case it was held that the provision, criterion or practice must be shown to exist before any question arises of applying the statutory burden of proof. The tribunal must identify the PCP and be satisfied that it was adopted by the Respondent, before proceeding any further.

231. *Harvey* stated that usually, a PCP will be a state of affairs that have an element of repetition. Although it is possible for a one-off event to constitute a PCP, this is only likely to be so if that event is at least capable of applying again and/or applying to other employees. In the case of *Ishola v Transport for London* [2020] EWCA Civ 112, it was stated that for a PCP to be established, there must be some form of continuum in the sense of how things generally are or will be done by the employer.

232. In *Dippenaar*, it was also stated that '*practices'* as distinct from '*provisions'* or '*criteria'* involve repetition of conduct, or at least the anticipation of repetition. Also, the EAT confirmed that rumour was insufficient proof of practice.

233. If the tribunal find that there is/are PCPs, then we need to look at whether it/they put or would put, persons with whom Claimant shares the characteristic, at a particular disadvantage, when compared with persons with whom she does not share it. The Respondent submitted that the Claimant would have to prove that any alleged PCP would put people with her specific disability at a particular disadvantage in comparison to people without it. It was submitted that there are variations between people with depression and anxiety and that it cannot be assumed that they would all have reacted to the events in the same manner as the Claimant. The Respondent submitted that it would not be surprising if another person with this disability was disadvantaged by being moved from their normal role into

a different, unfamiliar team; or by being told that someone had complained about them when the nature, details and original source of the complaint remained unclear. It was not accepted that this element of the test was met in this case. Nevertheless, the Respondent accepted that the Claimant was put at a disadvantage by the second alleged PCP.

234. In summary, in applying the burden of proof, the Tribunal must firstly decide whether the PCPs relied on by the Claimant existed and were applied. The burden of doing so rests on the Claimant. The Claimant then has to prove that persons of her disability were put at a particular disadvantage compared to those who were not so disabled and that, (section 23 Equality Act), at both the group and then the individual stage, the circumstances of the different groups were the same or not materially different.

235. Section 23(1) EA states that on a comparison of cases for purposes of section 19 there must be no material difference between the circumstances relating to each case.

236. If the burden does shift, the employer is required only to show a non-discriminatory reason for the treatment in question; the employer is not required to show that he acted reasonably or fairly in relying on such a reason; see the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 para 22.

237. In *Essop* it was said that *'it must be open to the Respondent to show that the particular Claimant was not put at a disadvantage by the requirement. There was no causal link between the PCP and the disadvantage suffered by the individual: he failed (the test) because he did not prepare, or did not show up at the right time or in the right place to take the test, or did not finish the task. A second answer is that a candidate who fails for reasons such as that is not in the same position as a candidate who diligently prepares the test, turns up in the right place at the right time, and finishes the tasks he was set. In such a situation there would be a "material difference between the circumstances relating to each case", contrary to section 23(1), referred to above.'*

238. In this case the Respondent does not seek to rely on the 'proportionate means' defence in relation to the second alleged PCP. It does rely in a defence in relation to the first alleged PCP.

239. Alternatively, the Claimant complains that the Respondent failed to comply with a duty to make reasonable adjustments in relation to the same PCPs relied on above.

*Failure to make reasonable adjustments*

240. Section 20 EA imposes on the employer a duty to make adjustments where a PCP (provision, criterion or practice) of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter, in comparison with persons who are not disabled. Section 20(2) provides that the duty comprises three requirements. Only the first applies in this case.

241. The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons were not disabled; to take such steps as it is reasonable to have to take to avoid the disadvantage. The employer is not under a duty to make adjustments if the employer does not know and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the substantial disadvantage.

242. Section 212(1) EA defines a substantial disadvantage as something that is more than minor or trivial. An employer who fails to comply with the first, second or third requirement has failed to comply with the duty to make reasonable adjustments and discriminates against that disabled person.

243. In the case of *Project Management Institute v Latif* [2007] IRLR 579 the EAT decided that the Claimant must show evidence from which it could be concluded that there was an arrangement or a PCP causing a substantial disadvantage and that there was some apparently reasonable adjustment which could have been made. If the Claimant does this the burden shifts. Once the burden has shifted, the claim will succeed unless the employer is able to show that it did not breach the duty.

244. In the case of *Griffiths v Secretary of State for Work & Pensions* [2015] EWCA Civ. 1265, the Court of Appeal confirmed that a failure to comply with the section 20 duty to make reasonable adjustments amounts to an unlawful act of discrimination. The section 20 duty required affirmative action in certain situations. (see also *Archibald v Fife Council* [2004] ICR 9454 HL and the Equality and Human Rights Commission Code of Practice on Employment (2011) para 6.2). This was not about expecting the Claimant to have to set out particular obligations that she had asked the Respondent to address but a duty on the employer to take reasonable steps to remove the disadvantage.

