EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs E Kavanagh	**v**	**Hertfordshire Partnership University NHS Foundation Trust**

Heard at: Watford (partly by video) **On**: 6-8, 10, 13-15 and 17 February 2023

Before: Employment Judge R Lewis
Members: Mrs A Brosnan
Mrs J Hancock

Appearances
For the Claimant: In person
For the Respondent: Ms L Robinson, counsel

JUDGMENT

1. In the numbered list of issues, the following points are dismissed on withdrawal: 17, 18, 19, 33, 36, 54, 58 and 71.

2. All other claims of disability discrimination brought by the claimant; however they have been expressed, fail and are dismissed.

REASONS

1. These reasons were requested by the claimant after Judgment had been given at the end of the hearing. This was the consolidated hearing of claims presented on 18 May 2021, 25 January 2022 and 21 March 2022. The hearings had been the subject of case management preliminary hearings on 10 March 2022, 19 May 2022 and 28 September 2022, all conducted by telephone by Employment Judge Daniels. The orders were sent respectively on 21 March, 23 May and 28 September.

Executive summary

2. We hope that it makes these Reasons easier to follow if we open with a short executive summary.

3. The claimant began to study nursing in her 40s. She had had a diagnosis of bi-polar affective disorder (BPD), which had been stable and well managed for several years. As she approached graduation, the respondent offered her a job as a Band 5 Nurse in its CCATT team. CCATT is the Child Crisis Assessment and Treatment Team, and sat within a wider unit, CAMHS (Children and Adolescent Mental Health Service). Occupational Health pre-employment checks confirmed that she was fit to work. However at about the same time a concern arose out of comments made by the claimant as to whether she was fit to drive safely in the dark, particularly for a long distance, and / or if she were tired. After some delay, OH advised that there was no issue with the claimant's eyesight, but with the side effects of her prescribed medication for BPD, and with fatigue in particular. OH advised that a number of adjustments should be made. The most important one in this case was that the claimant should not drive any long distance in the dark.

4. At the heart of this case was an issue about whether the respondent had failed in its duty to make reasonable adjustments. The respondent's case, which the tribunal accepted, was that (1) it offered the claimant posts which did not require night driving; (2) it offered all recommended adjustments to the claimant's CCATT post except that one; and (3) it could not offer a non driving post within CCATT, and that that proposed adjustment was not reasonable.

5. The claimant brought a large number of other allegations (more than 40 in all) of direct discrimination, harassment and victimisation. All of those claims fail on their facts. Although we discuss them separately below, the most frequent general reasons for their failure are: the tribunal found that some of the alleged events did not happen, or did not happen as alleged; that some were based on the claimant's misunderstanding, whether of the words of an email, a specific event, or of work place norms; and some were management decisions or remarks with which the claimant disagreed, but which we do not find were detriments.

Procedural

6. Even after three previous case management hearings, completion of an agreed list of issues was left in the hands of the parties. The tribunal bundle contained an agreed list (142-153). At the request of the judge, a further version was provided in sequential numbering, and that is the version referred to in these reasons.

7. All claims were of disability discrimination, it being accepted that the claimant was at the relevant times disabled as a result of BPD. The numbered list showed 10 factual allegation of direct discrimination; 3 factual allegations of s.15 unfavourable treatment; 3 factual allegation of a failure to make reasonable adjustments; 25 factual allegations of harassment; reliance on 4 protected acts, and 12 factual allegations of victimisation.

8. There was an agreed bundle of 1,488 pages, with more modest supplementary and remedy bundles. There were separate chronologies from each side, and an agreed cast list provided by the respondent. All references to page numbers in these reasons refer to the main bundle.

9. The parties had exchanged witness statements. The claimant was the only witness on her own behalf, and her statement, although long (49 pages, 320 paragraphs) was well organised and clear in its language.

10. The respondent had served the statements of three witnesses who in the event were not called. They were:

    Mr D Allman, who was then Clinical Nurse Specialist and the claimant's line manager. He is no longer employed by the respondent and was not available;

    Ms A Donley, who was then Recruitment Manager, served a statement, but was unavailable on certificated, medical grounds.

    Ms S Kintu, now Senior Practitioner, against whom one discrete allegation had been made. The claimant withdrew the allegation in the course of her evidence, and accordingly she was not called. When withdrawing the allegation, Mrs Kavanagh commented warmly on Ms Kintu's active mentorship of her.

11. The respondent's witnesses who had provided statements and who were called were:

    Ms M Graysmith, then Community Manager, within CAMHS, and overseeing CCATT. She was the main and longest witness who, with consent of the tribunal, was recalled to deal with what appeared to be a new allegation. The circumstances are stated at #19 below.

    Ms S Zenonos, then HR Business Partner;

    Ms O Dosunmu, Locum Band 7 Clinical Nurse Specialist within CCATT, (who very briefly gave evidence about one discrete allegation);

    Ms M Lopez-Wallace, then HR Adviser;

    Ms N Richards, Service Line Lead;

    Ms M Woodcock, then Head of CAMHS;

    Ms F McMillan-Shields, Managing Director of the Business Unit which included CAMHS; and

    Ms B Jumnoodoo, Deputy Director of Nursing.

12. The following case management issues and questions arose in the course of the hearing.

13. The tribunal met in person at the start of the hearing on the understanding that the case would take place entirely remotely. The bundles and documents were all available to us in electronic form. In the course of the first day of evidence, the claimant's connection became unreliable, and the claimant asked to be present at the venue. The claimant therefore attended the tribunal for the rest of the hearing, except the final day, when judgment was given. Ms Robinson, her solicitors, and all witnesses and observers on behalf of the respondent took part remotely.

14. The tribunal asked whether the claimant asked for any adjustments to be made to our procedures in light of her disability. Apart from breaks, which were readily agreed, she did not ask for adjustments. She informed the tribunal that shortly before the start of the hearing she had experienced a bereavement, and we made such allowances as were appropriate; in particular, the claimant was not fully available on the last listed day. After two days of giving evidence, the claimant asked to have the fourth listed day taken as a break, which was agreed.

15. At the start of the hearing, given the number of issues to decided, the tribunal proposed and the parties agreed that this hearing be limited to liability only.

16. We explained to the claimant that where the respondent had provided written statements from witnesses who were no longer available, we would read them, but attach such weight to them as we think fit in the absence of cross examination. We directed that if any service user were referred to in evidence, he or she should be anonymised, anonymised in the bundle, and if necessary, would be referred to our in judgment by an anonymous code. In the event this did not arise.

17. In the course of evidence, contrary to our expectation, we heard information about the health of colleagues of the claimant. Their identity is known to the parties and witnesses, and we refer to them, where we must, anonymously, and seeking to avoid giving such information about any of them as might lead to what has been called jigsaw identification. We are in no doubt whatsoever that the confidential medical rights of non-parties override any public interest in knowledge of their identity, having regard in particular to the practice of posting tribunal judgments online.

18. At the start of the hearing, the claimant applied to amend the list of issues by introduction of an additional protected act. It seemed to us that the application should be refused even before being advised by Ms Robinson that the identical application had been made unsuccessfully to Judge Daniels (138).

19. The list of issues named three comparators and a number of hypothetical comparators. We received no evidence on any of the named comparators. However, in the course of cross examination, the claimant appeared to identify at least two colleagues as comparators. Although this appeared to be new material, for which no notice or request to amend had been made, it seemed to us in the interests of justice to allow the evidence to be given. The tribunal was concerned that there may also be additional disclosure issues

arising out of these comparators. In the event, Ms Robinson dealt with the matter efficiently and effectively by requesting the recall of Ms Graysmith, who from personal knowledge was able to give evidence of the circumstances relating to the individuals. Although the claimant had objected to the recall on grounds that she was not prepared to question on the point, she was in the event well able to do so.

20. The timing of the hearing was such that evidence finished by lunchtime on 14 February. Ms Robinson produced her closing submission and made her oral submissions to the tribunal that afternoon, leaving the claimant overnight to prepare her reply. The claimant was advised that she did not have to reply in writing but was free to do so if she wanted; and that she did not have to answer technical points of law but was free to do so if she wanted. The claimant replied, taking part remotely, on the morning of 15 February, and the tribunal adjourned to the morning of 17 February with a view to giving judgment. The claimant was not available for the afternoon of that day. The Judge advised the claimant of the rules relating to written reasons and raised with the parties the issue of anonymity of the parties, so that the claimant might understand her rights. Neither side made any application for anonymity. The claimant asked for reasons, and left the hearing before judgment had been given in full.

Legal framework

21. The legal framework is that this was a claim brought entirely under the disability provisions of the Equality Act 2010. As stated, it was agreed that the claimant was at the relevant time a person to whom the disability provisions set out in s.6 applied.

22. There were multiple claims of direct discrimination. Those are brought under s.13 of the Act which states, so far as material:

> "A discriminates against B if because of a protected characteristic A treats B less favourably than A treats or would treat others."

23. Any question of comparison must be considered through the framework of s.23, which provides that,

> "There must be no material differences between the circumstances relating to each case."

24. When considering a claim of direct discrimination, the tribunal should note that the protected characteristic need not be the main or only cause of the treatment but must be a material cause of it.

25. The burden of proof rests initially with the claimant to prove facts from which the tribunal, in the absence of an explanation by the respondent might draw an inference of discrimination. A bare assertion will be insufficient.

26. A claim under s.15 arises where "A treats B unfavourably because of something arising in consequence of B's disability" and A cannot then justify the treatment by showing that it is a proportionate means of achieving a

legitimate aim. It is important to understand the distinction between a claim under s.13 and a claim under s.15. In a claim of direct discrimination, it is the disability itself which causes the event which has been complained about. In a claim under s.15 it is something caused by the disability which is the cause of the unfavourable, discriminatory treatment.

