EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Greenwood**

Respondent: **Calderdale and Huddersfield NHS Foundation Trust**

Heard at: **Leeds**

On: **3-6, 11, 12 and (deliberations only) 13 April 2023**

Before: **Employment Judge Maidment**
Members: **Mr D Wilks OBE**
Mr J Howarth

Representation
Claimant: **Miss A Harrison, lay representative**
Respondent: **Mr F Sutcliffe, Solicitor**

RESERVED JUDGMENT

1. The claimant's complaints alleging a failure to make reasonable adjustments are well founded and succeed to the following extent:

    a. A failure from 8 June 2020 – 4 May 2021 to put in place an arrangement, communicated to senior doctors conducting ward rounds, that the claimant not be required to be responsible for notetaking on ward rounds or that such requirement be limited.
    b. A failure to provide a laptop for the claimant's sole use as an auxiliary aid from 29 January 2021 – 4 May 2021.

2. The claimant's complaint of discrimination arising from disability relating to the initiation of a performance management process on 30 November 2020 is well founded and succeeds.

3. The claimant's remaining claims of disability discrimination and harassment fail and are dismissed.

4. The claimant's claim of unauthorised deductions from wages is dismissed on her withdrawal of it.

REASONS

Issues

1. The claimant submitted her tribunal claim on 15 March 2022 after a period of ACAS Early Conciliation from 6 January - 16 February 2022. At the time she submitted her application, she was still in the respondent's employment.

2. The claimant's complaints are all of disability discrimination. She relies on the impairment of a Specific Learning Difficulty as rendering her a disabled person, although such earlier diagnosis has been updated to one of dyslexia. The claimant had maintained, from indeed before her employment commenced, that her symptoms were akin to those which derive from dyslexia. The respondent accepts that the claimant was at all material times a disabled person and no issue is taken regarding the exact diagnosis of the claimant's impairment.

3. The full agreed list of issues is set out as an Annex to these reasons.

4. The claimant was employed as a Physician Associate ("PA"), a clinician. She complains of a failure to make reasonable adjustments. Those claims are based on it having been reasonable for the respondent to provide the auxiliary aids/services of a laptop for her sole use on wards, Dragon dictation or equivalent voice recognition software and a mentor/buddy to alleviate disadvantages she experienced at work. Further reliance is placed on the respondent operating a practice of discouraging the making of written notes during ward rounds and of disallowing flexible working, requiring employees in her position to adhere to mandatory rota changes which involving moving sites to a different hospital. Those are again said to have put the claimant at a disadvantage as a disabled person. The reasonable adjustments sought are to allow the claimant to make written notes freely during ward rounds, providing the claimant with a static permanent position (clarified as being a reference to her hospital base), removing the claimant from an out of hours ("OOH") rota and offering the claimant a 4 week phased return to work and 3 months settling in period after a period of sickness.

5. During the second day of hearing, the tribunal raised with the parties that it might give consideration, as a possible reasonable adjustment, to removing or limiting the claimant's responsibility for taking notes during ward rounds involving a structured re-arrangement of her responsibilities of which the consultants with which she worked were aware. The tribunal wished to ensure that the parties were able to make submissions upon such potential reasonable adjustment and, most importantly, to call any additional evidence to deal with the point.

6. The claimant has separate complaints of indirect disability discrimination reliant on the alleged practices of the respondent issuing performance management proceedings when a PA was not meeting expectations in the workplace, escalating such proceedings to a formal level if it did not think that the PA had made sufficient progress within several months, subjecting PAs to mandatory rota changes which disrupted their working schedules and the respondent declining to respond to queries when PAs sought further clarity on the matter of their working arrangements.

7. A complaint of discrimination arising from disability is pursued in respect of the unfavourable treatment of the initiating of a performance management procedure and, separately, a failure to pay the claimant full salary for the duration of her sick leave.

8. A complaint of direct disability discrimination is brought on the basis, as an act of less favourable treatment, of the claimant being lured to a performance management meeting under false pretences on 30 November 2020 and being advised that her employment might be terminated.

9. Finally, claims are brought of disability-related harassment based upon Dr Hoye's alleged treatment of the claimant at meetings on 28 September and 30 November 2020 as well as clinical supervisors complaining about the claimant being slow prior to the 30 November meeting and colleagues on the elderly patients' ward issuing a complaint against the claimant in March 2021.

10. A complaint of disability discrimination by association relating to the claimant's responsibility as a carer for elderly patients had been dismissed on withdrawal prior to this hearing. The claimant also now confirmed her withdrawal of a claim of unauthorised deduction from wages.

11. There are potentially issues of applicable time limits which go to the tribunal's jurisdiction and which could not be considered until the tribunal had heard all the evidence and made appropriate factual findings. On the basis of the dates set out above, a complaint about acts which occurred before 7 October 2021 is out of time.

Evidence

12. The tribunal had before it an agreed bundle of documents numbering in excess of 971 pages. The tribunal allowed Dr Hoye to be recalled as a witness to demonstrate how the respondent's electronic patient record system ("EPR") operated and the tribunal was subsequently provided with screen shots from her presentation which were accepted as additional documentary evidence. The tribunal also heard a 6 minute voice recording of a meeting the claimant had attended with Dr Hoye and Miss Ratcliffe on 12 January 2021.

13. Having identified the issues with the parties, the tribunal took some time to privately read into the witness statements exchanged between them and relevant documentation. Witnesses were called in an order agreed between the parties. That involved the tribunal hearing firstly from Dr Sarah Hoye, consultant in acute medicine followed by Kathryn Ratcliffe, operations manager in acute medicine. The tribunal then heard from the claimant. Finally, on behalf of the respondent, it heard evidence from Rhianedd Hurley, general manager for acute medicine and Azizen Khan, assistant director of HR.

14. The tribunal heard oral submissions from Mr Sutcliffe, with reference also to written submissions, and then, on behalf the claimant, from Miss Harrison. Both representatives approached the case with due sensitivity and assisted the tribunal greatly.

15. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

Facts

16. The claimant commenced her employment with the respondent as a PA in March 2020 after over 25 years' experience in the NHS working as a podiatrist. PAs work alongside consultants and junior doctors in hospitals with a role similar to that of junior doctors, but without the ability to prescribe medication. This is a relatively new position within the NHS workforce and the respondent had been putting in place a structure for the development of PAs since around 2016 with Dr Hoye acting as the Trust lead for PAs. Dr Hoye was also the claimant's educational supervisor responsible for her learning and educational progress. The claimant's line manager was Miss Kathryn Ratcliffe, who in turn reported to Mrs Rhianedd Hurley.

17. Prior to commencing her employment, the claimant had completed a health at work form, which she submitted to occupational health. Within this, she declared that she had Specific Learning Difficulty with short-term memory issues, with the symptoms described as the same as someone with dyslexia. The claimant described, as adjustments which would help her manage at work, using off-white paper and a different background as well as her telling her peers. Occupational health recorded a conversation over the telephone with the claimant on 4 September 2019, where it was noted that no adjustments were required. The tribunal notes that the claimant, in her previous employment at the Leeds Hospitals Trust, had used paper based records. It was put to the respondent's witnesses in cross-examination that this was why she had not previously had difficulties at work, in contrast to the situation within the respondent where records are kept in an electronic system known as EPR.

18. The claimant worked on an 8 week rolling rota, which included one week of twilight shifts from 2pm – 8:30pm, Monday – Thursday and 2 weekends, one short, working 8am – 6pm on Saturday and Sunday and the other working until 8:30pm on those days. When working weekends, additional rest days were scheduled. Otherwise, the normal working day for the claimant was typically from 8am – 4pm or 9am – 5 pm depending on when ward rounds began. The claimant's average hours equated to 37½ hours per week. The claimant's work on twilight shifts and weekends were on the acute floor at Huddersfield hospital. Otherwise, the PAs were scheduled to rotate 4 or 6 monthly across a number of different work areas, prior to potentially specialising, after 2 years of rotation, in a single area. The claimant started on the acute floor at Huddersfield moving to general medicine at Calderdale Hospital in Halifax in October 2020 and to elderly medicine, back in Huddersfield, in February 2021.

19. The claimant preferred to work at Huddersfield due to a shorter travel distance and her responsibilities as a carer for her parents. Dr Hoye was aware of the claimant's caring responsibilities from August 2019. She had agreed to a swap of location to Huddersfield then due to the claimant's caring responsibilities.

20. From March 2020, all medical staff worked according to a specially devised rota to deal with the emergency situation caused by the coronavirus pandemic. Dr Hoye accepted that there was a need during this period for medical staff to deal with more clinical issues than they usually would. There was a greater need for more difficult conversations with patient relatives. She described herself as having been exhausted and drained at times. However, she believed that everyone had learned a lot from the experience and said that people came to adjust to the new circumstances. The Covid rota involved some longer shifts, an overall increase in weekly working time of less than 1 hour and compensatory rest periods.