245. The Court stated that in order to engage the duty to make reasonable adjustments, there must be a PCP which substantially disadvantages the appellant when compared with a non-disabled person. *Griffiths* concerned the application of a sickness management procedure and the correct formulation of the PCP was held to be that the employee must maintain a certain level of attendance at work in order not to be subject to the risk of disciplinary sanctions. That was a provision, breach of which may end in warnings and ultimately dismissal. Therefore, a disabled employee whose disability increases the likelihood of absence from work on ill-health grounds, is disadvantaged in more than a minor or trivial way, by the application of that procedure. That group of disabled employees whose disability results in more frequent and perhaps longer absences will find it more difficult than non-disabled employees to comply with the requirement relating to absenteeism and therefore will be disadvantaged by it. The Court also referred to the judgment in *Archibald* where the substantial disadvantage was that the employee was at risk of dismissal. The purpose of the reasonable adjustment was to prevent the terms of her contract from placing her at that substantial disadvantage.

246. In the case of *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10/JOJ, it was stated that if there is a real prospect of an adjustment removing a disabled employee's disadvantage, that would be

sufficient to make the adjustment a reasonable one; but that does not mean that a prospect less than a real prospect would not be sufficient to make the adjustment a reasonable one.

247. In the case of *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ. 640 CA the Court of Appeal held that the duty to comply with a reasonable adjustment requirement under section 20 begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage.

248. The reasonable adjustments claim was only made in relation to the first alleged PCP. The Respondent denied that it applied that PCP to the Claimant. It was also not accepted that the alleged PCP put the Claimant at a substantial disadvantage or that the Respondent could be expected to know the same.

249. The Respondent also submitted that it took reasonable steps to avoid any substantial disadvantage accruing to the Claimant.

## Applying Law to Facts

250. The Tribunal will now apply the above law to the facts set out above.

251. The Tribunal will refer to the list of issues set out at paragraph 3 of the Case Management Summary dated 8 September 2020, which arose from the hearing before EJ Russell on 24 August 2020.

252. The Tribunal will start with the complaints of discrimination because if they are successful, that could impact the complaint of constructive unfair dismissal.

253. The discrimination complaints were as follows:-

*Disability*

3.1 Was the Claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of the mental impairment of anxiety and depression?

(a) At the start of the hearing the Respondent conceded that at all material times the Claimant was a disabled person within the meaning of the Equality Act 2010 by reason of her anxiety and/or depression.

(b) It is therefore this Tribunal's judgment that the Claimant was a disabled person for the purposes of the Equality Act 2010.

*EQA, section 19: indirect disability discrimination*

3.2 Did the Respondent apply either or both of the following PCPs (provision, criterion or practice)?

(a) A requirement to continue in the same team pending the outcome of a grievance.

(b) Not providing the subject of a complaint with full details of the complaint at an early stage and/or not permitting to the subject of the complaint to participate in the investigation.

*The Tribunal judgment on the PCPs*

(a) *The first alleged PCP is a requirement to continue in the same team pending the outcome of a grievance. Did the Respondent apply this as a PCP?*

a. The Claimant raised her first grievance on 3 February 2019 and her second grievance, relating to the QA meeting, on 2 April. From around December 2018 and even before she raised her grievance, the Claimant was working on cases for the South Quadrant. There was a point when she wanted to transfer to the South Quadrant but that was not possible as the postholder of the job that she was doing, was on secondment, so a permanent transfer to that team was not possible.

b. The Claimant applied for the job as an SGO assessor in January 2019.

c. In his risk assessment completed on 11 September, Mr Secker confirmed that the Respondent was considering re-deploying the Claimant to alternative posts at the same time as leaving open the possibility of her returning to her post as a CNRO with alternative line management arrangements in place. Although it was recognised that this might be difficult to arrange due to the internal structures, the evidence shows that the Respondent was prepared to consider it.

d. It is therefore our judgment that the Respondent did not operate a requirement that employees continue in the same team pending outcome of a grievance. Also, in this case, the Respondent did not require the Claimant to continue in the same team pending the outcome of her grievances. The Respondent was prepared to make alternative arrangements for the Claimant. The Claimant worked for a different team for some of the time and was absent due to ill-health for some of the time. While the grievance was being considered, the Respondent was in the process of making arrangements for the Claimant to change teams/line management.

e. In relation to the first alleged PCP, it is our judgment that the Respondent did not have a PCP requiring employees to continue in the same team pending the outcome of a grievance. This was not a PCP applied by the Respondent.

*(b) There were two parts to the second alleged PCP. The first part is the question of whether the Respondent applied a provision, criterion or practice of not providing the subject of a complaint with full details of the complaint at an early stage.*

a. We found as a fact that the way in which the initial complaint from Ms Kalluri was handled was not the way in which complaints are usually handled at the Respondent. All the Respondent's witnesses agreed this. It was also the Claimant's evidence that usually, complaints would first be raised with the person who is being complained about before being escalated to the manager.

b. Ms Kalluri raised the first complaint with Ms Adams by email on 30 April 2018. Ms Adams was off sick at the time so it was sent to Ms de Leon. There was a meeting between the Claimant's managers and Ms Kalluri on 17 May after which Ms Adams was advised to inform the Claimant about the complaint. She did not do so and the Claimant was not informed until 3 July 2018 that there had been a complaint. The delay was with Ms Adams as she felt uncomfortable telling the Claimant about this complaint because she did not have the full details such as the dates when these things were alleged to have been done, which families were involved etc. The Claimant was not given any of the details, not even that the complaint had come from Ahana Kalluri, until much later. She was given more details during the supervision with Ms Hobbs on 23 November 2018, and in the meeting with Ms de Leon, Ms Adams and Ms Hobbs on 11 December 2018. The Claimant did not get a copy of the original complaint until 8 June 2019, as part of her Subject Access request. This was not handled in accordance with any of the Respondent's practices or procedures.