27. A claim of harassment arises under s.26 which provides that harassment takes place if "A engages in unwanted conduct related to a relevant protected characteristic" and the conduct has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

28. It is important to note that the conduct must be related to the protected characteristic, and it is insufficient if it is conduct which a claimant finds in any respect negative. It is fair to comment that harassment, in the experience of the tribunals, is a word much misunderstood and misused by members of the public, who often understand it to mean no more than any event or action which they find uncomfortable.

29. A claim of victimisation arises under s.27. The word victimisation is often misunderstood by the public, wrongly, to mean any form of being singled out, or to depend on the perception of the claimant. Victimisation within the sub section occurs where the claimant has done a protected act defined by s.27(2) and if A then subjects B to a detriment "because B does a protected act or A believes that B has done or may do a protected act."

30. Finally, the claim was brought under the provisions relating to reasonable adjustment. The present case was not one which required the tribunal to consider adjusting a physical feature of premises or provision of an auxiliary aid. It arose entirely under s.20(3) which provides:

> "A requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."

General observations

31. We preface our fact find with a number of general observations.

32. In this case, as in many others, we heard about a wide range of issues, some of them in detail. Many of them were the subject of strong feelings on both sides.

33. Where we make no finding about a point of which we heard; or where we make a finding, but not to the depth to which the parties went, that should not be taken as oversight or omission, but as a reflection of the extent to which the point truly helped us decide this case. This observation applies in many cases, but was particularly important in this one, where the claimant clearly had and has strong feelings about these events, and has used occasionally extreme language to speak about them.

34. We have tried to approach our task with realism. In context, realism means a realistic understanding of how people do things in a workplace, not allowing ourselves to be influenced by the artificiality of the tribunal process.

35. Realism has a number of aspects. First, we must bear in mind that the tribunal has the luxury of hindsight, and that when managers make decisions, they do not. (Ms MacMillan-Shields made the astute comment that she had double hindsight: once when hearing the claimant's grievance, and then when giving evidence in the tribunal). We must also bear in mind the other side of that coin: no one at work has the ability to foresee the future.

36. We should apply a realistic expectation of standards. Everyone who goes to work makes mistakes, and while the tribunal should recognise that fact, it should also apply cautious scrutiny where an employer explains its actions by referring simply to a mistake. It should not criticise anyone for failing to achieve perfection at work.

37. The technique of giving evidence and being questioned is an artificial one. One aspect of artificiality is the supposition that every witness will have a detailed recall of the events which they are being asked about. A witness might quite honestly say that they have no recall of an event which seemed to them mundane or trivial at the time, even if it has later turned out to be a crucial event in a tribunal claim.

38. We should approach our fact find with some understanding of workplace norms, and the everyday reality of how people behave at work. Ms Richards and Ms Woodcock replied to allegations against them by saying that they did not know the claimant by sight at the relevant time, as they had never met her, and therefore could not have snubbed her because of her complaint of discrimination (see #185 below). Perhaps in recognition of the strength of this point, the claimant put to both, that they must have known who she was, because they must have asked colleagues to describe her, so that they could each recognise her if they saw her by chance. It does not seem to us likely that either senior manager would have done that.

39. Realistically, we accept the general point that within the NHS, a heavy and demanding workload is the norm; and that the events that we had to consider took place in a particularly demanding and stressful area of work (young persons' mental health) just after the first lockdown, and while the covid pandemic was in its relatively early stages. We do not disagree with Ms Robinson when she described covid as the greatest mental health crisis in NHS history, especially for young people. We recognise that on top of those factors NHS staff face overwork, understaffing, discontinuity of staff, and other factors which may explain delay and mistake.

40. The claimant represented herself throughout, and was entirely courteous and co-operative with the tribunal. She clearly found the process difficult at times, and we accommodated any request which she made for breaks.

41. The tribunal often sees the difficulties faced by members of the public who represent themselves, and we intend no criticism in saying that we saw a number of those difficulties in this case.

42. The claimant had a limited understanding of discrimination law, and probably a limited understanding of her own claims. In the list of issues, she had for example, named three comparators; the respondent's position was that the three named comparators were Social Workers, and were therefore not 'materially like' comparators with the claimant, a Nurse. We agree in principle that the different regulatory and professional frameworks which apply to the different professions render the comparison inappropriate for the purposes of s.23 Equality Act. In the course of questioning, it was obvious that she compared herself with two former nurse colleagues, but they were not named comparators and the claimant had not thought out how her direct discrimination case might be undermined if a comparator, who was treated better than she was, had a similar health profile to her own. When the case focussed on reasonable adjustment, it was not clear to us that the claimant understood the nuanced balancing exercise which must be undertaken to ensure that a proposed adjustment is in fact reasonable.

43. There were a number of aspects of how the claimant presented her case which, taken together, left us sceptical that her analysis of her experience was reliable. We do not say or imply that she was untruthful, or that she tried to mislead the tribunal. Not exhaustively or in order of priority, we set out a number of the points in the following paragraphs.

44. The claimant's case was that she had had an exemplary career as a student nurse, and that all had gone well until she disclosed her disability; after which she clearly thought nothing had gone right. It seemed to us repeatedly that the claimant mistook chronology for causation, and that the mere sequence of events misled her. The events in this case took place after she had disclosed her disability; that does not prove that disability was the reason for any of them. It perhaps did not occur to the claimant that she disclosed her disability as part of the process of embarking on full-time employment; and that these events took place in a context defined by that process.

45. The claimant took a binary approach, by which we mean that she recognised none of the positives in the respondent's management of her. There were a number of occasions in these events where the respondent took supportive and helpful steps as a matter of fairness or discretion, which were inconsistent with a respondent which wished to force her out. We have in mind the generous arrangement for paying upgraded pay for her worked hours and unworked hours; and we noted the number of jobs offered to her after May 2021 with a view to her return to work.

46. The claimant's case was that from autumn 2020, when she disclosed her disability, she was the subject of hostile targeting by a large number of managers. We count ourselves a relatively experienced tribunal, and it would be naïve to expect in a huge bundle (with many internal documents obtained through subject access) an overt statement of discrimination or prejudice. However, we could not in the bundle identify a single document which

expressed the slightest concern about the claimant's ability to work with BPD. On the contrary, the overwhelming drift of all the internal correspondence was problem solving in a manner which would facilitate the claimant's effective return to work. It was particularly striking that Ms Jumnoodoo in her evidence said that she regarded the claimant as a potential role model for others, ie as a person who had successfully overcome mental illness and was about to enter into an NHS career.

47. The claimant struggled, despite direction from the tribunal, to confine questioning to the issues of discrimination, and not to ask questions about management which, if relevant at all, would have been relevant to a grievance or management enquiry, but not to this case. She at times lacked a sense of proportion, in that some of the allegations which she made were, to adopt Ms Robinson's word, mundane, but some were utterly trivial. Although the claimant withdrew the allegation late in the case, there had for a long time been a complaint that an instruction to put on her mask in a staff kitchen was an act of victimisation.

48. Like many claimants, the claimant did not seem to us to show insight into events where her own actions or responses were not in her own best interests. She did not seem to us to understand for example the clear trail which showed that the information which she had given the respondent about her health, including her eyesight, was neither clear nor consistent, and she did not seem to have insight into the possibility that she could have co-operated more effectively with the respondent to solve the problems in these events. At the point in 2021 when Ms Jumnoodoo arranged for the claimant to be offered a number of alternative employments, she rejected all of them.

49. The claimant at times used hostile and extreme language about the respondent's witnesses, which showed little insight into the reality of the evidence. She accused a number of them of fabricating their evidence and of lying start to finish. In evidence and again in her closing submission, she accused a number of the managers from whom we heard of having engaged in a "conspiracy" to remove her from CCATT on grounds of her disability. She claimed that the witnesses had been "coached".

50. Our overarching finding is that there was no evidence before us which came close to justifying the use of any of those words and that there was no conspiracy against the claimant. On two occasions during the hearing, the Judge intervened in the claimant's cross examination when it was clear (more so the second time) that the claimant was asking witnesses why similar phrases appeared in a number of the witness statements. The claimant had picked up that a number of the statements had used the word "transpire" which she said appeared nowhere in the bundle; we noticed the stylistic use of the word "gotten." The Judge intervened to say that his understanding of the usual practice of solicitors is that they interview the witness, obtain information from the witness which the solicitor then drafts into a witness statement, and then asks the witness to approve the draft, having clearly explained to the witness that the resulting statement must be the evidence of the witness. In each case, the witness confirmed that that practice had been followed in preparation of her statement. That is not coaching, even if it does

produce the apparent oddity of a number of individuals using the same phrase or word. We take a moment on the point because it arose out of the claimant's inexperience and unawareness, but although it was explained to her twice in the course of evidence, she returned to the allegation of "coaching" in her closing submissions.

51. We were not sure that the claimant understood a great deal of the process of management. In particular, our experience is that line management is a delegated function, and therefore that as a matter of process, certain functions are delegated to the line manager, and/or the supervisor, and that the next layers of management do not routinely step into delegated functions. A more senior manager may be informed of an event or a development, but nevertheless legitimately leave the point in the hands of the direct manager.

52. We were not sure that the claimant understood that when managers make decisions, they often have a range of discretionary choices, and often must select the least bad, because each of the choices has things for and against it. Managers are often in the position of making a decision which is "damned if you do, damned if you don't" and it is difficult for us, as a tribunal, to criticise a manager who chooses one of two undesirable alternatives, each of which could be criticised in isolation.