21. Dr Hoye could not be sure as to when she was first aware of the claimant's disability, but thought that this would have been likely to have been discussed with the claimant when the claimant started her employment, as Dr Hoye had an open conversation with each of the PAs when they started. Certainly, she accepted that she knew in June 2020.

22. On 14 April 2020, the claimant emailed Mrs Hurley asking for a change in her working pattern as the situation was causing major distress to her as a carer for her elderly parents. The claimant made contact by email asking for answers to questions. Mrs Hurley wanted to have a discussion so that she could gain a fuller understanding of the claimant's situation and then confirm the outcome by email. Mrs Hurley was unaware that the claimant might be asking for a written response so that she could more easily process any information given at her own pace. The tribunal accepts that this was the claimant's preference and for that reason. Mrs Hurley discussed the

situation with the claimant on 17 April and explained the respondent's position. Mrs Hurley explained to the tribunal that the Covid rota was mandatory. At the time she said that she did not appreciate how significant a 1 hour change to shift timings might be to the claimant in the context of her role as a carer and her understanding was that the claimant simply didn't want a change at all.

23. In early June 2020, Dr Hoye started to receive "some really poor feedback" on the claimant's functioning and skills on the acute medicine floor. The claimant informed Miss Ratcliffe and Dr Desai, clinical director of acute medicine, on 4 June that she was going to undertake a supervision meeting and look at what support the claimant needed to put in place. She commented that: "it sounds very much like she is acting like a student with little motivation, performing few skills and not getting involved in work unless asked to do so. Her ward round participation is also not happening, as she is backing off. The PAs are worried as the rest of them are flying and don't want a bad rep."

24. Dr Hoye met with the claimant and emailed a summary of that meeting to Miss Ratcliffe and Dr Desai on 8 June. She referred to the claimant not having responded to an emergency alarm, with the claimant saying that she did not know the difference between alarms and that she would get in the way if there was a crash. She was told that she should attend any crash with others, get used to such medical emergencies and familiarise herself with alarms. She was prompted to sign up for an ALS (advanced life support) course. Dr Hoye noted a lack of team player skills and asked the claimant to be proactive in taking up patient allocations. Dr Hoye also addressed the claimant not pulling her weight with the claimant seeming "lost in terms of how things operate." An FY1 junior doctor, Becky Morris, was to be asked to mentor the claimant over the next 2 weeks and work alongside her.

25. Dr Hoye also raised with the claimant "poor/inappropriate documentation". Dr Hoye noted that the claimant felt that her dyslexia was inhibiting her recording patient notes on the electronic EPR system upon which all patient interactions and treatment were recorded. The claimant had referred to this taking her more time. Dr Hoye said that she was asking the claimant to get on ward rounds for practice and alternate in terms of taking patient notes with a junior doctor so she could gain confidence. Dr Hoye, in cross-examination accepted that gaining confidence would not necessarily alleviate the symptoms of the claimant's disability, but said that, as confidence built, a person gains more job satisfaction and improves. When put to her that this was not a disability specific adjustment, Dr Hoye replied that it was a sensible recommendation and a practice they utilised on the wards from time to time.

26. Ordinarily, Dr Hoye told the tribunal, around 4 or more medical staff accompanied a consultant on ward rounds. Before seeing a patient, all relevant information could be pulled from EPR including, for example, blood or ECG results. Whoever was responsible for documenting a ward round would prepare a brief history before seeing the patient and then input what emerged from seeing the patient on the ward round, including follow up tests/tasks to undertake. The consultant would check what was documented. The pace of the ward round and number of patients to document varied. It was greater in acute rather than elderly care where patients tended to stay longer and have more stable conditions. All patient interactions had to be recorded and visible through EPR. Any delay in inputting information was a risk to patient safety. Having patient information recorded anywhere else gave rise to confidentiality and data protection concerns. The tribunal accepts that those were genuine and significant issues of concern for the respondent.

27. Some staff had Dragon voice activated dictation software available through their login profiles. Dr Hoye was not aware of anyone using it during ward rounds, but had heard it being used by a consultant on an outpatient clinic.

28. Dr Hoye recognised that the claimant's work could be emotionally draining, not least in the context of her having suffered a recent bereavement, but said that the claimant was beginning to adjust and was keen to get on with the usual rota and with her usual hours. Dr Hoye had offered the claimant a move to the elderly care ward as a fresh start, but the claimant wanted, at this point, to stay in acute medicine as it was a good learning environment. The claimant had commented that the current team were not helping by making her feel slow, i.e. as if she should already have learned particular skills.

29. It was raised in cross-examination with Dr Hoye that the recording of patient information would involve having to process visual and auditory information with the need to demonstrate cognitive memory and sequencing functions to structure tasks. Dr Hoye agreed, but said that they had been providing additional support to the claimant. She agreed that a disabled person dealing with a high-pressure situation might have more difficulty in adapting to it. She agreed that it might be an increased strain for someone who struggled with processing information to work flexibly across different sites, but said that it was part of the PA job description. Dr Hoye's position was that the training of a PA was improved by experiencing a variety of specialties and in circumstances where not all specialties were operated at both of the 2 main hospitals within the respondent, Huddersfield and Calderdale. She appreciated that everyone developed at different rates.

30. Dr Hoye agreed that, up to this point, no changes had been made to the claimant's role as a PA, but rather some supervisory suggestions as to how she could be helped. For Dr Hoye, the issues of concern involving the

claimant related to more than one thing and certainly more than her difficulties of notetaking. Dr Hoye said that she did not consider referring the claimant to occupational health. She said that there were other things potentially helpful to look at.

31. Dr Hoye spoke to a junior doctor, Becky Morris, saying that it would be helpful if she could work more together with the claimant. However, partly due to the restraints of the Covid rota, they did not coincide in terms of their shifts as much as she had hoped. Certainly, by mid-July the claimant was reporting that any support from Ms Morris had not worked out due to sickness and rota differences. Ms Morris moved on to a different rotation as part of her own training around the end of July.

32. On receiving the summary of the educational supervision meeting, Miss Ratcliffe did not feel it necessary to take any further steps. She thought that on the acute floor there were at least 8 doctors and 2 PAs who could have assisted the claimant. The senior PA could spend more time with new starters and allocate support for daily tasks. She accepted in cross-examination, however, that the claimant might still struggle and that the claimant felt that she had been inadequately supported. The claimant had seen OH before she started, Miss Ratcliffe said, and no reasonable adjustments had been identified then. Unless the claimant had come to ask her for support she said: "..that covers the situation for me." She did not consider that any adjustments were now necessary as none had been raised with her. She was not a clinical person and relied on feedback from others.

33. The tribunal notes that on 8 June 2020 the claimant emailed a Mr Walsh saying that accessing laptops was difficult and some of the equipment was broken or slow to power up. She expressed having daily frustration on the acute floor. He replied saying that her email summed up the IT issues on the ward "quite nicely". The claimant described each ward having different models of laptop with different keyboard layouts and sometimes some broken/missing keys. This made it more difficult, the tribunal accepts, to use laptops on wards. Dr Hoye told the tribunal that things had improved since then with more laptops available and any issues being remedied more quickly. Dr Hoye expressed the view that she did not understand how the claimant having her own laptop would stop the dyslexia related issues. The tribunal has also been told that, for a period, a personal laptop could not be provided to the claimant due to infection control measures in place due to Covid.

34. On 9 July 2020, a lead PA emailed Dr Hoye saying that the claimant was still "struggling", with some issues on the twilight shifts escalated by the consultant during the ward round. The claimant was said to be upset and that this had knocked her confidence. The claimant was reported as saying

that she did not feel comfortable with the OOH shifts and needed more training.

35. Dr Hoye subsequently received relevant feedback from the registrar, Dr Callaghan. Dr Callaghan referred to a lack of action in respect of a particular patient with no record that bloods had been taken. Other clinical failings were identified. The claimant was reported as saying that she thought clerking the patient meant seeing them and making a plan, but not initiating any further steps/treatment. The claimant was waiting for the patient to be quickly reviewed by a senior doctor and a decision then made as to what to do. The claimant had told Dr Callaghan that she was struggling with asking for help and that people were not supportive. She didn't really understand how the system worked on the acute floor, what her role was and, Dr Callaghan reported: "all the ward rounds go too fast for her to keep up with." The claimant had said she had also been struggling since the death of her father and the aforementioned support from Becky Morris had not materialised.