c. In relation to the second complaint from Ms Millar, this was raised in an email from her to Ms Adams on 17 July 2018, in response to Ms de Leon's instruction that any future complaints must be presented with details. Ms Adams met with Sally-Ann Millar on 27 July to get some more information. It is our judgment that the Claimant was told about this complaint on the same day, 27 July, and that she was told the names of the families involved and some information about the complaints. She was not given all the details but Ms Adams did not know the full details at that time. The Claimant was also interviewed as part of Ms Adams' investigation into Ms Millar's complaint. It is likely that the way that this complaint was handled was similar to the Respondent's usual process, as she was provided with as much detail as her manager had at the time.

d. <u>It is our judgment that the Respondent did not apply a PCP of not providing full details of the complaint at an early stage. This part of the complaint fails.</u>

e. *The second part of the second alleged PCP is whether the Respondent had a provision, criterion or practice of not permitting the subject of the complaint to participate in the investigation.*

    i. The Tribunal finds it likely that the Respondent had a practice of conducting investigations into its employee's practice, without their knowledge or their cooperation. It is our judgment that the Respondent would do this if it had concerns about someone's practice and before taking formal disciplinary

action against them. We make this finding because it was not submitted to us that this was not the Respondent's practice. Also, it was not said by the Respondent's officers who gave evidence in the hearing, that this was unusual or not something that happened.

ii. It is our judgment that that this practice was applied to the Claimant. The Respondent conducted an investigation into the Claimant's practice and her work between July and September 2018, which adversely affected her.

iii. It is our judgment that in April 2018, when Ms de Leon saw the email from Ms Kalluri complaining about the Claimant, she correctly referred it back to Ms Kalluri and asked her to raise issues in a more timely fashion in future. She defended the Claimant against the allegations because of the nature of the CINRO role and confirmed that no complaints had been made against the Claimant through the normal channels. However, at the same time, it is our judgment that she believed that it was likely that there was something to the complaint. She asked Ms Adams to investigate the Claimant's work –*to be forensic in her review of the Claimant's performance statistics* - and to get back to her if she discovered anything. Also, on Ms de Leon's instructions, Ms Adams attended meetings that the Claimant was chairing so that she could monitor the Claimant's performance. There were clearly discussions about the Claimant between her managers, which resulted in the Claimant being described as '*intimidating'* in the same supervision meeting and that she adopted a style which resulted in '*defensiveness*' from her colleagues. It was stated in an email that was copied to Ms Kalluri that she can sometimes be '*harsh and chaotic'*. In the supervision notes from the 3 July meeting, Ms Adams stated that the Claimant needed to think about ways that she can challenge that does not create '*defensiveness'*. This comment was not something that was discussed in that supervision session. These criticisms did not feature in the supervision notes from the period before July 2018, that we were shown. Although everyone noted that there had been problems with the relationship between Mid and the CINRO assigned to them before April 2018, once these issues were raised against the Claimant, the Claimant's managers treated them as though they were credible. The Claimant was never told that she was being investigated, although she feared that she was, which caused her a great deal of stress and anxiety. The Claimant was promised a letter from senior management stating that the Respondent had confidence in her practice and that there were no issues as far as management was concerned. She never got that letter. The investigation by Ms Adams into Ms Millar's complaints exonerated her. The meeting on 11 December was an opportunity to say this but that did not happen. In a letter dated 22 January, in response to the Claimant's request for a copy of Ms Kalluri's email,

Ms de Leon stated that she had confidence in her practice. However, those criticisms remained as they were referred to by Ms Hobbs and Ms de Leon in their interview with Ms Kemp as part of the Claimant's grievance.

iv. It is our judgment that the Respondent conducted an investigation into the Claimant's practice after it received Ms Kalluri's complaint in April 2018 and that the Claimant was not informed of it and was not invited to participate in it. We judge that the investigation concluded in or around September 2018, once Ms Adams' investigation ended, although her managers' opinions, formed from the investigation, remained.

v. This was a PCP applied by the Respondent.

254. The next issue for the Tribunal was:

3.3 *Did the PCP(s) put disabled persons at one or more particular disadvantage when compared with non-disabled persons?*

i. It is this Tribunal's judgment that the PCP of conducting the investigation into an employee's practice without their knowledge and without including them would disadvantage both disabled and non-disabled persons. It would cause anxiety and stress and concern for the employee's future career.

ii. It is our judgment that the investigation was closely connected and triggered by the first complaint from Ms Kalluri and the way in which Ms de Leon chose to deal with it.

iii. It is also our judgment that employees with mental health disabilities would be put to a particular disadvantage by the application of this PCP. The Respondent submitted that people with depression and anxiety were not a homogenous group, which we accept. However, it is this Tribunal's judgment that it is likely that having your practice investigated and managers and your colleagues talking about you, while you are expected to continue working in a stressful job, would be likely to cause a deterioration in the mental health of a person disabled with a mental impairment. That person would be put to a substantial disadvantage.