53. Managing the claimant after 15 October 2020 was important. It was an important task for the respondent to facilitate the claimant's entry into the profession because there was no doubt that the claimant had much to contribute towards the service. That said, it was one of a large number of important tasks facing managers, and it occurred, as previously stated, at a time when the covid pandemic was taking place. The artificiality of an employment tribunal, and of a hearing at which the claimant's employment position is the only question under scrutiny, should not close our eyes to the reality that at the time of the events in question this was just one of many tasks, challenges and priorities facing all of those concerned, and that no one expected that any letter or email might be the subject of analysis in a tribunal hearing years later.

54. The claimant based some claims on misinterpretation of documents. There were a number of instances, and we regard her interpretation of letters or emails as unreliable. We give below three specific examples. They are point 5 ('containing environment') #148 below; points 12 and 49 ('fact finding') #156 below; and point 49 ('witch hunt') #177 below.

Findings of fact

55. When we come to our fact find, an initial question is how do we present these reasons. We have rejected the possibility of a granular fact find through each email trail. If we did that, these reasons would replicate the disproportionate volume of the bundle, and risk following the parties into a confusion of wood and trees. The approach which Ms Robinson adopted in her skeleton, namely of a chronological summary, followed by a brief analysis of each separate claim, seemed to us helpful and a model which we adopt in the hope that it makes these reasons clear and accessible.

56. The respondent is what its name suggests: the NHS University Trust for Hertfordshire. We were concerned with teams which provided a mental health service to young people (CAMHS), within which sat a crisis and emergency team (CCATT) made up of nurses, social workers, and others. CCATT provided its services at venues at Radlett, Watford General Hospital (WGH) and the Lister Hospital in Stevenage. It also provided a community based service, which might involve visiting venues, eg schools, but also involved quick response to individual young people in crisis.

57. The claimant, who was born in 1970, had previously pursued a career which included retail and banking. Before the events in this case she had a diagnosis of bipolar affective disorder. It was agreed in these proceedings that that constituted a disability. For some years before these events, her condition had been stable and she had been on medication (506).

58. The claimant lived in Watford. She was, by early 2020, in the final year of her studies for a degree in mental health nursing, during which she had undertaken placements with the respondent, both in Watford and Stevenage. Placements were not employment, she was not paid for them, and she did not count as a member of the respondent's staffing establishment. Her placements were successful, and during them she formed good relationships with other nurses, and with the respondent's managers, and it was envisaged that she would become a nurse employed by the respondent when she completed her studies. We noted the praise expressed in placement reports (eg 203). The claimant's studies were successful and ended with the achievement of a First-Class Honours Degree.

59. Covid was first identified in the UK in early 2020, and the first lockdown began at the end of March 2020. The NHS came under particular strain, and there was recognition that the circumstances of the pandemic made particular demands on mental health services.

60. In April 2020, and in response to the demands of the pandemic, the claimant was appointed to a post entitled: "Aspirant Nurse (Student on extended clinical placement)" for 30 hours per week for a period of six months to expire on 20 October 2020 (154, 168). The contract was stated to be short-term because short-term funding was available from central sources in response to the pandemic.

61. The purpose of the role was to enable nurses at the end of their studies to take up a clinical post at once in the difficult circumstances of the time. The post was at Band 4. Although a normal place of work was identified, the contract stated that the claimant might be required to work in any of the Trust's establishments within its geographical area or patient population (#170).

62. The claimant's appointment to the Band 4 post was welcomed warmly (in emails not seen at the time by the claimant) by Ms Graysmith and Mr Mansaray, Head of Education (216).

63. Meanwhile, the claimant sought permanent employment. On 26 June she was made a "conditional offer of appointment" (182). The offer referred to a newly qualified nurse post. The appointment was conditional because of a number of conditions that were required to be met: Occupational Health clearance, right to work clearance, and University graduation, followed by registration with the NMC. The offer was a permanent post at Band 5 for 37.5 hours per week (185) and we reject the claimant's assertion that it was at Band 5/6. There was no contractual evidence to support that argument, which would not be consistent with a newly qualified appointment.

64. The claimant completed a health questionnaire on 6 August (227). The questionnaire asked "Do you have any illness/impairment/disability (physical or psychological) which may affect your work?". The claimant answered "Yes" and wrote in the details (228-9):

> "I have bipolar affective disorder. This is managed very well with medication and self-awareness. Only reservation is working nights and continuous long days. Anti-psychotic also acts as sedative."

65. The questionnaire asked, "Do you think you may need any adjustments or assistance to help you to do the job?". The claimant in reply wrote, "Maybe" and in detail:

> "I am currently week 2 of a six week rota. This includes nights, continuous long days near to home and an hour's drive. I will have to assess how I manage. Hopefully, ok."

66. The claimant expressed a preference to work within the CCATT Team. We note that the claimant's declaration of BPD was properly made as part of the pre-appointment screening, and plainly did not impede her in being approved as fit to be appointed. It was certainly not seen as a hindrance to her working.

67. On 8 August Ms Graysmith was involved in correspondence about potential leadership programme training. In that context, Ms Graysmith wrote (231):

> "Can you also please put [the claimant's] name forward.. she is on a Band 5-6 development post (preceptorship to begin with). She has indicated that she would like to be considered to do the course."

68. The claimant had been appointed to a Band 5 post and had accepted that post. We accept that Band 5 was a starting grade which was a stepping stone to the next grade, Band 6, and that she was seen as a strong candidate for career development. Ms Graysmith put forward the best case she could for the claimant to join the leadership programme, and hinted at the claimant's developmental potential. If however we are asked to find was the claimant's formal post contractually "Bands 5 to 6 development" we find that it was not.

69. The claimant was passed fit by Occupational Health on 28 August (236). On 29 August the claimant was informed that her pre-employment checks had passed satisfactorily, and that she would be appointed to Band 5 based at the CCATT Office at Radlett (238). The formal terms and conditions for the post were stated to be at Band 5 for 37.5 hours per week and said that the

normal place of work was at Radlett, but that she could be required to work anywhere within the respondent's geographical catchment or patient population; that repeated the wording already familiar to the claimant from her Band 4 terms (190-191). The offer remained subject at that stage to confirmation of the claimant's graduation.

70. It therefore remained only for her to complete graduation and registration with the NMC. The personal warmth and elation in her email correspondence at that time with Ms Graysmith is powerful evidence of the working relationship and trust which had been established between them.

71. On 1 September 2020 Ms Graysmith completed paperwork to indicate that the claimant's employment had become permanent in place of fixed term.

72. In the course of their email correspondence, the claimant wrote to Ms Graysmith on 25 September:

> "You may be aware .. I have bipolar affective disorder which is managed really well.."

73. Ms Graysmith replied that she had been aware of the diagnosis (253-254). Ms Graysmith had previously expressed considerable support for the claimant, her appointment and career development. Those plain facts were together cogent evidence that Ms Graysmith had no hostility or concern related to the claimant's disability.

74. In the course of that correspondence, also on 25 September, Ms Graysmith wrote to the claimant:

> "Dave (Mr Allman) mentioned about your concern about driving in the dark – He asked me to make a referral to Occupational Health so if/when you get a call from them that is was it is regarding, nothing else,"

75. We accept that the point arose out of something said by the claimant to Mr Allman during supervision, which arose out of an incident which the claimant described to the tribunal as "a near miss," when she was driving home, in the dark, after a long day, and missed a roundabout. It is evident that Mr Allman had mentioned this to Ms Graysmith, and she completed an Occupational Health referral early in October (259).

76. The wording of the referral is significant. After explaining the claimant's employment status, Ms Graysmith wrote (emphasis added):

> "<u>A requirement of the role</u> in CCATT is to be able to drive and the role can involve extensive travel. The claimant has disclosed that due to an eye problem she finds driving in the dark very difficult. CCATT shifts range from 8am to 8pm which would mean that <u>she would be required to drive in the dark</u> during her shift or when returning home from work. I am concerned about her safety and whether she has a medical condition that condition that causes this. I am not sure whether the DVLA are aware or should be notified also. She has a diagnosis of bipolar, but this is managed well – I'm not sure whether this sight problem is related in any way."

77. The reference to a sight problem was Ms Graysmith's reasonable interpretation of the information she had been given: it was a common-sense interpretation of being told that driving in the dark was a problem. We interpret the reference to BPD as being made for the sake of completeness. There was no question of Ms Graysmith suggesting that the claimant could not be employed because of BPD.

78. Dr Blankson of Occupational Health had a telephone consultation with the claimant, then reported on 15 October. The report was also sent to the claimant (261).

79. The report is silent on eyesight. The report attributed the claimant's driving fatigue to the effect of BPD medication. Dr Blankson advised that the Equality Act was likely to apply. He advised that the claimant was fit to work with a number of adjustments. They were: a fixed shift pattern; exclusion "from night shift and long-distance travel especially at night due to the side effect of her medications;" and he wrote that he had advised her to inform DVLA. He also advised periodic individual stress risk assessment, reduction in performance target measures, availability of a trusted mentor of her choice, and at least annual review with Occupational Health.

80. At about the same time as Dr Blankson's report was received, the claimant was informed, and passed on the information, that there was a delay in completing her graduation and registration, which could not take place until December at the earliest (263). This turned out to be due to an IT problem at the University, which affected a number of students.

81. On the same day as she received Dr Blankson's report, Ms Graysmith asked Ms Lopez-Wallace for advice (270). She wrote, emphasis added:

> "The OH report recommends that no night shifts, a fixed shift pattern and no long-distance driving. <u>It is simply not possible to accommodate this in CCATT</u> and my question is about her suitability to be placed in this team… Who decides this and whether there was an Occupational Health screening before then."

82. Mr Allman, who had been copied in, suggested that the claimant might want to work at a different mental health unit known as Forrest House. He wrote (269):

> "Given the issues raised with driving etc it might not be too out of the question to suggest she could work there rather than CCATT, at least for an initial period. It does also seem a much more containing environment for a newly qualified nurse of the Preceptor Programme and would be a much more development role for her own practice."