36. Dr Hoye met with the claimant on 14 July to discuss these issues. She reported back to Dr Callaghan that the claimant seemed to have "more insight". Dr Hoye had no recollection of any discussion regarding the need for a mentor – the claimant had raised in an email of 9 July that Dr Callaghan had suggested that she speak to Dr Hoye about having one. She said that she didn't think to refer the claimant to occupational health saying that Dr Callaghan's email made no reference to dyslexia and Dr Callaghan's feedback was not related to the claimant's dyslexia.

37. Dr Callaghan was subsequently spoken to about how to deal constructively with the type of situation she found herself in with the claimant.

38. On 5 August 2020, Dr Hoye asked for the claimant's preferences for her next rotation. The claimant responded that her preference was to rotate at the Huddersfield site only, due to caring responsibilities and also to rotate 6 monthly (rather than 4 monthly) into any discipline, including acute medicine.

39. The claimant's case is that it took longer to orientate herself to new environments. Whilst there would be common systems in place across wards, the claimant needed time to get used to the physical layout and where things were stored.

40. The claimant's next educational supervision meeting was scheduled for 28 September. As was her standard practice, Dr Hoye emailed consultants in acute medicine asking for any feedback on the claimant. One responded saying that the claimant had made good progress and was very keen to join ward rounds and always eager to help saying "she is a bit slow to react

otherwise she is a very valuable member of the acute floor". With support the claimant was said to have already improved significantly and that continuous support was needed for at least the next few months to help her. Another consultant felt that the claimant had improved, but was not near to the level of the other PAs on ward rounds. Although she worked hard, it was said that the claimant was finding it difficult to get the information they needed to know about a patient. The consultant commented that they had taken over the typing of notes for most of the patients as they thought it would be quicker. That was the reason why the ward round was delayed, although the consultant recognised that she could be faster than some.

41. Dr Hoye went through the feedback with the claimant at the supervision meeting on 28 September. She started with a number of positive comments recognising that the claimant was keen to join ward rounds and had improved. She then raised areas to reflect and improve upon. The claimant's learning trajectory in terms of IT skills and documentation with reference to ward rounds was said to be "slow" in comparison to her peers. It is noted that Miss Ratcliffe told the tribunal that this wouldn't come across to her as a concern given that the claimant was new to her role. This was despite the claimant having already said that difficulties were due to her disability.

42. Dr Hoye noted in the report produced after the meeting that she had highlighted that if the claimant shared with more senior colleagues that her dyslexia impacted on her ability to use EPR as speedily, then ward round adaptations could be made. She gave to the tribunal alternating note preparation as an example. The claimant's evidence was that this sometimes occurred, but the situation varied depending on the consultant involved. Dr Hoye accepted that she had not given the claimant any examples of adaptations which could be made in practice and accepted that there was no plan as to the type of assistance which might be provided. Dr Hoye told the tribunal that she was sure that the claimant had not disclosed her disability to people she should have in order to gain their help. It is the claimant's case that Dr Hoye shouted at her that: "I thought you were going to tell your seniors about your learning difficulty". Dr Hoye said that she was astonished by this claim and that she never shouted at her in this meeting and does not shout.

43. Dr Hoye did provide to the claimant a suggested template to assist her in compiling information on ward rounds. That was to help the claimant's inputting of information into EPR, giving her more time to concentrate on the content rather than the headings/layout.

44. The evidence of the claimant is that she at all times inputted information obtained in a ward round directly into EPR. The tribunal accepted her clear and convincing evidence. There is no other witness evidence of how she conducted herself on ward rounds. She had an A4 sheet on which she had

sketched out the (anonymised) location of patients, in common, she said, with a number of medics. She took a notebook with her on the ward round to capture any "pearls of wisdom" and to make a note of follow up actions and jobs required to be done once the ward round was completed. Typically, a consultant would come onto the ward and pick a PA or junior doctor to accompany them on the ward round. In acute medicine one of the PAs was usually chosen – there could be 2 PAs on each side of the acute floor during the week. The remaining medical staff would then pick up the jobs written up on EPR in real time. A smaller number accompanied consultants on ward rounds during the Covid pandemic. If the claimant was chosen for the ward round, she would bring up the template in EPR and populate it with the patient information. The consultant would then add anything additional they wished before they moved on to the next patient. If the claimant was sharing the ward round responsibilities, then she would have more time to prepare the information for the next patient whilst the current patient was being seen. The claimant estimated that she had the benefit of this form of alternating EPR recording on fewer than half of the ward rounds and rarely when working OOH.

45. The claimant was about to rotate into the general medicine ward 6AB at Calderdale Hospital, which Dr Hoye told her would be an ideal setting to enhance ward round skills due to the slower patient flow and increased patient continuity, which would enhance her ability to document patients given greater familiarity with them. It was also noted that consideration would be given to further IT support with reference to the use of Dragon dictation software. The claimant had raised that this had been helpful to her in the past and Dr Hoye asked her to look into it. When put to Dr Hoye that she ought to have been more proactive, she responded that the suggestion was the claimant's, she would understand how it could help her and that, whilst she was not making excuses, there was only much she could do in the middle of the Covid pandemic.

46. As regards the use of Dragon, Dr Hoye thought that it could help with documentation, but there were a lot of other aspects of the claimant's role and the claimant would still need a quiet environment to use the software and would still need to gather all the information from a number of sources.

47. The claimant's concerns as a carer were also discussed at the supervision meeting. The claimant was concerned regarding the longer travel distance to the Calderdale Hospital. Dr Hoye referred to the ability for her to park at Huddersfield hospital and use the shuttle bus service which she told the tribunal took around 20 minutes between sites. The claimant was to assess over the next few weeks how the forthcoming change in location would affect her caring responsibilities. The claimant was said to be aware that site rotation was essential to deliver a well-rounded education with a mix of specialties experienced. Dr Hoye recognised that the claimant's preference was to remain at Huddersfield.

48. Miss Ratcliffe told the tribunal that she did not see a referral of the claimant to OH to be appropriate – she would have expected the claimant to say that she wanted a referral. Miss Ratcliffe said that she wasn't aware that the claimant's disability was causing her difficulties.

49. On 16 November 2020, Dr Hoye asked the two general medicine consultants on ward 6AB for the feedback on the claimant. She said that she would be putting together a plan for more support as required for the claimant, but all evidence as to the claimant's progress or lack of it was appreciated. She referred to having seen a communication suggesting that one of the consultants felt that a supernumerary role was perhaps more appropriate for the claimant. One of the consultants responded saying that she did think it would be better if the claimant was supernumerary. The claimant was working hard and trying to improve, with the claimant arriving early to prepare for the day's work. She reported however that the struggle came more on the ward round, reporting that the claimant struggled with efficiency and had to write notes on paper as well as on EPR saying that the consultant herself tended to take over the typing on EPR. She said that, unlike others, the claimant wasn't "slick… where some quick jobs can be done on the spot… She has to write all the jobs down… I find myself often wondering why she needs to write certain things down." It was reported that the claimant was hesitant to have a discussion with a patient's relatives regarding a do not resuscitate protocol. It was also said that the claimant did not appear to be clinically competent. It was said that the claimant's work actually created more work for the other juniors and it would be better if there was a dedicated junior to supervise her fully.

50. Dr Hoye emailed HR, Dr Desai and Miss Ratcliffe on 17 November under the subject heading of "struggling PA employee in difficulty". She said that the claimant was clearly struggling and, despite several meetings and action plans, there appeared to be "such a slow trajectory of improvement, that really she cannot function beyond supernumerary… She is nowhere near on par with her very successful PA colleagues… We have to bear in mind she has dyslexia which she views as a disability that impacts upon her work, and I cannot be prejudiced against this – but I have made several suggestions already as to how she can use EPR to help herself." She summarised issues as including the claimant's support on ward rounds being ineffective, being very slow with jobs, not grasping important concepts and being unreliable as a functional part of a busy team, whilst recognising that the claimant tried hard and meant well. She finally referred to the claimant: "Writing everything down… Why??? Have discussed this before. EPR is the record?" She said that she had already moved the claimant to a more long-stay ward which was better for her. Dr Hoye said she wanted to put together a plan to tackle the issue saying: "To be honest I am really disappointed here. However, I suppose 1 of 22 posts in difficulty with 21 very good employees isn't bad odds."

51. Miss Ratcliffe told the tribunal that did not see the tone of this email as unsupportive as, she said, she was aware that support for the claimant was in place and was confident that Dr Hoye had implemented all of the measures needed.