3.4 *Did the PCP(s) put the Claimant at that/those disadvantages(s) at any relevant time?*

i. The Claimant had been diagnosed with anxiety/depression since 2002. The Respondent has accepted that the Claimant had been disabled across the whole timeline of the case. The Claimant's managers had been aware of her ill-health as she had been off sick with her mental health. The Claimant returned from sickness absence in February 2018 and spoke to Ms Adams about her mental health as recorded above.

ii. Ms de Leon also confirmed that she was aware that the Claimant had been emotionally fragile in 2016 and 2017.

iii. It is our judgment that the Respondent had knowledge of the Claimant's disability. Ms Adams and Ms Hobbs discussed the likelihood that the Claimant was going to be off with stress in response to the complaints from Ms Millar. Ms Hobbs' response to Ms Adams' concern was that the Claimant should learn from feedback, although at the time she had not been given any feedback. She had been told about complaints which at that time had not yet been investigated.

iv. It is also our judgment that the application of the PCP put the Claimant at a particular disadvantage. She suffered increased paranoia, stress, worry and anxiety when she guessed that the Respondent was conducting an investigation into her practice. She worried about her work and her ability to do it. She made more mistakes. She was told to sit in with Ms Millar's team and to try to improve her relationship with Ms Millar and her team, which she found difficult as she did not know which one of them had complained about her and if they would do so again. This caused her to worry and led to a deterioration in her mental health around this time.

v. As a person who was disabled and suffered from depression and anxiety, the Claimant began to suffer from panic attacks and frequently broke down in meetings with Ms Adams and Ms Hobbs.

vi. In our judgment, between July and September 2018, the Claimant attended work but was affected by the ongoing investigation into her practice as it caused her to worry and avoid spending time with family and colleagues because she felt ashamed. She described in detail how if affected her in the feedback form that she completed in July 2018. She did not want to spent time discussing her problems at work in case people thought badly of her and she did not want family members to worry. She also spent lots of time trying to work out what had happened. Her worry and concern and increased paranoia about the investigation that she suspected had been going on into her practice and the fact that she had not been given a copy of the original complaint, were the factors that led her to submit her GDPR/Subject Access request in June 2019.

vii. <u>It is this Tribunal's judgment that the application of this PCP put the Claimant at the particular disadvantages described above, at the relevant time and that her mental health suffered as a result.</u>

3.5 *If so, has the Respondent shown the PCP(s) to be a proportionate means of achieving a legitimate aim? The Respondent will identify in writing the legitimate aim upon which it seeks to rely.*

i. The Respondent submitted that if the Tribunal considers that the preceding conditions are met, it would concede that the Claimant was put at a disadvantage by the second alleged PCP. There was no defence put up to this complaint.

ii. It is therefore this Tribunal's judgment that the Respondent has failed to show that the PCP was a proportionate means of achieving a legitimate aim. The Respondent could have discussed with the Claimant their concerns about her practice and engaged her in the investigation and then reassured her, in writing, when they decided that there were no real concerns that needed to be addressed.

iii. Unsubstantiated comments about her personality were detrimental to her mental health and gave her no insight into her practice and were unhelpful. These comments about her personality were also linked by her managers to the concerns raised about her performance by Ms Kalluri and Ms Millar, even before there was an investigation into whether these concerns were well founded or if her personality featured in them. If these were concerns that her managers always had about her, they should have raised them with her before Ms Kalluri sent in her email in April 2018. They had not done so and it was to her detriment that they were raised on the back of what was considered an unfounded complaint.

iv. <u>The Claimant's complaint of indirect disability discrimination succeeds in relation to part of the second PCP.</u>

*Reasonable adjustments: EQA, sections 20 & 21*

3.6 Did the Respondent know and could it not reasonably have been expected to know the Claimant was a disabled person?

i. <u>It is our judgment that the Respondent knew that the Claimant was a disabled person. The Respondent conceded that at all times the Claimant was a disabled person for the purposes of the Equality Act 2010.</u>

3.7 Did the Respondent apply a PCP (provision, criterion or practice) that an employee is required to continue in the same team pending the outcome of a grievance?

i. It is our judgment that the Respondent did not apply this PCP to the Claimant. As stated above, the Claimant was not required to continue in the same team pending the outcome of her grievances. Although it was not possible for her to move to the team without displacing another employee, the Claimant was enabled to work with South quadrant for a period. The Respondent offered her the possibility of returning as a CINRO, with different a different management line, if that was what she wanted and which at times, she had stated that she

wanted. The Respondent was also looking at redeployment opportunities elsewhere in the Council. The fact that she did not move to another job does not mean that she was required to stay as a CINRO.

ii. The PCP was not applied. Therefore, issues 3.10 – 3.12 of the list of issues falls away and are not repeated here.

iii. It is this Tribunal's judgment that the complaint of a failure to make reasonable adjustments fails and is dismissed.