83. Ms Woodcock replied on 19 October, asking (268):

> "Is there anywhere we can place this student that accommodates her needs for no night shifts, fixed working pattern and no long-distance driving?

84. These email trails set off a separate question, which was how the recruitment process had progressed to the stage it did and permitted the claimant to be

offered appointment for a job which required driving but which she could not fulfil. That was a side issue, which seemed to us of managerial interest but not necessarily of interest to the claimant at the time, or helpful to the tribunal. It could have been deferred to be dealt with later.

85. Of greater significance was the fact that the immediate reply of three more senior practitioners (Mr Allman, Ms Graysmith and Ms Woodcock) to Dr Blankson's report was that the claimant's appointment was not viable if she could not drive long distances or at night. That was entirely consistent with the respondent's case, which was that a nurse in CCATT was required to work from time to time at Watford or Radlett, from time to time at Stevenage, and throughout the community at all times in response to crises, in accordance with the contractual provisions above.

86. With hindsight, it is possible to see that on receipt of Dr Blankson's report, there might have been constructive lines of enquiry which were not immediately taken up. An immediate one was confirmation from Dr Blankson that there was no ophthalmological issue: in fact, that confirmation was never forthcoming despite request, and it was several months later that the claimant reported that after visiting an optician she had obtained new glasses which dealt with what might have been purely eyesight issues.

87. The real immediate question was what was to be done about the claimant's appointment once she completed her graduation and registration in December. That in turn raised the questions of whether all of the adjustments recommended by Dr Blankson were feasible. Meanwhile, the claimant continued at work and continued to have supervision with Mr Allman.

88. On 6 November Ms Graysmith asked questions about the Occupational Health report. She asked how long the claimant had had problems driving in the dark and whether it was an issue "with your eyes or an effect of medication". The claimant replied (281):

> "I have had issues for several years. I did think it was my eyesight, however, have had several eye tests over the years and was only identified as being slightly short-sighted It could be the medication, tiredness, unfamiliar late-night journeys or a combination. Saying that, I can drive at night in areas I am familiar with."

89. She confirmed that she had told the DVLA many years ago when she started medication. She confirmed that she had not discussed eyesight or sleep at the pre-employment OH referral. When asked the question, "What time would you need all of your shifts to finish", her answer was:

> "This depends on location. If I were to be based at Watford 8pm should be fine as I literally live five mins away. Community days are 9 to 5pm, which should be good, as I can arrange any community appointments whilst it's still daylight when/if I do not know the area".

90. That answer was not satisfactory, because it made no mention of precisely what Ms Graysmith and other managers saw as the problem points: Stevenage, or community appointments at a distance from Watford, or in an area unfamiliar to the claimant, or which could not be pre-booked because

they were in response to crisis, and all of these formed part of the claimant's role.

91. The claimant was off sick for three weeks from 2 December. There was a meeting on 4 December of Ms Woodcock, Ms Donley and Ms Lopez-Wallace, both of HR, and Ms Zenonos. There is no minute of the meeting. Ms Zenonos emailed a number of colleagues with the outcomes, one of which was to clarify the delay with graduation and registration. It came about because Mr Mansaray had been unable to elicit any information from Hertfordshire University about the claimant's graduation. The other was what Ms Zenonos summarised as (329):

> "The unconditional offer was based on an OH clearance made without full disclosure of condition/medication which will have a significant impact on her ability to carry out aspects of the role, namely driving in the dark."

92. Ms Zenonos' advice was to rescind the unconditional offer made in August in light of new information which in turn would require further OH assessment.

93. Ms Zenonos also wrote (emphasis added):

> "I am aware of the concerns that CCATT will have in being able to accommodate any adjustments based on what we already know, however I advise that we wait on the full review of her revised OH screening form before consideration is given as to whether the adjustments can be accommodated. …
>
> "Driving is a fundamental requirement potential applicants for employment are turned down if they cannot drive or have no means to drive as it is considered an essential requirement of the role and being able to accommodate driving between daylight hours would be difficult to maintain."

94. On 15 December Ms Donley of HR wrote to inform the claimant that there would need to be a new Occupational Health questionnaire because it appeared that there had been disclosure of a health condition unknown at the time of previous clearance. That was factually correct: the clearance of 28 August had been made in ignorance of any restriction on the claimant's ability to drive at night. Ms Donley wrote (335)

> "Whilst we are not withdrawing an offer at this stage we are reverting the offer back to conditional status, subject to the outcome of a revised OH screening and a review of any adjustments that may come out of this."

95. The claimant replied stating how upsetting this notification was and asking for a valid explanation of the delay in dealing with what she called "the reasonable adjustment request."

96. That use of language was, we think, the first occasion of a point which was recurrent at this hearing, namely that the claimant understood that the adjustments suggested by Dr Blankson were reasonable, and that they triggered an entitlement to have those adjustments made without further enquiry. That an adjustment might be medically advised, but not be

managerially reasonable, was not clear to the claimant at the time, nor, we believe, at this hearing.

97. As mentioned above, the claimant was off sick for three weeks starting 2 December. She was originally self-certificated and was advised by Mr Allman that from the eighth day, which was 9 December, she would need a certificate (333). In the event, she obtained a backdated certificate covering the period 2 to 18 December (remedy bundle 27).

98. On 10 December the claimant's graduation and NMC registration were confirmed (331). It was overlooked at the time that as a result she should have been placed on a Band 5 contract for 37.5 hours per week. This did not in fact take place until the following May.

99. The claimant asserted that she attended work on 13 December, and that Ms Dosunmu told her to go home, because she did not have a fit note warranting her attendance.

100. It appears that the claimant returned to work after 23 December. A return to work meeting with Mr Allman was completed on 30 December (327). In early January she was rostered to work in Watford (340).

101. On 11 January the claimant asked for an explanation in writing why her unconditional offer had been rescinded. She had already been given this information, but Ms Donley replied the same day (346). Ms Donley's reply made the point clear: the reason was that the previous clearance had been given without a full understanding of the effect of the claimant's medication on her ability to drive at night. On that basis, fresh Occupational Health advice was required in the light of full knowledge and full information.

102. Two further matters arose on or about 27 January 2021. The claimant was rostered to work at Stevenage the following week. Given the time of year, that inevitably involved driving in the dark and although the journey was known to the claimant, it was 21 miles each way, and therefore potentially hazardous at the end of a shift. The further Occupational Health referral decided on at the 4 December meeting had still not happened. (It was due to take place on 2 February). On the same day there was an incident at Watford, when the claimant was asked to sit one-to-one with a young person and refused to do so, asserting that the task required her to have had restraint training which she had not undertaken. The unanimous view of her managers at the time was that the particular training was not required for the particular task, and that the claimant had refused to carry out a reasonable management instruction. Evidence at this hearing, some two years after the event, was that the position was nuanced and unclear.

103. The claimant asked to take two weeks annual leave, which would have overlapped with the first two weeks of her rota in Stevenage, and that was agreed.

104. The claimant had a second telephone consultation with Dr Blankson on 8 February but his report (371) contained an important typo and therefore had

to be replaced on 18 February with a corrected version (383). In the final version Dr Blankson reported that the claimant was fit for work, with adjustments. They were listed as, in short, to work closer to home; no night shifts; stress risk assessment; a mentor; and her line manager and colleagues to look out for potential symptoms which might indicate a relapse, such as mood swings, irritability etc. Dr Blankson said that he would also ask for a GP report.

105. The claimant, by agreement, worked from home on non-clinical administrative tasks between 19 and 21 February and then was off sick from 22 February to 12 April.

106. Meanwhile, Dr Blankson's February report was considered by the same group of managers and HR advisers. Ms Graysmith wrote to colleagues on 22 February (387, emphasis added) :

> "The night shifts aren't a big issue as our band 5s do not currently undertake them so that expectation isn't there until she is a band 6 and we have others in the team who have flexi working agreements due to similar health problems (which mean that nightwork is detrimental to their health).
>
> The issue is really around the recommendation about working close to home and driving in the dark… it can be dark from 4pm ... We are a mobile team and as such our only true base is in Radlett and the rest of the time there is an expectation that the team travel to where the crisis is. Staff are assigned to a hospital some of the time to do assessments and are based there on that day but the rest of the time (and for follow ups for the young people they assess) they are out and about in the community and there is no guarantee that a young person is going to live close to her home address. I would also want to know what constitutes "close to home" is it about mileage or time spent driving? And what the reason is for this (how does it negatively affect her)… My feeling is that such adjustments are not possible and if put in place would be detrimental to the service and therefore the young people we support"

107. Although that was a very clear statement, it ran in parallel to an HR inquiry with Occupational Health, asking about whether any night time driving was advised, and also raising wider questions about the process leading to the claimant's appointment. A number of the emails sent in that period, including those sent by the claimant, expressed frustration at delay, a point with which we greatly sympathise.

108. On 15 February, and repeating the misunderstanding which we have referred to at #96 above, the claimant again wrote to Ms Donley stating (400):

> "Occupational Health have said I am fit for my role with reasonable adjustments."

109. The claimant spoke to Ms Graysmith on 25 February and Ms Graysmith's report of the discussion was sent to colleagues the same day (405). It starts:

> "I have just spoken with [the claimant], she is signed off sick by her GP as she doesn't feel she can drive to Lister for work and will remain off until all this is sorted out."