52. In cross-examination, Dr Hoye maintained that she accepted that the claimant had a disability all along. She felt she had already assisted the claimant by giving her the template to use on ward rounds. She said that she discussed with the claimant her use of a notebook and that she did not feel it was appropriate or safe from a data protection viewpoint and where EPR is where the information needed to be stored with time otherwise wasted in transferring the information over. She said that she appreciated that the claimant was taking notes as a coping mechanism. She rejected a suggestion that she was becoming exasperated and explained her reference to being disappointed as her wanting everyone to do as well as they could. She agreed that referring to the claimant as a single employee out of 22 in difficulty would be horrible for the claimant now to read and she wished she had not written that. She agreed it wasn't a very supportive thing to say, but there was evidence of the great supervision that she had done. Dr Hoye said that she had a good reputation as a supervisor and this situation with the claimant was not compromising that.

53. On 6 November a trainee PA from Leeds University had reported working alongside the claimant and a situation where the claimant had not provided assistance with a particular patient. The incident was raised with Dr Hoye by Leeds University. Dr Hoye emailed colleagues on 23 November referring to the claimant having declined to assist the PA. She referred to the incident beginning to question the claimant's basic clinical skills and approach to sick patients. She referred to the claimant already having been told off for ignoring alarms. These were matters to be brought into their discussion regarding an action plan for the claimant. Dr Hoye had discussed the matter with the claimant prior to this date. The claimant's evidence is that she told Dr Hoye that she had been suffering from a panic attack at the time. Dr Hoye said it was possible that the claimant had told her this. Dr Hoye agreed that the claimant had told her that she was feeling disorientated on a different ward because she couldn't access the IT equipment she needed. Dr Hoye agreed that the claimant had been upset. Dr Hoye said in cross-examination that she thought that she had tried to understand why the claimant was upset and, when asked if it could have been because of her struggling in her role without reasonable adjustments, responded that that might have been the case.

54. Dr Hoye arranged for an in person education supervision meeting on 30 November to be attended also by Miss Ratcliffe. Dr Hoye said that she intended including a lot of negative comments and that she thought it would be a good idea to have Miss Ratcliffe there, including to support her (and

the claimant). She agreed that the claimant thought that she would be coming into a regular educational supervision meeting. Dr Hoye rejected, however, that the claimant was being lured to the meeting under false pretences. Dr Hoye said that she had asked the claimant to attend a supervision meeting and that is what it was. She considered that it was difficult to tell her in advance that Miss Ratcliffe would be there, because this could be taken the wrong way by the claimant and could make her more worried. She agreed that she did say at the meeting that the claimant would not have attended if she had known what the meeting was about. This was with reference to the way Dr Hoye thought some of the previous feedback had been received by the claimant. She elaborated that the claimant could be defensive and not accept criticism saying: "she doesn't always get the feedback fully". The claimant was described as listening, but Dr Hoye not being sure that she had fully taken it on board. There was a need to repeat and reiterate feedback. When put that this could be a function of the claimant's disability, Dr Hoye said that it was difficult for her to say. She felt that, if the claimant had known in advance of the purpose of the meeting, there would have been many questions and emails asking what it was about. She agreed that there was no prior history of the claimant not turning up at meetings.

55. Prior to the meeting Dr Hoye and Miss Ratcliffe had put together a document with the heading "performance improvement plan" which listed a number of target areas, performance concerns, expected standards of performance, agreed improvement actions and with timescales for a review. Dr Hoye said that she was unaware of the respondent's performance management procedures, which was why she had support around her, including Miss Ratcliffe. She had not previously had a format available to put together an action plan for PAs and thought that what Miss Ratcliffe and her had come up with would be an appropriate action plan for a supervision. Miss Ratcliffe had found the template and shared it with Dr Hoye who had then populated it with the performance concerns and actions required etc. Dr Hoye told the tribunal that she understood if the claimant was confused and upset, particularly if she understood what was meant by the performance improvement plan title (which Dr Hoye herself didn't). However, it was delivered in an appropriate manner with them looking at how the claimant could be helped.

56. The tribunal has been taken to the respondent's staff performance management policy. It was agreed that this applied to all medical staff. Its purpose was to help the member of staff to address any performance issues with the emphasis on the achievement of desired outcomes. The policy recognised that whenever disability was a contributing factor to poor performance, steps to be taken would invariably require reasonable adjustments wherever possible to the role. Miss Ratcliffe told the tribunal that she was not conscious of the need for reasonable adjustments when they put the plan together. She said that adjustments had not been raised as needed beyond what was already in place and that the claimant's

problems were not all about her disability. She then accepted that some of her problems were related to her disability and that was why a subsequent referral was made to OH (which in fact came somewhat later).

57. The policy provided at stage 1 for an informal process. Dr Hoye agreed that there were aspects of her intervention which fell into that stage, but what she was doing was "not labelled in my eyes as this." In retrospect, she did not like the use of the performance improvement plan title and she changed this, replacing it with the title of education action plan.

58. Miss Ratcliffe's evidence was that she did not believe that the plan or this meeting fell into any formal process – it was an informal action plan to support the claimant. The steps taken were in accordance with the policy, but informal, not formal.

59. Mrs Khan told the tribunal that Dr Hoye and Miss Ratcliffe had been trying to have an initial supportive conversation and had believed that they were at an informal stage without appreciating that this was part of the formal policy. The intervention was indeed at an informal stage, but that was stage 1 of the respondent's policy. She was of the view herself that the policy was misleading and the informal stage within the policy document shouldn't have been categorised as being stage 1.

60. Dr Hoye's position was that there was a lot more to the claimant's issues prompting concern than her disability. She needed extra support in her communication, teamwork and patient relationships which were nothing to do with her dyslexia. Reasonable adjustments were an issue in terms of word processing on ward rounds and notetaking. In cross-examination, Dr Hoye accepted that the claimant's dyslexia could affect her ability to retain information regarding clinical processes. She agreed that it might be very difficult to establish what were the causes of a problem. When put that it was sensible to implement reasonable adjustments before performance measures, Dr Hoye said that that was difficult to answer. She had received so much different feedback in terms of the variety of sources and type of concerns and not all were to do with writing. Again, however, she accepted that the claimant's difficulties might go wider than writing information down.

61. Miss Ratcliffe told the tribunal that the claimant raised that she would like to continue to use her notepad and that this had been agreed as an interim measure. She agreed that its use had been discouraged as it was not best practice, but said that it had been allowed. The claimant raised Dragon and Miss Ratcliffe told the tribunal that she believed that it was already available for everyone to use (the tribunal is not satisfied, on the evidence, that it was or from any particular date). She said, however, that the plan was not about, nor did it contain, any reasonable adjustments – the plan was not about reasonable adjustments or dyslexia but around all of their concerns,

including patient safety. The claimant did not want extra support on top of the action plan and Miss Ratcliffe believed that Dr Hoye had put in place all the support required. Miss Ratcliffe accepted again in cross-examination that there were no reasonable adjustments in place prior to the meeting or in the action plan.

62. Part of the action plan involved additional training and observations on clinical skills. It was arranged that the claimant would have a 90 minute session with a consultant to help her communication skills with particular reference to speaking to relatives regarding do not resuscitate protocols. Dr Hoye said they were trying to build the claimant's confidence in areas where she needed it. There was reference to the use of the template previously provided on ward rounds. When asked which of the support measures specifically related to disability, Dr Hoye answered that they were "not specific to disability but to help the claimant… I hope the more competent and skilled the claimant got, that would help with the whole situation, things tend to flow on paper easier then with experience… I acknowledge that I did not take into account specifically the disability in the plan."

63. At the supervision meeting on 30 November the claimant said she had wanted to know in advance that this was a meeting relating to supporting her performance. It was explained to her that this was an initial meeting to set targets, but was not part of an official HR process. There was an acknowledgement that the issues might need to be addressed in such a process in March 2021 depending upon how things went with this initial plan. It was said that the claimant would have been upset and have been asking questions about the meeting, if she had been aware in advance of its purpose.

64. The incident with the Leeds PA was discussed and Dr Hoye went through the action plan. The claimant said that she was unable to keep up with a particular consultant's ward round and had to document it afterwards. Dr Hoye referred to the claimant reducing the use of her notebook, as the record of jobs to be done should be on EPR.

65. It is the claimant's case that during the meeting, Dr Hoye shouted at her. Dr Hoye said that she never shouted and did not know where that suggestion came from. There was no shouting during the meeting. She also disputed the suggestion that she had been thumping the desk. She rejected the suggestion that the claimant was told that her employment might be terminated. If targets were not achieved, however, the formal stage was where it could lead to, she accepted. She agreed that ultimately it was progressed to the formal stage, albeit due to a further complaint rather than because of the action plan. On the other hand, Miss Ratcliffe was of the view that they had skipped the informal stage when those complaints were made. With this action plan they were acting informally in line with policy – it was the informal part of the formal policy. Dr Hoye said that she herself

did not know anything about the performance management process and that was not what the meeting was for. This was not something she would have been managing without a lot more people involved, including HR. Miss Ratcliffe was clear that the claimant was never told that her employment might be terminated. She said that it was absolutely not true that Dr Hoye had shouted and that she had not thumped the desk.