255. The Tribunal will now consider the complaint of constructive unfair dismissal.

*Constructive Unfair dismissal*

3.8 Did the Respondent, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the Claimant? The Claimant relies upon the following conduct:

(a) 3 to 20 July 2018: Ms Adams failed to tell the Claimant the nature or maker of the complaints against her;

(b) 19 July 2018: the comments by Ms Adams that "*maybe* [the Claimant] *will be off with stress*" and Ms Hobbs that the Claimant needed "*to reflect more and learn from her feedback*";

(c) 31 July 2018: the Respondent failed to respond to the Claimant's account of events and concerns;

(d) 7 September 2018: the Respondent's management failed to respond to the conclusions of the investigation report that the complaints were unfounded;

(e) 3 July to 23 November 2018: failure to give her supervision;

(f) 11 December 2018: Ms De Leon insisted that the Claimant attend a meeting when she was off sick and failed to provide her with a copy of the email from Ms Kalluri;

(g) From 11 December 2018: refusal to permit the Claimant to transfer to another part of the council and requiring her to work with the individual who complained about her;

(h) 27 March 2019: Ms De Leon attended the Claimant's supervision without consent and complained about the Claimant's reports;

(i) 3 February 2019 to 25 June 2019: failure to deal adequately with the Claimant's grievance, including delay, failure to keep her informed, not providing a sufficiently comprehensive outcome, taking no sanctions against the complainant and/or failure to act on the recommendations about alternative work;

(j) 10 January 2020: the outcome and recommendations of the Claimant's grievance appeal, that the Claimant should look for an alternative role in the council or be subject to independent supervision and work separately from her existing team. This was the last straw.

Our judgment in relation to allegation 3.10:-

(a) In July 2018, Ms Adams failed to inform the Claimant of the nature of the complaints made against her by Ms Kalluri. This is accepted by the Respondent. The Claimant did not find out that Ms Kalluri had been the arbiter of the initial complaint until Ms Hobbs told her sometime later, on 23 November. The effect of this on the Claimant was described in detail in the quotation from Ms de Leon's summary of the 11 December meeting, set out above. The failure to tell her what the Respondent knew of the complaint, or that it had been returned and was not going to be given any credence; affected the Claimant's confidence and her trust in the Respondent. Although the Respondent had apparently decided not to investigate Ms Kalluri's complaint, it had repercussions for the Claimant as at the same time, she was being investigated by Ms Adams, on Ms de Leon's instructions. She did not see the written complaint until 8 June 2019. She was told about Ms Millar's complaint although not told that it had been made by Ms Millar. She took part in the investigation of that complaint.

(b) The comments made by Ms Adams that the Claimant might be off with stress was likely said in recognition that the Claimant was someone with a fragile mental health state and who had been upset when told about the complaints raised by Ms Kalluri, which had not been raised in the proper way so that this was the first time that the Claimant had heard of them. The comment made by Ms Hobbs was unwarranted, as far as the evidence we had. There was no evidence that the Claimant had previously been given feedback about conducting herself in a way that could give rise to complaints. There was no evidence presented to us that she was someone who did not do her job well and had not maintained high professional standards. Ms Hobbs did not intend for the Claimant to see this comment but she did, when she received the Subject Access/GDPR requested documents in June 2019. When she saw the comments, they upset her because both Ms Adams and Ms Hobbs were familiar with the Claimant and Ms Adams knew about her past vulnerability to depression. In our judgment, although she felt that she could not trust these managers when she read these documents, on their own these comments would not amount to a fundamental breach of contract.

(c) It is our judgment that in July 2018, the Claimant gave a detailed, graphic account of her experience of being the subject of a complaint, in her response to the questionnaire. She provided details of her experience, which the Respondent's witnesses agreed made worrying reading. It is our judgment that whether or not she was upset about the contents, Ms de Leon did not telephone the Claimant when she read this document. It is our judgment that the Claimant was hurt and felt unsupported by the Respondent's failure to respond to her feedback form. Ms Hobbs

acknowledged the Claimant's feedback but forwarded it to Ms de Leon for a substantive response, which was not forthcoming. The Respondent must have realised from the contents of the form that the Claimant was having mental health issues but there was no referral to Occupational Health or counselling services at that time. The Claimant was disappointed by the lack of a substantive response. It is our judgment that in the particular circumstances, it was reasonable for the Claimant to expect a response to her feedback and the lack of one caused the Claimant's trust and confidence in the Respondent to deteriorate significantly.

(d) This was further undermined when management, in particular Ms Kalluri and Ms Millar, failed to respond to the conclusions of Ms Adams' investigation report. The Claimant was hoping that once they had read the investigation report, she would receive an acknowledgement that there had been an error and that she had not conducted herself as alleged. She would then be confident about returning to work in Mid. Instead there was silence from both Ms Kalluri and Ms Millar as well as from Ms de Leon. It later transpired that Ms Millar did not accept the report's findings and the Respondent had not addressed that with her. The Claimant felt that she had been targeted and in meetings, Ms Adams agreed with her that it looked that way. When Ms de Leon chased Ms Kalluri, she denied that the Claimant had been targeted but indicated that she was not retracting her complaint. Ms de Leon also mentioned that it looked like the Claimant had been targeted in her email. Instead of accepting the outcome, Ms Kalluri intimated that it was likely that the substance of the complaint had not been confirmed because of the passage of time. This was very disappointing and upsetting to the Claimant and did not give her the closure she needed. She had little confidence that she would be safe if she continued to work with this team. The Claimant tried to work with Ms Millar, who refused to or failed to reply to her emails and other colleagues were asking her questions which lead her to think that something was still not right. This further undermined her trust and confidence in the Respondent. There was an opportunity when Ms Adams published her investigation for Ms de Leon or another senior manager to call a meeting and declare their support for the Claimant's practice and that the matter was at an end. There was no definitive end to the matter.