110. Ms Graysmith also recorded having told the claimant that which had been clear to her (Ms Graysmith) since 15 October, but had perhaps not previously been put expressly to the claimant (405):

> "I also explained to her that I wasn't sure that it would be possible that we can accommodate her always working "close to home" due to the nature of the role and the detrimental impact that would have on the service we provide to our young people. My sense is that she wants to have set shifts based only in Watford with little community travelling – I really don't think that is a reasonable ask of a community crisis team …!?"

111. On 22 February Ms Donley spoke to the OH manager to pass on questions which the manager would ask Dr Blankson to clarify back to the respondent. On 25 February Dr Blankson informed Ms Donley that he would ask for an update from the treating psychiatrist and report back further (420). On 1 March the claimant wrote to Ms Zenonos to asked to be placed on medical suspension. She also raised an issue about lack of support from HR.

112. There was an important email from Ms Graysmith on 1 March, sent to Ms Zenonos and Ms Lopez-Wallace. It was a more structured summary of the rationale for being unable to accommodate all the proposed adjustments. It confirmed that stress risk assessment, mentorship, and, with consent, looking out for symptoms were all available; she repeated that there were no night shifts at Band 5 but that the team could support the claimant in applying for flexible working without night shifts. The gist of her email, which should be read in full, was a reiteration of the detrimental effect on the service of the claimant working only close to home (429-430). It was in short a reiteration of the point that all Dr Blankson's advice could be accommodated, except only the advice to work only close to home and therefore avoid distance driving in the dark. Other correspondence showed that this was the unanimous view of every manager or practitioner who was asked to consider the claimant's position.

113. Ms Graysmith wrote to the claimant the same day. The email was the subject of some unnecessary dispute at this hearing (435). It said:

> "You can work from home until we have further clarification from OH and any reasonable adjustments are agreed or not. But that would obviously be non-clinical work, so if you are wanting to continue clinical work then you would have to continue with the rota provided and if you couldn't manage that then you would need to be signed off as sick."

114. Ms Graysmith there told the claimant what the three practical options available to her were. One was to do non-clinical work from home. One was to do clinical work on the basis of the rota provided, which the claimant knew at the time meant Stevenage. If she were unable to manage Stevenage then the third option would be to be signed off sick.

115. Ms Zenonos reported on 11 March that she had found the claimant an alternative potential role (444).

116. On 15 March the claimant had a catch-up meeting with Ms Graysmith on Teams. Unknown to Ms Graysmith the claimant recorded and later transcribed the conversation (449-460). Ms Robinson asked us to note that this had been done covertly, and we therefore approach the transcript with the cautions which arise in such a case: a conversation of two people, one of whom does not know they are being recorded, is liable to distortion or manipulation by the recording party. The tribunal may accept a covert recording as evidence, without regard for its distaste for the practice of covert recording.

117. Ms Graysmith's embarrassment and frustration were obvious from the transcript; she apologised for the delays, which she attributed to the need to obtain advice from HR and from Occupational Health. She told the claimant that there were a number of arrangements that could be accommodated, but that the no-driving adjustment could not be accommodated. She told the claimant about other opportunities that were available at Band 5, which the claimant was plainly not interested in.

118. Matters were therefore stalled for a period. The claimant returned to work on non-clinical duties on 14 April. A GP report on 12 April and a further Occupational Health report on 22 April (506 and 525) did not advance matters. Dr Blankson wrote:

> "Having read the GP report I can confirm that the recommended adjustments in my report should be fully adhered to. The issues of distance driving to her workplace form home should be risk assessed in particular driving time during the winter months should be restricted to daytime only."

119. That was indeed the final OH position, which in the event was exactly where it had been on 15 October, six months previously. Dr Blankson followed it up on 6 May with the news that the claimant had been to an optician and had new glasses, which had resolved any sight difficulties (542).

120. Meanwhile, the question of what was to happen to the claimant had been escalated to Ms Richards. Ms Richards wanted to take a fresh look at the Occupational Health recommendations and formed the view that to do so she needed to scope them against the claimant's job description. She therefore asked to be given a copy of the job description for the Band 5 CCATT nurse role. That opened a line of enquiry which led to the discovery, seemingly for the first time by any of those involved in these events to date, that no such job description existed. There were job descriptions for Band 5 nurses elsewhere in CAMHS based on a generic Band 5 job description, but none for a Band 5 in CCATT. Further enquiry gave rise to the explanation, which was that there was no substantive Band 5 post within the establishment of CCATT. It followed that over a period of about 9 months, a huge amount of management work had gone into appointing the claimant to a post which did not in fact exist.

121. Matters proceeded therefore from about late April onwards on the basis that an embarrassing discovery had just been made, which would at some point

have to be explained to a claimant who was, in correspondence at least, showing signs of understandable stress caused by delay and uncertainty.

122. We were taken to monthly establishment records in the bundle, which Ms Robinson relied on to show that there were, at times in 2019 at least, no Band 5 posts established within CCATT. It was however agreed that two established posts at Band 6 in CCATT had been occupied in 2019 by nurses with personal grades of Band 5. They had not been designated as acting up, but they were in posts which were above their own banding. We were then told by Ms McMillan-Shields, speaking with what she called double hindsight, that that understanding in turn was wrong and that there were in fact Band 5 posts in CCATT.

123. We cannot, and do not, resolve the question of whether, and if so when, the respondent's budgeted establishment included a Band 5 Nurse post within CCATT. We accept the integrity of the evidence of Ms Junmnoodoo, and Ms Richards, which was that at all relevant times they believed in good faith that they should approach the claimant in about late April on the understanding that several months had been wasted in debate on whether she could be appointed to a post which was not in fact within the establishment. We also accept the force of Ms Robinson's submission, which was that this point, no matter how distressing to the claimant, and how troubling organisationally and managerially, was a red herring throughout, because the claimant could never have taken up that post anyway because of the night driving issue.

124. Having made their discovery about the absence of a Band 5 role, managers escalated the matter to Ms Junmnoodoo, as Head of Nursing, to deal with on a cross service basis. Ms Junmnoodoo telephoned the claimant on 6 May, and told her what others had known since 15 October, and which Ms Junmnoodoo took responsibility for setting in stone: she was not going to be appointed to a Band 5 post in CCATT. The reason Ms Junmnoodoo gave was that there was no such post. Ms Junmnoodoo conveyed apologies, and wrote the next day to confirm the position (566). Ms Junmnoodoo showed the leadership quality of grasping a difficult issue, showing candour, and taking responsibility for what must, from the claimant's perspective, have been a shocking piece of news.

125. The claimant met Ms Junmnoodoo on 10 May. Ms Zenonos and another colleague were present (575). The conversation moved swiftly on to what other preferences the claimant would have, as no CCATT Band 5 was available. There was discussion about shift patterns and about the eyesight issue. The claimant reported that she found the meeting helpful.

126. In her evidence, Ms Junmnoodoo wrote that in the context of speaking about BPD:

> "I praised her and reiterated how proud I was for someone with such conditions to have succeeded in becoming a nurse and that I would like to work with her to share her success story as an example for others."

127. We accept that that evidence captured the tone of the meeting accurately, and the spirit with which Ms Junmnoodoo approached the claimant and her disability. Both tone and spirit were the exact opposite of the hostile, conspiratorial scheme of management which the claimant placed at the heart of this case.

128. On 24 May Ms Junmnoodoo wrote the claimant a lengthy letter to summarise the meeting, (607) and to set out what else was available. She identified vacancies at two inpatient units and two possible community health units. The claimant was subsequently offered roles in a number of different units in June and August (642, 719 and 728). She did not accept any of them.

129. On the same day, the claimant went off sick (24 May 2021) and in the event remained away from work until 24 January 2022. She returned then to work in Radlett, where she continued in post until 31 May 2022, and has been off sick since then.

130. Ms Junmnoodoo also addressed the failure to amend the claimant's working conditions or circumstances in light of her graduation and registration the previous December, and arranged for her upgrade to Band 5 at 37.5 hours per week to be implemented retrospectively, so that the claimant received the higher rate of pay for hours worked since 10 December 2020 and was also paid for 7.5 hours per week which she in fact had not worked since that date. In cross examination Ms Robinson put to the claimant that this showed the respondent had gone the extra mile, and while the claimant agreed with that question, she returned to it in her own closing, and said that she was not grateful to Ms Junmnoodoo, she had been given no more than her entitlement.

131. The claimant presented a grievance in late May 2021, which in due course was assigned to be dealt with by Ms McMillan-Shields in light of its complexity, and the number and seniority of those grieved against.

132. Ms McMillan-Shields' first task was to understand the questions which she had to answer. To do this, she needed from the claimant both clarity and finality. We accept that she struggled, and took time, to achieve both of these, in the sense that the claimant did not express her complaints clearly, and that having done so, she repeatedly amplified or changed what she had previously said. That was a source of both delay and frustration. On 25 June Ms Macmillan-Shields met the claimant to agree terms of reference for the grievance. Her note of the outcome (666-668) captures something of how difficult this process was.

133. Ms Macmillan-Shields appointed an investigator, Ms Judges, whose task was to interview the claimant, those aggrieved against, and any other witnesses, analyse the relevant documents, and report.

134. Ms Judges' approach was that as the claimant had grieved against eight individuals, she should prepare a separate report about each of them. That was evidence of an open-minded and meticulous approach, which recognised the possibility that the claimant's complaints could not be

considered on an 'all or nothing' basis, but had to be looked at individually. It was a significant task, made more difficult by the claimant's presentation of the material.

135. Ms Judges' report about the grievance against Ms Donley illustrates the point (902). Ms Donley was then Recruitment Manager. She had been copied into some of the correspondence around the claimant's appointment, and the issues discussed above. She was the author of the letter **(**335, #94 above) which reverted the claimant's employment offer from unconditional to conditional. It was obvious that she was at most a minor player in these events. She had made no relevant decisions, apart possibly from the conversion of the offer, and that that decision (conversion) was made in light of Dr Blankson's advice about night driving. Nevertheless, Ms Judges' report of this one grievance ran to 11 pages, with 22 Appendices.