66. Dr Hoye and Miss Ratcliffe were, therefore, adamant that the possible termination of the claimant's employment was never mentioned. The tribunal accepts their evidence. Dr Hoye was certainly not thinking about a formal process and where it might lead. The claimant was upset at the meeting and clearly struggling to take on board what she was being told. Her evidence must be viewed in that context. The implication of the process being adopted was that there might be an escalation, which ultimately clearly could lead to a termination of employment. That is the message the claimant took away from the meeting, but not, on balance, the words actually stated at the time.

67. Similarly, the tribunal prefers the respondent's evidence on the issue of Dr Hoye shouting and banging on the desk. The claimant in evidence took an opportunity to demonstrate what she meant by Dr Hoye shouting and effectively mimicked a quavering and escalating tone of voice. This did not correlate with the allegation that Dr Hoye shouted at the meeting. The tribunal saw for itself the vocal intonation which the claimant was seeking to demonstrate. Dr Hoye had a tendency in evidence to gradually increase her speed of speech when becoming, as she did before the tribunal, upset, with an audible quivering in her voice. That is more likely than not how she came across at this meeting. It did not amount to her shouting. The claimant believes that Dr Hoye was also shouting at a subsequent meeting in January 2021, but the tribunal has listened to the audio recording of that meeting and, again, the above-mentioned characteristics of Dr Hoye's speech are evident in circumstances of her clearly feeling under significant stress and becoming upset. The claimant did not raise a complaint immediately after the meeting regarding Dr Hoye's alleged behaviour or, for example, in the chain of correspondence described below with Jackie Goodwin or as a separate allegation in her subsequent grievance. It is the claimant's case that Dr Hoye was annoyed because she had been criticised and shouted at by Leeds University with reference to the treatment by the claimant of the student PA. The email correspondence does not point to that sort of reaction by Leeds University and the tribunal rejects the proposition that Dr Hoye felt vulnerable in her own position as a result of any criticism by Leeds University. Again, the claimant was in a state of some shock and upset at the 30 November meeting and her recollection is likely to have been affected by that. The tribunal looks back at the earlier allegation of Dr Hoye shouting at the educational supervision meeting in September 2020 and factors in the same considerations before coming to a conclusion that the evidence of Dr Hoye, that she did not shout at that meeting, ought also to be preferred to that of the claimant.

68. The claimant was visibly upset at the meeting. Dr Hoye and Miss Ratcliffe were also both in tears after the meeting and Mrs Hurley met them both. They expressed to Mrs Hurley disappointment at how the meeting had gone and the claimant's reaction. They felt that the claimant had not taken their suggestions in the way which was intended and had become distressed. Miss Ratcliffe told Mrs Hurley that Dr Hoye was really upset and Dr Hoye indeed explained to Mrs Hurley that the claimant did not respond in the way that they had hoped and had been quite accusatory, taking their proposals as the start of a formal process. She felt that the claimant had refused to listen when Miss Ratcliffe was trying to get things back on the right footing.

69. On 6 December the claimant emailed Dr Hoye and Miss Ratcliffe asking to reduce her hours to 80% FTE. The claimant referred to an earlier email sent to Mrs Hurley on 23 September in which the claimant expressed a desire to discuss options around changing her working pattern around the difficulties she faced as a carer. She raised the additional time involved in her travelling to Halifax saying this would impact on the person she cared for and on her own health and well-being in a negative way.

70. The claimant emailed Jackie Goodwin of HR on 24 December asking for the PIP process to stop, saying that it was started with disregard to policy and against the Equality Act. Mrs Goodwin responded that day saying that managing performance issues, which had been raised with her through the informal stages of the performance management policy, was the correct way to do this. She continued: "I'm still unclear of what your disability is as you have not been descriptive but if you have a disability that is affecting your performance, this should be acknowledged and supported through your action plan." The claimant was advised to discuss this with her managers.

71. The claimant replied to Ms Goodwin saying that she had been invited to the meeting under unfair pretences. It had been noted that she was emotionally shocked at the meeting and therefore unable to take in all the information given to her. She said that she had been discriminated against due to her disability. She said she had done the best she could with what she had available, but no attempt to understand her situation had been made. This was not reflected in the action plan.

72. Miss Ratcliffe emailed the claimant on 6 January cancelling a video meeting to review the action plan in order instead to have a face-to-face meeting the following week. She referred to the claimant's disability and said that she was aware that Dr Hoye had supported her with different strategies. This could be discussed when they met, but she suggested a referral to occupational health to see what support they could offer asking if the claimant would be happy for her to make that referral. She said that she was sorry that the claimant felt she had been invited to the previous meeting

under false pretences, saying that the meeting was a supervisory not a performance meeting and there was no formal performance process in place.

73. On 7 January 2021, the claimant asked to suspend her application for flexible working.

74. A further supervision review meeting took place on 12 January 2021. The claimant produced a dictaphone at the start of the meeting and asked if it was okay if she recorded it. She explained that it would assist her given her difficulty in recalling information. Dr Hoye, who was present physically in the room with the claimant (Miss Ratcliffe attended by video), said that she could.

75. The claimant said that she was unable to express herself properly at the time of the previous meeting. She said that she found the meeting devastating and that it had a big impact on her. She said she was "absolutely floored". She said that she had spoken to colleagues and realised that she was in a performance management process - there was a crossover between the formal/informal and this needed to be clarified. Dr Hoye explained that from respondent's perspective this had always been an educational supervision meeting and that Miss Ratcliffe had been there in case extra support was required. She apologised that the claimant had not been told in advance, but said that she did not want her not to come if she was told that her manager would be there. She said that this was not a formal meeting. It had been an initial meeting and the situation would be reviewed.

76. At this point and quite suddenly, it is clear from the audio recording, Dr Hoye became more and more upset showing signs of extreme anxiety. She said that the phone recording was making her very agitated and that she couldn't do a supervision meeting knowing it was being recorded. She said that she was so sorry, but that she needed to stop the meeting. After the recording had been stopped, Dr Hoye apologised to the claimant saying that she had let her down – a reference, the tribunal finds, to not being able to complete the meeting. Dr Hoye then removed herself from the meeting room and discussions went no further.

77. Dr Hoye emailed Miss Ratcliffe the following day saying that she was sorry she fell apart, but was so shocked by the dictaphone recording, when she was already quite tense. She then said: "I did let her down as supervisor as well." Dr Hoye said that this was a reference to her being unable to finish the meeting, not to how she had supported the claimant in the preceding months. Again, the tribunal accepts that. Dr Hoye did not feel at the time that the claimant had been let down in her educational supervision.

78. Dr Hoye then emailed the claimant apologising for the way in which the meeting ended. She described herself as being "quite overwhelmed" by the presence of the dictaphone and felt under pressure as it was not something she had experienced previously in supervision meetings. She reaffirmed that this was not part of a formal HR process, but was a follow-up to check progress with the suggested educational targets. She referred to needing to reschedule the meeting to discuss the claimant's progress. She also said that they recommended that she had an occupational health review for her disability so that the respondent could offer any further support required using their recommendations. She said that she would prefer not to use a dictaphone in further meetings unless she was informed that the claimant must do so and would rather feel able to more naturally discuss how she could help the claimant.

79. Miss Ratcliffe actioned a referral to occupational health on 13 January 2021. In this she said that the claimant had highlighted that she had a disability, dyslexia, which resulted in short-term memory loss. Occupational health was asked to discuss with the claimant if any support/adjustments could be put in place. The space, under a heading in the form as to what adjustments had already been tried, was left blank by Miss Ratcliffe.

80. At the end of January 2021, Dr Hoye emailed consultant colleagues for feedback on the claimant's performance. The feedback contained positive and negative comments. One consultant referred to the claimant as coming in early to prepare and read notes in advance, trying hard to improve and with some signs that this was happening. However, she also described signs of clinical incompetence in the past and hesitation in having do not resuscitate conversations. The claimant was described also as only knowing recent events well and being unable to link them with past events in the patient's medical history. She found the claimant to be inefficient and slow in performing jobs saying: "I'm fully aware she has certain struggles, which is why she needs to write things down always on the ward round." A consultant colleague was more positive finding the claimant to be well organised and efficient with good knowledge and not getting things wrong any more than would be expected for someone of her level of training.

81. Dr Hoye described also being aware that there had been a complaint from a patient's family that was being investigated. When put to her that this had involved a complaint about a team of colleagues and not just the claimant, Dr Hoye said that she was not aware and did not know the outcome of it.