(e) It is our judgment that between 3 July and 23 November the Claimant did not receive any supervision. Ms Adams was off sick for some of that time and when she was at work, she was conducting the observations and investigation into the Claimant's practice but did not have supervision meetings with her. The Claimant had a meeting with Ms Hobbs on 23 July and her first supervision meeting with Ms Hobbs on 23 November. The Respondent failed to support the Claimant at this very stressful time when she was being investigated and when she was suffering stress, increased anxiety and worry due to unexplained complaints and given the very nature of the job was already stressful. This further undermined the Claimant's trust and confidence in the Respondent.

(f) We find that the Claimant was reluctant to attend the meeting on 11 December because she was struggling with anxiety and depression and insomnia and had little hope that any more meetings would resolve matters. However, she was interested in an opportunity to go through a timeline to

understand what happened. We agree with the Respondent and the Claimant's live evidence that she was not off sick at the time and was therefore not forced to attend while sick. It is our judgment that she attended because Ms de Leon invited her and she trusted her. She had some concerns about the management at Mid and her relationship with Ms Adams was in difficulty. The meeting was helpful in that although hearing the details distressed her, she was given more details about what had happened, which shed some light on it for her. The only issue from this meeting is that Ms de Leon refused to give the Claimant a copy of Ms Kalluri's complaint. She did give an explanation, which we referred to in the findings but it is our judgment that it was not a good reason for not giving it to her. It must have been clear at that meeting that the details of that complaint were weighing on the Claimant's mind and that she needed to be able to read it in order to have some peace. The Claimant would have been bound by the confidentiality undertakings in relation to the contents of the complaint as she was in relation to all her other work. Ms de Leon's refusal to allow her to have a copy of the complaint and her not allowing the Claimant sufficient time to read it in the meeting, damaged their relationship and caused the meeting to have the opposite effect to what she had intended. The Claimant came to the meeting as a person with a mental health impairment and the inability to read and digest the details of Ms Kalluri's complaint caused her mental health to deteriorate significantly after this meeting, as outlined above in our findings.

(g) There are two parts to this point.

a. Firstly, refusing to allow the Claimant to transfer. It is our judgment that the Claimant was not able to transfer to the South Quadrant after she agreed to help out colleagues there because the CINRO assigned to that post was away on a temporary secondment. There was no permanent post available there. Alternatives were considered and noted by Mr Secker in his letter of 5 December and on the risk assessment form, as set out above. It is also our judgment that in January 2019, the Claimant had a coffee with Ms de Leon and indicated that she would rather that Ms Adams was no longer her line manager and that she no longer wanted to transfer. This was when she believed that there would be a written declaration of support for her practice coming from Mr Secker. The Respondent arranged for her line management to change to Ms Hobbs. There was no letter of support from Mr Secker but Ms de Leon did say in her letter refusing the give the Claimant a copy of Ms Kalluri's email, that she had every confidence in the Claimant's practice.

b. Secondly In relation to Ms Millar - the Claimant had tried to discuss the same case with Ms Millar but Ms Millar had failed to respond to her email. In July 2018, she had been encouraged to attend meetings with Ms Millar's team and to build relationships with them. This was before the investigation had begun. In that respect the Respondent did not take into account her feelings or her safety. The Claimant was not forced to continue working with Ms Kalluri. When she had the coffee with Ms de Leon, she was promised a letter from Mr Secker confirming his confidence in her abilities. She did not get that at that time. Ms de Leon did give her an assurance later when

she asked again for a copy of Ms Kalluri's complaint. As far as we know, the Claimant never got a letter from Mr Secker supporting her practice. In our judgment, Mr Secker's offers of employment/ arrangements at their last meeting on 10 February 2020, were real and were an attempt at rectifying the situation. It is our judgment she was required to work with Ms Millar for part of the time. In the 11 December meeting, there was an acknowledgement by Ms de Leon that the way that this had all been handled had seriously damaged the Claimant's trust in the Respondent.

(h) It is our judgment that the handling of the meeting on 27 March 2019 by Ms de Leon and Ms Hobbs added to the Claimant's mistrust of the Respondent and the deterioration of her relationship with the management team. It is our judgment that the Respondent's managers have the right to go to any meeting that they consider appropriate. However, in a situation where the employee is known to be suffering from a mental impairment and where there are already known issues of trust and transparency, it was thoughtless, insensitive and lacking in insight for someone about whom she had raised a grievance to decide to conduct a quality assurance session at the same time as a supervision meeting and to fail to inform the Claimant of this. Even when the Claimant arrived at the meeting point, she was not told that Ms de Leon was going to come into the meeting with Ms Hobbs. The Claimant was expecting two separate meetings. The Respondent was aware that the Claimant suspected that she was being kept in the dark about her management and the way in which this meeting was set up reinforced that for her. Ms de Leon has admitted that the meeting ran away from her. As a senior manager, that was her responsibility. The Claimant wanted supervision and did not get any supervision that day. In our judgment, having both her manager and her manager's manager present; the way in which the meeting was conducted: - including the raised voices between her and Ms de Leon, the Claimant leaving the meeting in tears, being accused of bad practice in relation to typing errors and missing factual details in reports which put her on the defensive - was likely to further damage the relationship of trust and confidence between her and the managers. If this had been the only thing that had happened, it may not have damaged the relationship to the extent that it did but given the history which Ms de Leon outlined in the 11 December meeting (the minutes of which we quoted from above), this meeting was not starting from a clean slate. Relationships needed to be rebuilt/mended and the conduct of this meeting had the opposite effect and further undermined the trust and confidence that the Claimant had in her management.