136. The material prepared by Ms Judges was referred in full to Ms Macmillan-Shields. She read and analysed it, and prepared her own report of findings, drawing on what had been placed before her (1034-1067). She did not consider that a hearing with the claimant was necessary, given the scale and complexity of the process, and given also that the outcome was largely favourable to her: of eight areas of grievance, Ms Macmillan-Shields was minded to uphold six. She was advised, and we agree, that her decision not to have another investigation meeting with the claimant did not depart from the respondent's grievance policy.

137. The claimant met Ms Macmillan-Shields on 17 December. We accept the striking evidence of Ms Macmillan-Shields about the meeting:

> "The purpose of the meeting was to discuss the investigation findings with the Claimant and the various reports, allow her the opportunity to ask any questions, and deliver an outcome … One of the first things the Claimant said at this meeting was that she was going to bring a further complaint and appeal against the grievance outcome, even though she had not heard it yet … Given that I had upheld the majority of the Claimant's complaints, I expected the Claimant to be reasonably content with this outcome. Instead she immediately expressed her dissatisfaction and proceeded to tell me that she was going to take her case to an employment tribunal."

138. It perhaps would do little justice to Ms Macmillan-Shields (or Ms Judges) if we try to summarise the outcome. The tribunal asked Ms Macmillan-Shields if she could give an overview of 'what went wrong' for the claimant. We accept that she gave a wise and succinct reply: it was a case of 'too many cooks.' Too many managers became involved in trying to deal with too many aspects of the problem simultaneously, and lost sight of the ultimate single objective of getting a newly qualified disabled nurse into work.

The list of issues

139. We now turn to the list of issues. We refer to the issues exclusively by the handwritten numbering (1-80) on the working copy which was in use at this hearing.

140. In closing submission, the claimant confirmed withdrawal of the following points: 17, 18 and 19 (which therefore rendered 20, 21 and 22 unnecessary to decide); 33, 36, 54, 58 and 71**.**

141. The following further points did not require separate adjudication. Points 1, 2 and 3 were undisputed jurisdictional points. The following points were contingent on other findings: points 15, 16, 59, 60, 65, 79 and 80.

142. The complaints of direct discrimination form points 4 to 14 inclusive of the list of issues. We deal first with some general points. In the usual analysis of direct discrimination, the tribunal's task is to find as fact what event happened, and then to ask whether the claimant has proved facts from which, in the absence of explanation, it might infer that a protected characteristic was a material factor in the event. It is often helpful to ask what was 'the reason why' the treatment took place.

143. We must bear in mind that at the heart of a discrimination case is comparison between the treatment of the claimant and another person or persons. While comparators are a difficult proposition for every claimant, particularly litigants in person, the comparators relied on in this case were three named individuals; and/or a hypothetical comparator, and/or newly qualified nurses generally. The claimant's identification of comparators did not seem to us to meet in any respect the test of s.23. In particular, we accept that the three named comparators, being social workers, not nurses, were comparators who did not meet the test of s.23.

144. We must also, in relation to each event, ask whether it was a detriment, in the sense of an event which a reasonable person would regard as placing herself at a disadvantage in the workplace.

145. The overarching reason why the direct discrimination claims fail is that they are mis-formulated in a way which is typical among litigants in person. The claimant has identified events which distressed her and which she considers to have been detriments. She has identified the protected characteristic of disability. She has not been able to point to any causal connection between the two, or any indication that a non-disabled comparator would have been treated any better or differently. She has made a bare assertion that the management steps taken by the respondent had a causal relationship with disability. Our finding is that disability played no part whatsoever in any of the events at points 4 to 14.

146. When we consider the claims of direct discrimination, we must bear in mind that they are predicated on an adverse response to the impairment as such. We are entitled in that context to place weight on the fact that the respondent's witnesses were all professionals working in support of people with mental illness. We note, in an ocean of paperwork, the absence of a single hostile word about the claimant's diagnosis, as compared with considerable material about securing her return to work. We have quoted at #126 above Ms Junmnoodoo's language, speaking as Head of Nursing. It was common ground that other colleagues of the claimant, with comparable impairments, have been supported into building successful careers within the

mental health teams. Cumulatively, all of those matters count very heavily against any suggestion of direct discrimination.

147. We now turn to the numbered list. In point 4 the claimant complains that in October 2020 Mr Allman told her to stop non-mandatory training. We do not find that that happened. We accept that the claimant's training record (249) shows that she undertook a significant degree of training at that time, subject to her health and attendance. We accept that she was required to complete mandatory training before non-mandatory, consistent with being a newly qualified nurse at the start of her career. We had no evidence that non-disabled colleagues who were comparators were actively encouraged to attend non-mandatory training.

148. Point 5 refers to Mr Allman's email (269-270) quoted at #82 above. It was not a proposal for redeployment in the true sense, but a suggestion to address the problem which had arisen that day from Dr Blankson's first report. The email should be read as a whole, from which it can be seen that it is supportive and an attempt to be helpful. It was not a detriment. The claimant has misunderstood the word "containing" as implying restricted liberty; in our view that reading is plainly unreasonable. The word is used in the sense of supportive, working within established professional boundaries, and therefore appropriate for a newly qualified practitioner. The claim fails because the factual allegation is not made out.

149. The same point arises in relation to point 6: Ms Lopez-Wallace and Ms Woodcock responded to the same event (Dr Blankson's report) with proposals for suitable employment and in the same spirit. The claim is not made out factually.

150. In point 7 the complaint is of not being tasked with clinical work. It may be that the pleading is mis-stated, because there was clear evidence of the claimant having been placed on clinical shifts at the time complained of (November). It was not until the following February that the issue of working at home on non-clinical work as an alternative arose. When the issue of non-clinical home working did arise, it was not because of disability, but for the reasons set out at #113 above (435). The claim is not made out factually.

151. On point 8, we would have been assisted by the live evidence of Mr Allman. The supervision notes which we have read appear to us written in concise professional vocabulary, addressing legitimate professional issues for supervision, and contain no suggestion of any personal hostility or discrimination-related issue between Mr Allman and the claimant. On 16 November Mr Allman wrote to Mr Mansaray and others, at Ms Woodcock's request, and summarising his experience and assessment of the claimant's performance as it presented to him (283-4).

152. Point 8 continues that Mr Allman 'stated that a high-paced, high-risk team would be detrimental to the claimant's development.' That is taken out of context. Mr Allman in fact used the phrase 'high risk' to make two telling points; one that high risk was inherent in the work of the team, and therefore stress reduction could not be guaranteed; and secondly, that because the

team dealt with 'young people in high risk situations,' it. in Mr Allman's words, 'absolutely cannot afford to reduce performance measures.' Taking the email as a whole, we accept that that was a reasonable and genuine professional judgement.

153. The respondent made a legitimate request, in proper language and was under no obligation to discuss the contents with the claimant before or after doing so. Mr Allman's obligation was to report accurately and truthfully as he understood it, and we can see no evidence whatsoever that his report was tainted by any improper consideration. It was not objectively a detriment for him to do so, even if the claimant may have felt strongly about what he wrote.

154. Points 9 and 10 are the first iterations in the list of a recurrent point. The claimant completed graduation and registration on 10 December 2020, but had to wait until the following summer to receive her upgrade to Band 5, increase in hours, and pay increase. We agree that that was not done until May 2021, following Ms Junmnoodoo's intervention. In our judgment, the claimant's concern about delay is well-founded, but the reason was not disability. We find that the reason was a prolonged period of uncertainty and indecision, in the circumstances which we have set out above. It may well be that the reason for delay was that the consequences of the claimant's graduation were simply overlooked. We agree with the claimant that this was a bad mistake, but we find that it was no more than that.

155. Point 11 was that the claimant's employment offer (335) was rescinded. We agree with Ms Robinson's reply: it was not rescinded, it was converted from unconditional to conditional in the light of what appeared to be new Occupational Health information, which information in turn appeared to have been kept from the respondent and Occupational Health the previous August. The advice related to a matter which was potentially dangerous to the claimant and other road-users, and could not be disregarded. We do not find that the offer was rescinded. We find that the reason for conversion was not disability, but related to the discovery of new information about the claimant's ability to drive, which in turn led to a fresh referral to occupational health.

156. Point 12 relates to an email which Mr Allman sent on 27 January (357) about the claimant's refusal to sit with a young person (#102 above). His third paragraph stated:

> "Michelle, I have done some initial fact finding and the claimant has not disclosed any underlying concerns or anxieties about conducting clinical work in hospital or any reasons why her personal circumstances may affect her professional conduct."

157. At this hearing the claimant took issue with the phrase "fact finding," which she understood had a technical meaning within the respondent's investigation procedures, which she said had not been followed, therefore evidencing discrimination. We do not agree. Mr Allman was simply reporting that he had asked the claimant questions to elicit information. He called that fact finding. That seemed to us both a legitimate action, and a legitimate use of language, which were not a detriment, and were both wholly unrelated to disability.

158. Point 13 related to Ms Graysmith's "options" email of 1 March (435). The pleaded case distorts the more nuanced position of what work the claimant was able to do. The claimant at that time was rostered to work in Stevenage. She was unable to travel to Stevenage. She was therefore offered other options, including working from home or sick leave. She was not offered the option of working permanently in Watford, and / or of working without any commitment to driving in the dark. We do not find that that failure was an act of direct discrimination: the options were offered in an attempt to solve the problem as it then presented. If it is alleged that support was not offered as a separate head of claim, we do not accept that that was the case.