82. A further educational supervision meeting took place on 9 February with the claimant and Dr Hoye attending in person and Miss Ratcliffe by video. By that stage, an occupational health report had been produced on 29 January. This recorded the claimant as providing a diagnosis of specific learning difficulty affecting short-term auditory memory with the claimant's problems reported as mainly associated with the pace of documentation required,

particularly during ward rounds. She was also having some episodes of anxiety. In addition, a number of adjustments were recommended for consideration including additional time for record keeping, allowing the claimant to take written notes on ward rounds to assist with record-keeping, consider providing a laptop for her personal use to complete patient documentation and the claimant having a mentor. The claimant had reported finding work issues stressful and it was recommended that she access the respondent's Mental Health Well-being and Stress Management Policy to complete the Workforce Well-being Questionnaire. It was queried whether the claimant could take a colleague to support her to meetings to make notes for her. as she had advised that she could not recall meetings and found it difficult to remember everything discussed.

83. At the meeting, progress against targets was reviewed with the action plan updated. It was noted that the claimant had made "really good progress" at attaining action plan goals and her efforts were acknowledged. Under the heading of areas where she was doing better was included her preparing notes before ward rounds taking into account the last 24 hours of a patient's care. An area still needing improvement was to include in note preparation relevant information in the earlier period and assimilating and summarising that information as required. There was reference to the outcome being awaited of the aforementioned patient complaint. It was noted that the claimant had had a useful session with Dr Kiely about do not resuscitate conversations. In terms of the occupational health rerort, the claimant was to consider a funding application "for IT device e.g. personal laptop" and to complete a well-being questionnaire. The claimant was pleased that the next rotation would be at Huddersfield. It was noted that this would be in elderly medicine with a greater continuity of care.

84. It is noted that the claimant did subsequently make an application to Access to Work with a grant being approved on 20 November 2021 for some A4 yellow overlay sheets, a noise cancelling headset, Dragon medical practice edition (at a cost of £1994), a dictaphone, various training on the IT provided and training on coping strategies, neuro diversity awareness and disability impact. The total cost amounted to £7220.34 with a maximum contribution from Access to Work of £5599.08. The support did not include, for instance, a laptop, mentoring and a quiet space as it was said that the employer should provide those if she needed them as part of a reasonable adjustment. Dr Hoye was unaware of this application or the outcome.

85. One action noted at the educational supervision meeting on 9 February, in accordance with occupational health's recommendations, was that the claimant would complete a well-being questionnaire. The claimant completed the questionnaire termed as a risk assessment tool in an appendix to the well-being policy and returned it to Miss Ratcliffe. Miss Ratcliffe told the tribunal that this form of risk assessment tool had been superseded by a new version. She sent the claimant a link to this other form

which on completion went automatically to occupational health with Miss Ratcliffe being notified if anything arose from it. Miss Ratcliffe said that she did not know the outcome of the claimant's self-assessment and no steps were taken as a result. The claimant's answers to the questionnaire, as referred to below, indicated significant demands on her, with her having a lack of control and support as well as poor relationships with colleagues.

86. On 30 March what was termed to be a collective complaint was brought against the claimant by medical staff working on Ward 20. By this time the claimant had worked, intermittently, a total of 15 days on this elderly patient ward. Dr Hoye said that she considered that to be long enough for the claimant to familiarise herself with the ward. The complaint covered issues of patient safety, teamwork and professionalism. It was also said that the claimant took substantially longer at tasks which increased the workload of her colleagues. It was said that it should be recognised by the claimant and the respondent if she needed further support "which doesn't appear to be provided at current".

87. Dr Hoye requested consultant feedback which was provided by Dr Seebass on 15 April. She said that the claimant had had very little continuity and that she had had very little time to supervise the claimant. The claimant's time on the ward had limited her ability to get to know the patients and for support to be provided. The claimant was said to have taken well above average time to complete a task due to uncertainty about what exactly was expected. In the last week, the claimant had shown significant improvements. Dr Seebass felt that the claimant would benefit from a further period of continuous training on elderly care.

88. Miss Ratcliffe told the claimant about the collective complaint in a telephone call. The claimant subsequently provided her written comments. Dr Hoye believe that the claimant knew enough about the matters of concern raised to be able to provide those comments. Her view was that this was a collective complaint which had to be treated with importance. It did seem to fit with the types of problems she had seen in the claimant for months. She probably had taken the complaints at face value, she accepted in cross-examination. In the claimant's response she referred to her having been bullied. She said that a number of the complaints were untrue. She said that she had been persistently called "slow" and "poor" and that she had been wrongly put in "this formal performance management process". This had affected her performance. She said that she could not see why these concerns had not been dealt with on an informal line management basis.

89. Miss Ratcliffe was of the view that serious concerns had been raised from the full ward team, not just from one person. Matters of patient safety could not be ignored. When it was suggested that these should have been investigated to determine if the concerns were well-founded, she said that that is why they called the meeting with the claimant. Miss Ratcliffe agreed

in cross-examination that she did not question herself whether the complaints were true. She said that the claimant's suggestions of bullying were discussed at the subsequent meeting and that it had been made clear that the respondent did not tolerate bullying. However, the claimant had started working in this area in February and Miss Ratcliffe said that complaints of bullying needed to be raised in a timely manner and with details.

90. As already referred to, on 6 April the claimant completed and returned a workforce well-being questionnaire to Miss Ratcliffe. This was the form of document recommended by occupational health and part of the mental health and well-being policy. The claimant raised significant stressors the demands upon her, having a lack of control and insufficient support. She raised poor relationships with colleagues.

91. Miss Ratcliffe emailed the claimant on 6 April regarding a provisional booking for a formal performance management meeting on 19 April with herself and Jackie Goodwin from HR. She was told that, in accordance with occupational health advice, she could bring someone with her as support/to take notes. The collective concern from colleagues on Ward 20 was set out.

92. On 6 April the claimant emailed Miss Ratcliffe asking for her to list the reasonable adjustments which had been made for her.

93. When referring to this list in her evidence before the tribunal, Mrs Hurley said that the claimant was encouraged to speed up in her record taking in order to do her job effectively. It was her recollection that the claimant had been moved to work in an area with less acutely unwell patients and a lower patient turnover to support her. In cross-examination she said that it could be difficult to understand what the claimant was going through as someone who did not have the claimant's disability. There were concerns with the claimant's overall performance and Mrs Hurley meant that the claimant should speed up to the best of her ability. Mrs Hurley confirmed that no defined amount of time or specific provision had been made for the claimant to be given additional time for her record keeping. The pace of ward rounds was set by the consultant.

94. In advance of this meeting and to reply to the claimant's email, Miss Ratcliffe sought further information from Dr Hoye on a number of points. Miss Ratcliffe queried whether providing a personal laptop for the claimant would be a practical/reasonable adjustment saying that if they were allowing the claimant to take written notes on ward rounds a laptop would not be required. Dr Hoye's view was that the claimant needed to function effectively with EPR. She referred to it having been suggested that the claimant looked into Dragon dictation, but that she hadn't done this. She said that the claimant spent time transferring handwritten notes onto the

computer which stopped her from doing jobs. She was concerned that a written booklet could be lost or information not put onto EPR. The system was very susceptible to an inaccurate transfer of information noting that, at least with EPR, a consultant could remotely review her work or check respectively or at the time and correct the entries as needed. She commented that she thought a personal laptop would be an unnecessary expenditure.

95. Miss Ratcliffe responded to the claimant on 9 April with a long list of aspects of support given to the claimant. Miss Ratcliffe agreed in cross-examination that the items listed were not necessarily all reasonable adjustments. The claimant responded on 21 April asking which of those were not provided to someone who did not have a disability. Miss Ratcliffe replied referring to an occupational health referral, allowing the claimant to take her own notes, notes being circulated in a timely manner after each supervisory meeting, the claimant being encouraged to complete the health and well-being risk assessment and occupational health advising the claimant to contact Access to Work. The claimant was on 21 April copied in on a request from Ms Goodwin of Miss Ratcliffe asking her if it was possible to provide a laptop for the claimant's use. The claimant was not then involved in the email discussion between various managers about that. Mrs Hurley raised concerns regarding hygiene, security and storage of a laptop. Miss Ratcliffe concluded that it would not therefore be an appropriate adjustment – she wanted to discuss with the claimant why "she feels so strongly to having a laptop/how this would help her?" She felt the alternative solution would be to allow the claimant to use her own notebook. The tribunal is unclear as to the difference in terms of hygiene risk between using a notebook or laptop. A notebook, as the respondent envisaged it being used, did not assist the claimant in making the real time EPR entries the respondent maintained was necessary.