(i) It is our judgment that Ms Kemp took 5 months to complete the grievance and produce a result. She also failed to clearly set out whether or not she upheld the Claimant's grievances. This was a huge disappointment to the Claimant. As Mr Martin found, there were some obvious points in which the grievance should have been upheld and she failed to do that. This meant that in order to get the right decision, the Claimant had to appeal against the grievance outcome. This prolonged the process for her and increased the stress, anxiety and depression that she was experiencing. Ms Kemp did not challenge the managers about the statements they made about the Claimant's personality and so those made their way into the grievance outcome. Descriptions of her as chaotic, a maverick and not taking people

with her were serious criticisms to have against someone in her area of work although they were of her personality rather than of her work. As far as we saw, those criticisms had not appeared in her supervision notes or anywhere else, prior to July 2018. Ms Kemp took them as objective truth when stated by the managers in the grievance investigation. Some of those managers, such as Ms de Leon were subject to the grievance and that should have featured in the analysis of whether her assessment was correct. From the moment that Ms Kalluri raised her complaint, it is our judgment that Ms de Leon believed that it was likely to be true because of her opinion of her and the way the Claimant's colleagues spoke about her. Ms de Leon and Ms Hobbs continued to believe that these were accurate, relevant descriptions of the Claimant and repeated them to Ms Kemp. There was no grievance outcome and therefore no sanctions against anyone considered to have conducted themselves improperly. As far as recommendations were concerned, the Respondent did not provide the Claimant with an advocate, which Ms Kemp had recommended as an aid to her returning to work. This was something the Claimant was hoping to have as at that point she wanted to return to work. Having put time and effort into raising a grievance it was disappointing and a further reason to mistrust the Respondent that the recommendations were not followed.

(j) Mr Martin conducted the grievance appeal and upheld some of the points. His decision was clearer in that the Claimant could see which points were upheld and which aspects were not. Mr Martin decided not to refer anyone for disciplinary action as he did not believe that any of their actions were motivated by malice. This was a conclusion open to him on the evidence. As Ms Kalluri's initial complaint arose from something that happened in 2015, it was going to be difficult to find out the source of the complaint, what had actually happened and who was responsible. It was open to Mr Martin to conclude that as the social workers had now been interviewed, there was nothing further to be gained by a further investigation and disciplinary action. He decided to make general recommendations for changes in the service and in the working relationship between the CINROs and the teams, which was likely to be useful to the service. He recommended restorative work between the Claimant and her colleagues and redeployment for her, if she felt unable to return to work. The Claimant was not happy with the outcome of the grievance appeal as she considered that disciplinary action was the only fair outcome and that it did not address the other issues she raised. It is our judgment that the outcome of the grievance appeal contributed to the breakdown in the relationship between the Claimant and the Respondent but was not by itself a breach of her employment contract. The fact that the Claimant did not get the outcome that she wanted would have been a disappointment to her. It is also our judgment that the results of the grievance appeal and the meeting on 10 February did not remedy any breach that had occurred before it. It is our judgment that the outcome of the grievance appeal was not a last straw.

3.2 Was the Claimant's resignation on 10 February 2020 in response to any breach as found above?

i. It is this Tribunal's judgment that the Claimant came to the meeting on 10 February, prepared to resign if she did not hear from Mr Martin that he had decided to sanction certain

managers and members of the team at Mid. If he had decided to sanction certain managers/caseholders, that may have restored the Claimant's trust in the Respondent. The Claimant came prepared with her laptop, keys and ID card, ready to resign if the appeal outcome did not put right all the wrongs she had experienced in the past two years. It is our judgment that the Claimant did not resign because she had found alternative employment. The Claimant went to a temporary job which required her to travel and to stay in hotels away from her family. This was therefore not a better job than her job with the Respondent. She did not resign because she had found new employment. As a householder with dependents, it was imperative that she take any employment offered and so it is our judgment that this was the reason why she started work quickly after she left the Respondent.

ii. It is our judgment that the final straw was not a final straw so as to terminate the Claimant's employment. However, it is our judgment that there was a cumulative breach of the Claimant's contract, which was not remedied by the grievance appeal process and outcome.

iii. The Respondent readily accepts that its handling of the initial complaint raised by Ms Kalluri was not transparent and left the Claimant thinking that her employment was in trouble. The Respondent then began an investigation into her practice which included increased observation of her work, an in-depth/forensic investigation of her written work and feedback forms. The Claimant did not know of this until she received the Subject Access Request in June 2019, but it confirmed her suspicions when she did receive it, as she had felt unsupported in the way that the Respondent dealt with the complaints. It was not until November 2018 that she found out that there were two separate complaints, that Ms Kalluri had raised the first one and that the second had come from Ms Millar. It was not until December 2019 that she saw and had the opportunity to properly digest Ms Kalluri's complaint which she found upsetting.