159. That latter point is reiterated at point 14, which is a general complaint that for a period of eight or nine months the respondent failed to address the claimant's stress related absences. In cross examination, Ms Robinson referred the claimant to records of email and telephone contact with her, Occupational Health referrals, and steps to enable her to return to the workplace, including a phased return, working from home, and possible reference to EAP. We do not accept that the factual complaint is made out, and we do not find that the claimant's disability played any part whatsoever in this course of management.

160. We now turn, departing from the order of the list, to the claims of harassment, which formed points 33 to 58. The overarching difficulty with these claims, as formulated, was that the claimant's analysis has appeared to us to go no further than to complain that these were unwanted events which upset her. Those two elements alone are not enough to prove a case of harassment. They do not show that the event in question was related to disability, or that the claimant's response was reasonable in all the circumstances.

161. Point 33 was withdrawn.

162. Point 34 was a re-label of point 5 and we repeat what we have said in that context at #148 above.

163. On point 35, the first point is that Dr Blankson's recommendations of 15 October were 'ignored.' That is the opposite of what happened: from that date on, the respondent gave a huge commitment of resource to try to adopt them. On the second question, the claimant was not forced to drive to Stevenage. She was rostered to work in Stevenage and indeed she asserted that she was safe to do so (email of 9 November, 281). As the position was more clearly understood the following February, she was specifically offered alternatives which would have enabled her to avoid the effect of being rostered in Stevenage. This complaint fails because the factual basis has not been made out.

164. Point 36 was withdrawn.

165. Point 37 is a reformulation of point 11 and we repeat what is said at #155 above. The language of point 37 goes further than point 11, and states that Ms Donley acted, 'on the pretence that the Claimant had lied during her pre-employment assessment.' We heard no evidence which justified that use of

language. Ms Donley did not say or imply that the claimant had lied. Ms Donley did not pretend anything.

166. Point 38 reads that, 'On or around 7 May 2021 Ms Junmnoodoo advised the claimant that there had been an error and she should never have been offered the Band 5 CCATT Nurse role and was therefore facing redeployment.'

167. While redeployment is the wrong word technically, it captures the sense of being offered alternative employment. Ms Jumnoodoo also told the claimant that there was no Band 5 role within CCATT. We accept that this unwanted event took place and that it distressed the claimant. We do not accept that it related to disability. Ms Junmnoodoo proceeded on the understanding, in good faith, and on advice, that through some prior organisational mistake, the claimant had been offered a role which was not within the budgeted establishment. That was the reason for the offer, and it was wholly unrelated to disability.

168. Point 39 relates to Ms Graysmith's emails of 6 and 9 November 2020 (280-281). We repeat the discussion set out at #88-90 above. Ms Graysmith did not send a questionnaire, but an email with questions in it. She understood that the claimant's Band 5 role in CCATT could not be undertaken on a no driving basis, and was nevertheless entitled to enquire further about the driving position. The sting of point 39, as drafted, was that as 'the Respondent had already decided' that the claimant was unsuitable for the band 5 role, there was no purpose to the questions being asked. We disagree. Individuals had responded to Dr Blankson's advice on and after 15 October. The respondent had not formed a view as employer or organisation, or made any decision by the time Ms Graysmith asked her questions.

169. On point 40 we repeat what is said at point 7 above (see #151 above). On point 41 we repeat what is said at #152 above about Mr Allman's supervision notes.

170. Our finding in relation to both point 40 and 41 is that the factual event complained of was whilly unrelated to any consideration of disability.

171. On point 42, the respondent was entitled, and duty bound, to verify authoritatively the claimant's graduation and registration position with her University, wholly unrelated to any consideration of disability.

172. Points 43 and point 44 are reformulations of what is said at points 9 and 10 (delay in the claimant's move to Band 5, increased hours and pay increase) and we repeat what we have said at #154 above.

173. Point 45 was a complaint that on a date in December 2020 Ms Dosunmu sent the claimant home because she did not have a fitness to work certificate, which the claimant stated was contrary to policy. The event was undocumented, and Ms Dosunmu said in evidence that she had no recollection of it: if it happened, it was an every day event at the time. We do not consider whether there was a breach of policy, we consider this event only as an allegation of harassment.

174. It appears to be the case that the claimant attempted to return to work at a time when she was understood and expected to be on sick leave. It is probable that seeing the claimant at work and understanding her to be off sick, Ms Dosunmu told her that as she was off sick, she could not work unless she was medically certificated fit to work. This was not related to disability, it was routine sensible management. Ms Dosunmu was not challenged when she asserted that she knew nothing of the claimant's disability until she was called upon to prepare for this case. The claim fails.

175. Point 46 refers to Mr Allman's correspondence with the claimant (349,350 and 357) in which he explained to her the viable alternatives if she was not able to work at Stevenage. It was the same 'options' point as Ms Graysmith made at 435. We see nothing which justifies the use of the word "pressurised". He put to her the alternatives, as Ms Graysmith did again on 1 March: work to rota, even if that meant working at Stevenage; non-clinical work from home; or sick leave. The emails contained a legitimate management approach unrelated to disability.

176. Points 47 and 48 relate to Mr Allman's conduct of supervision and his supervision notes. It was his duty and right to discuss with the claimant matters which related to her clinical performance, even if she did not wish to discuss them. He was also entitled and duty bound to comment in a critical or adverse manner, if that were his legitimate judgement as a manager, as a failure to do so would defeat the very purpose of the exercise. It was appropriate to discuss an apparent refusal to carry out a specific task, in particular if that were refusal to carry out a reasonable management instruction. It was wholly unrelated to any consideration of disability.

177. Point 49 is a continuation of point 12 and we repeat what is stated at #156 above. The point states that Mr Allman 'stated his actions could be seen as a 'witch hunt'.' That is a distortion of what Mr Allman actually wrote in his email of 27 January to Ms Graysmith and others. It is clear that his point was that he chose not to pick up the claimant on every occasion when her performance fell short, so that she would not respond negatively:

> 'We have discussed the recurring theme of declining requests from team leaders to do certain tasks … There have been plenty of other minor incidents in the past like refusing to assess someone with Musa, or completing certain admin tasks, but I did not want to make it seem like a witch hunt.'

178. Point 50 reiterates the choices offered to the claimant after 19 February 2021, when she was rostered to work at Stevenage, but unable (and unwilling) to do so. We do not add to the discussion above. Point 51 is a continuation of the same points and we repeat what is said at point 13 above at #158 above.

179. At point 52 the complaint is that on 13 April 2021 Mr Allman did not accept the claimant's Med 3 on the grounds that it was unsigned. The copy at remedy bundle 32 was indeed unsigned, and Mr Allman emailed the claimant, after dealing with a number of other practical points (508):

> "I also feel I need to point out that your return to work GP letter isn't signed by the doctor. This letter will be going into your personnel file so we would certainly need the doctor's signature on it – digital or otherwise. Thanks."

180. That was a statement of no more than managerial; common sense, unrelated to disability, if it had the statutory effect of upsetting the claimant it was an unreasonable effect.

181. Issue 53 reiterates an issue about the meeting with Ms Junmnoodoo in May. If the complaint is a failure to follow the redeployment policy we accept that the redeployment policy was not appropriate to the facts of the claimant's situation at the time. The policy applied broadly to redundancy situations; the claimant was not redundant.

182. Point 54 was withdrawn.

183. Points 55 to 58 related to events after the claimant returned to work from prolonged absence on 24 January 2022. Point 55 was that a mediation meeting had not been arranged between the claimant and those against whom she had grieved. We accept Ms McMillan-Shields' approach, which was that while mediation between the claimant and colleagues after the grievance outcome was desirable in principle, the practical realities were that she had grieved against a large number of colleagues, and there was a significant resource implication in arranging a series of mediation meetings. Furthermore, it was practical and sensible for a period of time to go by after the claimant's return in order to assess which individuals mediation would be most suitable with, because a number of those whom the claimant had grieved against would have little or no working contact with her anyway. We also accept that it was not sensible to have mediation with those in the group who were about to leave their employment with the Trust. We also have very considerable doubt, at the end of this case, that the claimant had a true understanding of mediation or was suitable to enter into it. However, we need only find that Ms McMillan-Shields made legitimate management decisions not to pursue mediation, which were wholly unrelated to disability.

184. Point 56: it is correct that the claimant returned to work in the same department as some of those against whom she had grieved. That is the reality of a workplace, and neither the claimant nor the others was required to be moved in consequence of any grievance. If it is alleged that the failure to redeploy was an act of harassment, we find that that decision (or, more accurately, the failure to consider it) was a legitimate decision of management unrelated to disability.

185. Point 57 was a complaint that Ms Woodcock and Ms Richards called in at an office where the claimant happened to be and "were hostile towards her as neither of them greeted her" and Ms Richards did not attempt to speak to her (see #38 above). Neither Ms Woodcock nor Ms Richards could remember this event. Calling in at an office with a general greeting to those in the office and then speaking specifically to those whom she had come to meet would have been the routine for either. We accept that neither of them knew the claimant by sight, or had previously met, or would recognise her, and the

claimant did herself no help by questioning to the effect of "surely you would have asked what I looked like" so as to be recognised. This point fails because we find no such event has been proved to have taken place.

186. Point 58 was withdrawn.

187. We turn to the claims of victimisation. The claimant relied on four protected acts, the first on 18 November 2020 and the last on 28 May 2021. The respondent agreed that the last in sequence was a protected act (point 64). As to the others, we find as follows.

188. On point 61, we find that on 18 November in supervision the claimant did a protected act. Although it is not referred to in Mr Allman's notes (293, 322) we rely on paragraph 13 of his witness statement:

> "Also during this meeting, we had a conversation about the adjustments that had been recommended for the claimant by OH my view at the time was that the long list of adjustments would not have been feasible…I do not recall the claimant saying that a failure to implement those adjustments would be a breach of the respondent's legal duty."