96. On 26 April Ms Goodwin emailed Miss Ratcliffe expressing confusion as to why they were at the formal stage of the performance procedure if the claimant had been meeting her objectives under the action plan. She said that she thought they were meeting the claimant because of the continued issues which had been raised. Miss Ratcliffe replied saying they had not called the meeting due to the action plan and the claimant not achieving targets, but rather had asked for the next stage in the process due to the concerns raised by Ward 20 since the action plan. The meeting was said to have nothing to do with the action plan/objectives. Miss Ratcliffe emailed the claimant on 26 April confirming that she had been on target with meeting the objectives set, however, serious, more recent concerns had been brought to her attention "which follow the same themes as the ones set in the action plan…"

97. The formal meeting was subsequently rearranged for 30 April 2021. An hour was scheduled for that meeting. The claimant had asked to be

provided with a laptop and a private room to take part in the meeting by video. Unfortunately, the laptop was sourced quite late in the day. When the meeting did take place the majority of the conversation was around the purpose of the meeting. The claimant raised disputes with concerns which had been raised by her colleagues. There was insufficient time to discuss any future action plan.

98. The meeting was therefore adjourned. However, the claimant was absent due to sickness (work related stress) from 4 May 2021 and did not return to the workplace. The management meeting was not rescheduled.

99. On 19 May 2021, Miss Ratcliffe emailed the claimant to confirm that the respondent would agree to her request to reduce her hours to 80% of a full-time position. The respondent could not, however, agree to her request not to work on the out of hours rota. The claimant told the tribunal that OOH work was a big issue for her.

100. The claimant raised a grievance on 22 June 2021 about a failure to make reasonable adjustments.

101. A further occupational health report was produced on 24 June. This confirmed that the occupational health advice given on 1 February remained applicable. Miss Ratcliffe emailed the claimant on 1 July 2021 referring to the occupational health report and saying that there were no further recommendations in addition to the ones in the previous report which had already been considered and discussed. Miss Ratcliffe said that the laptop was still not an option because of infection control issues and the position regarding the difficulty in providing a buddy remained. The claimant was still allowed to use her notebook and her requested rotation had been supported by the claimant being placed in Huddersfield on elderly care. The respondent now had more information regarding yellow overlay screens which would be discussed with the claimant on her return to work. Dates had been obtained where the claimant could receive training on the use of EPR - she had not contacted the claimant on this whilst she was sick. The claimant emailed Miss Ratcliffe on 1 July saying that she had no reassurances that reasonable adjustments would be implemented ready for her return to work which made her very concerned for her health and well-being. She said that she needed some reassurance that the laptop and mentor would be in place.

102. On 7 July Miss Ratcliffe commenced a period of sickness absence and then a period of maternity leave returning to work only in May 2022. Ms Bevan assumed her role during her absence.

103. The claimant's first grievance hearing held at stage 2 of the process took place on 9 July. An outcome was issued on 20 July 2021. As regards

the provision of a laptop, the claimant had been asked to explain how a personal laptop would benefit her. She described having software downloaded to it which could remove barriers. The panel upheld this part of her grievance and asked that IT equipment be identified for the claimant. The claimant's request for a mentor was not accepted on the basis that there was thought to be an established range of contacts and support colleagues available to the claimant including her clinical and educational supervisors. The panel understood that the claimant had been allocated additional time for record keeping as she would be working on the elderly rather than the acute floor. It was again understood that she would benefit from having a laptop and voice recognition software. Management was to undertake a mental health well-being and stress risk assessment with her. There would be in an agreed phased return to work plan.

104. Mrs Hurley told the tribunal that up to this point the respondent (without specific examples given) had tried to discuss the purpose of a personal laptop with the claimant and had been unable to ascertain the difference between her using the ward laptop and one for her personal use. The provision of a laptop was no longer a problem as they now had this information, provided infection control protocols were observed. Similarly, the respondent was struggling to understand what they claimant meant by her requiring a mentor or buddy. If the functions of a mentor were what would be expected of an educational or clinical supervisor, there was no need for an additional person. Occupational health seemed to be working, she said, on the assumption that there was an unmet need.

105. The claimant saw Dr Hindle of OH again who produced a further report on 28 July 2021 saying that the claimant would be able to return to work, but adjustments were likely to be required, as advised upon previously by occupational health.

106. The claimant attended a stage 3 grievance hearing on 13 September with an outcome issued on 7 October 2021. It was concluded that there was a range of individuals available to support the claimant. The claimant described needing someone who could answer questions whilst in the ward setting which did not fit with the panel's understanding of the role of a mentor. It was recommended that there be a discussion to identify who was the best placed person on the ward to provide the support for the claimant. It was recognised that at the previous stage it had not been understood that as well as working in the elderly ward, the claimant would be expected to work on the acute floor out of hours. Nevertheless, it was a requirement for all PAs to participate in the out of hours provision. The priority should be supporting the claimant's return to work to the point that this enabled her to undertake the full extent of the PA role. The panel concluded that there should be no formal performance management recorded on the claimant's personnel file.

107. A further occupational health report of 13 October recorded that the claimant was not fit enough to return due to health problems that had arisen due to workplace stress. By the time of a further assessment on 23 December 2021, little improvement in health was reported. It was said that the claimant's emotional well-being might improve if the grievance process found in her favour. However, the claimant had developed quite a lot of negativity in respect of her employment.

108. The outcome of the claimant's stage 4 grievance was provided on 23 December 2021. The panel concluded that there had been conflicting opinions as to what constituted a mentor. The claimant had not been consistent. The panel recommended the allocation of a mentor as someone who could set aside scheduled time each month to explore with the claimant how she was progressing and to support her to come up with strategies to manage her career and help build her confidence. In addition, it recommended the allocation of a workplace buddy, someone consistent if this was possible, during the claimant's agreed phased return to work. The panel understood that it might not be possible beyond the phased return to have a dedicated and consistent workplace buddy. The panel accepted that the claimant would benefit from being placed into a static role rather than rotating and that a permanent move to such a post would support her with her record-keeping when done in line with the other agreed reasonable adjustments such as a laptop allocated for her personal use with the required software and ability to use an electronic overlay. Following discussion with Mrs Hurley, it had been confirmed that, should she wish, the claimant could be permanently moved into a static role on Ward 20.

109. The claimant confirmed on 12 January 2022 that she would like to move to a static position on a permanent basis on Ward 20. She queried however how Mrs Hurley reconciled working out of hours after a phased return of 4 weeks, constituted a static position on a permanent basis. This had been confirmed to the claimant at a sickness absence meeting with Mrs Hurley on 6 January.

110. Reverting back to the stage 4 grievance outcome, the panel were clear from the outcome of the earlier grievance process that there was no formal performance management process in place and any reference to a formal process of performance management in the claimant's records would be deleted.

111. The panel concluded that any delays in providing reasonable adjustments were not from the commencement of the claimant's employment and there was no evidence of a request for adjustments prior to discussions held around the claimant's performance. The panel noted that those discussions appeared to have been handled in a very "clumsy" manner and that there was a need for managers to take learning from this. The panel were sure that appropriate action was taken upon becoming

aware of the claimant's learning difficulties with an occupational health referral completed which resulted in advice being provided for a number of suggested adjustments. There was then ongoing discussions regarding the implementation of those adjustments and, aside from a mentor and a laptop, a number of adjustments were put in place. The panel were clear, however, that there was a lack of clarity on the provision of a laptop for her personal use - now it was understood and was in place.

112. Mrs Khan agreed in cross examination that the claimant's grievance appeals were largely successful with most of the adjustments requested agreed and the provision of a laptop and mentor regarded as feasible. When put to her that they should have been implemented prior to the grievance process, she confirmed that, with hindsight, that was the case, but that discussions had taken place as to what was required.

113. A report from Dr Hindle, following a review of the claimant on 26 January 2022, recorded that the claimant was not fit to return to work. He said that she might be able to return to working from a fixed area where all adjustments could be put in place and she could develop a relationship with a supportive consultant. She could not, however, work on weekends or on twilight shifts where she would have to work on all the wards somewhat more flexibly. He said that otherwise she would not have the necessary adjustments or support to hand which would lead to her feeling stressed and exacerbate some of her underlying health conditions.

114. On 31 March 2022 Ms Bevan emailed the claimant confirming, amongst other things, that a phased return would take place over 4 weeks. She referred to Dragon software and the use of Zebra devices which were noise cancelling and worked as a dictaphone.

115. Ms Bevan wrote to the claimant again on 20 May 2022 following a sickness absence meeting 6 May. The claimant was given the name of 2 doctors on Ward 20 who would be available to her as support during her first two weeks back at work. Mrs Hurley did not consider that this necessarily meant that no one would be available in the subsequent 2 weeks of the phased return. She agreed that it would have been preferable if Ms Bevan had said something about the subsequent 2 week period. Mrs Hurley said that they had reviewed junior doctor rotations to come up with names of individuals who could support the claimant. She agreed that Ms Bevan was describing the provision of a buddy rather than a mentor here.