iv. When Ms Adams completed her investigation of Ms Millar's complaints, there was no statement from Ms de Leon or the managers at Mid that this was they accepted the outcome and that she had been cleared.

v. It is our judgment that the Claimant resigned because she believed that she could not trust the Respondent and that it was an unsafe place to work and because it was likely that this could happen again, given that there had been no sanctions applied to those who had made unfounded complaints against her and refused to accept that they were so. Also, when she expressed how the whole process had affected her, there was no substantive response from her managers. When one complaint was found to be baseless, there was no acceptance

of that outcome by those who had complained and no clear statement of confidence in her practice and in her approach from her line managers. Lastly, when she raised a grievance, the recommendations were not followed.

vi. This Tribunal considers that items (a), (c), (d), (e), (f), (g) (h) and (i) above were matters where the Respondent conducted itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant. There was not a deliberate attempt to push the Claimant out but: by failing to give her details of the complaints against her, failing to give her supervision at the most difficult time, by insisting that she continue to work with someone who did not want to work with her and who had accused her of serious misconduct without justification; by failing to give any meaningful response to her putting in writing her painful experiences at the wrong end of the complaint process and by using the meeting on 27 March as an opportunity to hit back on her for what was likely to be minor errors in her work when what she clearly needed was support, encouragement and supervision; the Respondent seriously damaged the trust and confidence with the Claimant. Add to that the failure of the grievance investigation to even tell her whether her grievance was upheld or not and to instead, without evidence, repeat the negative descriptions of her practice and her personality, which she had not been aware of before July 2018.

vii. It is our judgment that the Claimant's decision to resign on 10 February was not in sole response to the decision on the grievance appeal or in relation to the redeployment but was in relation to it and all that had gone before. When the Claimant arrived at that meeting, she no longer had any trust or confidence in the Respondent. She did not believe in the jobs that Mr Secker told her about and did not trust in any arrangements that he promised to make for her to return to work. The job offers did not suffice to make her feel safe at work, which she reasonably believed was an ongoing risk to her mental health, should she return.

viii. It is our judgment that the Claimant's contract had been breached fundamentally by the Respondent's conduct as set out in items (a), (c), (d), (e), (f), (g) (h) and (i) above. This was a cumulative breach which caused the Claimant to decide to resign before she arrived at the meeting on 10 February 2020, unless the outcome met her expectations. She did not hear anything in the grievance appeal outcome to persuade her to stay and so she informed the Respondent of her decision to resign.

3.3 If so, did the Claimant affirm the contract of employment or waive any breach before resigning?

i. In our judgment, the Claimant did not affirm the breach. Once she was aware that the grievance appeal outcome was not going to be what she thought was just, she relied on the earlier breach ending with the appeal outcome, and resigned. Applying the principles set out in the cases of ***Williams*** above, the most recent act on the part of the Respondent which the Claimant relies on as causing her resignation was the outcome of her grievance appeal. It is our judgment that this was not a fundamental breach on its own and at the same time, it was not objectively trivial. Mr Martin was entitled, based on the evidence before him, to decline to recommend disciplinary action against those who had complained about the Claimant. In that case, the Tribunal can go on to consider whether the earlier conduct itself entailed a breach of the ***Malik*** term, has not since been affirmed, and contributed to the decision to resign. It is this Tribunal's judgment that the earlier conduct, outlined in subparagraphs (a), (c), (d), (e) (f), (g), (h), and ending with the grievance outcome at (i), was conduct likely to destroy or seriously damage the relationship of trust and confidence between the Claimant and the Respondent and that it was not affirmed. The Claimant had not affirmed the breach and the grievance appeal outcome did not remedy any previous breaches. The Claimant was constructively dismissed.

3.4 If dismissed, was it for a potentially fair reason and fair in all the circumstances of the case? The Respondent must provide further information about the factual matters and legal basis for an allegedly fair dismissal.

i. The Respondent does not submit that there was a fair reason for the Claimant's dismissal. It is our judgment that there was no fair reason for the Claimant's dismissal proved at the hearing.

3.5 Should there be any adjustment to any basic or compensatory award to reflect contributory conduct, the chance of a fair dismissal in any event and or unreasonable failure to comply with the ACAS Code?

i. There has been no submission in this regard. This will need to be explored at a remedy hearing.

## Judgment

256. The Claimant's complaint of indirect disability discrimination is successful in relation to the second PCP.

257. The Claimant's complaint of constructive unfair dismissal succeeds.

258. The Claimant is entitled to a remedy for her successful complaints.

259. The parties are to write into the Tribunal with their dates to avoid between 1 May 2023 and 1 December 2023 so that a 1 day remedy hearing can be fixed.

260. The Claimant is also to submit a revised Schedule of Loss taking into account that the Tribunal can only award a remedy in relation to those complaints that have succeeded, by 1 March 2023.

261. The Respondent is to submit a counter Schedule, if so advised, by 3 April 2023.

**Employment Judge Jones**
**Date: 24 January 2023**