189. We find that there was a conversation about disability, which touched on the need for adjustments. We find that that is sufficient to engage s.27(2)(c) without need for the claimant expressly to refer to her rights under discrimination legislation.

190. By similar reasoning, when we come to point 62, we rely on paragraph 18 of Mr Allman's witness statement:

> "I remember the claimant saying during this meeting that she felt reasonable adjustments should be made and that she was going to make a complaint…,I responded to say that I disagreed because the way it was being dealt with had nothing to do with a protected characteristic."

191. Again, although there is no reference in the note (349) we find that that evidence is sufficient to indicate that s.27(2)(c) was engaged.

192. We find that the third protected act was made during the covert recorded conversation with Ms Graysmith (point 63) by a similar reading of the following in the transcript (453):

> "MG: So HR can send that out with an explanation of why we can't, why the adjustments aren't reasonable for service..
>
> EK: And obviously I will be making a complaint.."

193. Subsequently Ms Graysmith wrote to Ms Zenonos (462):

> "The claimant has asked for everything in writing to her from HR/Recruitment (why reasonable adjustments cannot be met and what policies/processes are being followed)".

194. We infer from that material that there was discussion of reasonable adjustments arising out of the claimant's disability, and that the claimant made clear her dissatisfaction.

195. Point 64 succeeds by consent, it being conceded that there was a protected act in the claimant's grievance.

196. The alleged victimisation detriments are set out at points 66 to 78, and we now turn to them, reminding ourselves of our earlier comments about detriment. Our overarching finding is that no protected act played any part whatsoever in any of the factual events complained about.

197. Point 66 reformulates points 47 and 48 about supervision, and we repeat what we have said at #176 above.

198. Points 67, 68 and 69 all refer to matters raised by Mr Allman on or about 27 January. Points 68 and 69 (rostered to work at Stevenage, and told to accept it or go on sick leave) seem to us reiterations in part of points 46 to 48 and we repeat what has been said about them at #175-176 above. Point 67 refers to the incident when the claimant refused to meet a service user. Mr Allman's language about that incident, recorded in his note (351) is a wholly unimpeachable statement of the policy of any manager:

> "Remined EK that following request from team is important / Further refusal may be assessed for capability or disciplinary processes."

199. It was not a detriment to remind an employee that she is expected to carry out reasonable management requests. It was not a detriment to remind a mature employee that failure to do so may become a disciplinary matter. There was nothing whatsoever which might relate this everyday piece of management to any of the protected acts which preceded it.

200. Point 70 reformulates points 13 and 51 above, and we refer to what we have said about them above at #158 and #178.

201. Point 71 was withdrawn.

202. On point 72, we accept that during the recorded teams meeting Ms Graysmith explained to the claimant that not driving in the dark was not a reasonable adjustment. That was the view which she had held since the afternoon of 15 October 2020, long before any protected act, and was wholly unrelated to any protected act. It was her legitimate professional judgement, which was widely shared. The last sentence of point 72 is "Michelle Graysmith later denies this". We do not accept that that has been made out.

203. Point 73 is a reformulation of point 52 (the unsigned sick note, 508 and remedy 32) and we repeat what is said at #179-180 above.

204. Point 74 is a reformulation of points 38 and 53, (dealt with at #166-167 above) and we see no evidence whatsoever which links this with a protected act. Point 75 is a reformulation of the availability of non-clinical home based work in circumstances where work involving driving in the dark was impossible.

205. Point 76 was a complaint that Ms McMillan-Shields failed to hold a grievance meeting with the claimant. We repeat what is said above at #132, 136 and 137. We accept that Ms McMillan-Shields met the claimant in June to agree terms of reference, during which the claimant presented an outline of the points of concern, and that thereafter Ms McMillan-Shields delegated the fact finding element to the investigating officer, Ms Judges. She received Ms Judges' report, reached her conclusions, and then had a separate meeting with the claimant, at which she delivered the outcome. It is correct that she did not hold a grievance meeting with the claimant in the sense of a meeting at which she asked the claimant to reiterate her concerns, grievances and complaints: she had done so partly at the terms of reference meeting and partly by delegation to Ms Judges. We find that her decision not to hold another grievance meeting with the claimant was a legitimate professional judgement, wholly unrelated to any protected act.

206. The claimant's model of a meeting at which she would have had the opportunity to question those grieved against was flawed and inappropriate for reasons familiar to any manager: to do so would inflame working relationships. However, this particular point illustrates well the flaw which underpins much of the claimant's approach to this case: Ms McMillan-Shields made a number of discretionary management decisions about how to conduct part of her role. The claimant would like her to have made other decisions. But the question for us is not whether Ms McMillan-Shields' decisions were good or bad but whether they were done because of any protected act, and of that there was no evidence whatsoever.

207. Point 77 states:

> "From 10 May 21 Ms Junmnoodoo, Ms Zenonos and Ms McMillan-Shields have denied that the claimant was offered a Band 5-6 Development Post despite the claimant proving evidence and so she currently remained in a Band 5 post."

208. As stated at #67-68 above the offer and acceptance documentation referred to a Band 5 post. We do not accept that Ms Graysmith's email of 8 August constituted contractual appointment of the claimant to such a post, or was evidence of it. We repeat what we have said above.

209. Point 78 is a reiteration of the complaint about delay between 10 December and May 2021. We repeat our earlier findings.

210. We now turn to points 23 to 32 and the claim for reasonable adjustments.

211. Points 23. 24 and 25 were not in dispute. The respondent conceded that it applied three PCPs to the claimant; (1) rostering to cover both WGH and Lister Hospital, Stevenage and requiring Band 5 nurses to work at both locations; (2) requiring staff to rotate between the two venues on a three weekly and then a three-monthly basis; and (3) requiring staff to work at Stevenage on a shift pattern which could include consecutive late shifts.

212. Points 26 and 27 were the question, not admitted by the respondent, of whether the PCPs put the claimant at a substantial disadvantage because,

as a result of her mental health and / or her medication, it was more difficult for the claimant in the period after October 2020 to travel long distances regularly, especially at night and after a longer shift, and there was insufficient recovery time between shifts.

213. It seems to us important to approach the matter realistically and with fair balance. The disadvantage was that allowing for the claimant's mental health, the effect of medication, including recovery time, the needs for sleep and to avoid fatigue, the claimant was put at a substantial disadvantage by a system which required her to work from time to time in Stevenage and, in particular, to work consecutive long days in Stevenage. We find that the respondent applied PCPs which put the claimant at substantial disadvantage.

214. Point 28 related to knowledge and there did not seem to us to be an issue. We accept that by 15 October 2020 at the latest, on receipt of Dr Blankson's first report, the respondent had requisite knowledge.

215. Points 29 to 32 formulate four reasonable adjustments. As Ms Robinson pointed out in her closing skeleton, they were not pleaded factually in full in accordance with the recommendations of Occupational Health.

216. We find that point 29 (work at WGH only) was not offered to the claimant, and was not a reasonable adjustment. We find that point 29 (daytime shifts only) was at all times available to the claimant, as Band 5 nurses in CCATT did not work night shifts. It was a standard practice, not a reasonable adjustment. However, the claimant's formulation is partly artificial and unhelpful, because in mid winter a day time shift can require travel in the dark.

217. We find that point 31 and point 32 were in principle available, as part of a general commitment to the offer of a flexible working pattern. They would have been offered, as part of a wider arrangement, if that arrangement could have been agreed.

218. It is perhaps more straightforward to summarise that the respondent did offer the claimant adjustments which included working daytime shifts only, a daytime shift finishing at the latest at 8pm; and that it would offer flexibility in shifts to enable the claimant to have sufficient time to rest from driving in between shifts. We also accept, with reference to point 32, that the respondent would offer fixed shifts and flexible working.

219. Each and all of the above, whether taken separately or cumulatively was in our judgment a reasonable adjustment.

220. The respondent did not offer the adjustment of being based at Watford only or the concomitant adjustment of avoiding long distance travel. It could not guarantee avoidance of driving at night. (although curiously that is not pleaded in the list of issues).

221. Ms Robinson stressed that the respondent did offer the claimant other Band 5 nurse roles which did not require long distance driving and she referenced four offers: 24 May, 3 June, 3 August and 13 August 2021, none of which

bore fruit; and a final and fifth offer, at Radlett, which the claimant took up on 24 January 2022.

222. We accept that each of those was a reasonable adjustment in the sense that it balanced the claimant's wishes and needs with Occupational Health advice and organisational imperative.

223. We turn in conclusion to the single point which has always been at the heart of this case**,** and which the claimant might, on reflection and advice, have pursued as the single most important point in the case: could reasonable adjustment have been made which in effect would have been that the claimant could perform the Band 5 role in CCATT in Watford only. The immediate and unanimous view of every practitioner and manager who saw that proposal was that it could not be accommodated. They did so for the reasons which we have set out above, which were that the work was to be part of a broad community service, addressing acute need and crisis. It therefore required flexibility in and for the community, for the service users, and allowance for the fact that service users were a group of acutely vulnerable people in crisis. The service was by definition as unpredictable as any emergency service. It could not be safely delivered without the ability to drive in the dark.

224. We accept that the claimant's post could not be cut away from the general configuration of the roles within the team, which required practitioners to work at Stevenage or Watford, and in the community.

225. We therefore find that the adjustments offered by the respondent were reasonable adjustments, and that the adjustment requested by the claimant, which the respondent refused, was not a reasonable adjustment. The claim therefore fails.

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Employment Judge R Lewis

Date: 3/4/2023

Sent to the parties on: 14/4/2023

Naren Gotecha
For the Tribunal Office