116. In accordance with the respondent's policy, the first 2 weeks of the phased return were to be paid as normal with the claimant utilising annual leave over the second period of 2 weeks.

117. Dr Hindle reported on 15 June 2022 that the claimant had significant symptoms of anxiety and depression. They were said to be consequent on her perception of the lack of support at work. The claimant could potentially be fit again, but with a period of 4 – 6 months of further lack of fitness.

118. The claimant had first contacted ACAS on 6 May 2021 and Equality Advice service for advice. She was aware of early conciliation requirements and the ability to go to an Employment Tribunal by 8 July 2021. The claimant was still pursuing her grievances at that point and seeking a resolution through them. She wanted to pursue her grievances to a final outcome. She thought that "it was all an extension of the discrimination" and just treated this as being the logical process before commencing these proceedings.

Applicable law

119. The duty to make reasonable adjustments arises under Section 20 of the Equality 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

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

120. The tribunal must identify the provision, criterion or practice applied/auxiliary aid, the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the claimant. 'Substantial' in this context means more than minor or trivial.

121. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know (actually or constructively) both firstly that the employee is disabled and secondly that he or she is disadvantaged by the disability in the way anticipated by the statutory provisions.

122. Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which as well as the employer's size and resources will include the extent to which the taking the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

123. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the predecessor disability legislation when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."* Pursuant, however, to **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10**, there only needs to be a prospect that the adjustment would alleviate the substantial disadvantage, not a 'good' or 'real' prospect.

124. In **Doran v Department for Work and Pensions EAT 0017/14** approval was given to a proposition that, in the context of a long-term ill health absence, the duty to make reasonable adjustments is not triggered unless and until the claimant indicated an intention or wish to return to work.

125. It is not permissible for the Tribunal to seek to come up with its own solution in terms of a reasonable adjustment without giving the parties an opportunity to deal with the matter (**Newcastle City Council –v- Spires 2011 EAT**).

126. If the duty arises, it is to take such steps as is reasonable in all the circumstances of the case for the respondent to have to take in order to prevent the PCP/lack of auxiliary aid creating the substantial disadvantage for the claimant. This is an objective test where the tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

127. In the Equality Act 2010 discrimination arising from disability is defined in Section 15 which provides:-

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

128. The tribunal must determine whether the reason for any unfavourable treatment was something arising in consequence of the claimant's disability – this involves an objective question in respect of whether "the something" arises from the disability which is not dependent on the thought processes of the alleged discriminator. Lack of knowledge that a known disability caused the "something" in response to which the employer subjected the employee to unfavourable treatment provides the employer with no defence – see **City of York Council v Grosset 2018 ICR 1492 CA**.

129. Any unfavourable treatment must be shown by the claimant to be as a result of something arising in consequence of the claimant's disability, not the claimant's disability itself. The EHRC Code at paragraph 5.9 states that the consequences of a disability "include anything which is the result, effect or outcome of a disabled person's disability". It has been held that tribunals might enquire as to causation as a two-stage process, albeit in either order. The first is that the disability had the consequence of "something". The second is that the claimant was treated unfavourably because of that "something". In **Pnaiser v NHS England 2016 IRLR 170 EAT** it was said that the tribunal should focus on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious for process of that person, but keep in mind that the actual motive in acting as the discriminator did is irrelevant.

130. Disability needs only be an effective cause of unfavourable treatment - see **Hall v Chief Constable of West Yorkshire Police 2015 IRLR 893**. The claimant need only establish some kind of connection between his or her disability and the unfavourable treatment. On the other hand, any connection that is not an operative causal influence on the mind of the discriminator will not be sufficient to satisfy the test of causation. If an employee's disability-related absence, for instance, merely provided the circumstances in which the employer identified a genuine non-discriminatory reason for dismissal, then the requisite causative link between the unfavourable treatment and the disability would be lacking. The authorities are clear that a claimant can succeed even where there is more than one reason for the unfavourable treatment. As per Simler J in the Pnaiser case: "The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (more than trivial) influence on the unfavourable treatment, and so amount to an effective reason or cause for it". Further, there may be more than one link in a chain of consequences.

131. The claimant also complains of direct disability discrimination. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

132. Section 23 provides that on a comparison of cases for the purpose of Section 13 *"there must be no material difference between the circumstances relating to each case*". Section 39(2)(d) covers "*any other detriment*" as a potential act of unlawful discrimination.

133. The Act deals with the burden of proof at Section 136(2) as follows:-

"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision".

134. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

> *"(1) A person (A) harasses another (B) if -*
> *A engages in unwanted conduct related to a relevant protected characteristic, and*
> *the conduct has the purpose or effect of—*
> violating B's dignity, or
> creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *the perception of B;*
> *the other circumstances of the case;*
> *whether it is reasonable for the conduct to have that effect."*

135. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

136. A claim based on "purpose" requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

137. Where the claimant simply relies on the "effect" of the conduct in question, the perpetrator's motive or intention – which could be entirely

innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the claimant is peculiarly sensitive to the treatment accorded him does not necessarily mean that harassment will be shown to exist.

138. Indirect discrimination, as defined in Section 19 of the Equality Act 2010, occurs where:

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

139. Section 123 of the Equality Act 2010 provides for a three month time limit for the bringing of complaints to an Employment Tribunal. This runs from the date of the act complained of and conduct extending over a period of time is to be treated as done at the end of the period. A failure to comply with a duty to make reasonable adjustments is an omission rather than an act. A failure to do something is to be treated as occurring when the person in question decided on it. This may be when he does an act inconsistent with doing it. Alternatively, if there is no inconsistent act, time runs from the expiry of the period in which the person might reasonably have been expected to implement the adjustment. The tribunal has an ability to extend time if it is just and equitable to do so, but time limits are strict. The person seeking an extension should provide an explanation for the delay and there will be a balance to be conducted between the parties in terms of the interests of justice and the risk of prejudice.

140. The Court of Appeal considered the question further in **Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170, CA**. It noted that, in claims where the employer was not deliberately failing to comply with the duty, and the omission was due to lack of diligence or competence or any reason other than conscious refusal, the employer is to be treated as having decided upon the omission at what is in one sense an artificial date. In the absence of evidence as to when the omission was decided upon, the legislation provides two alternatives for defining that point. The first of these, which is when the person does an act inconsistent with doing the omitted act, is fairly self-explanatory. The second option, however, requires an inquiry that is by no means straightforward. It presupposes that the person in question has carried on for a time without doing anything inconsistent with doing the omitted act, and it then requires consideration of the period within which he or she might reasonably have been expected do the omitted act if it was to be done. In terms of the duty to make reasonable adjustments, that seems to require an inquiry as to when, if the employer had been acting reasonably, it would have made the reasonable adjustments. That is not at all the same as inquiring whether the employer did in fact decide upon doing it at that time. Lord Justices Lloyd and Sedley both acknowledged that imposing an artificial date from which time starts to run is not entirely satisfactory, but they pointed out that the uncertainty and even injustice which may be caused, could be alleviated, to a certain extent, by the tribunal's discretion to extend the time limit where it is just and equitable to do so.

141. Applying the legal principles to the facts, the tribunal reaches the conclusions set out below.

Conclusions

142. The tribunal considers firstly the claimant's complaint alleging a failure on the respondent's part to comply with a duty to make reasonable adjustments.

143. Those claims based upon the application of a provision, criterion or practice relied firstly on the respondent discouraging the making of written notes during ward rounds. The respondent certainly did regard taking written notes during ward rounds, particularly in contrast to all information being immediately entered onto EPR, as not best practice and therefore a practice to be and in fact discouraged.

144. The respondent believed that the claimant was making entries, including sensitive information regarding patients and their medical conditions, in a notebook which she carried with her during the ward rounds. This was mistaken. The claimant was in fact, when required on ward rounds, entering the information on EPR. She was making notes in her notebook of tasks to be completed and of any information she gained from the ward round which would be useful in her future learning and development. She also had a separate piece of paper on which she had sketched out the layout/location of patients in an anonymised form. Her notebook also contained general information useful to her and to assist her orientate herself in the ward environment and access necessary supplies/equipment. The respondent thought that utilising EPR on ward rounds was best practice, believing that the claimant was not following that practice. Whilst the applicable PCP might more clearly and appropriately have been pleaded as the requirement (which the respondent certainly had) to use EPR on ward rounds, the discouragement of making written notes was integral to and part and parcel of that.

145. The respondent had genuine and good reasons for wishing EPR to be used and discouraging written notes. Information about a patient needed to be viewable in real time. There was a risk to patient safety if information was omitted and only added at a later stage of the working day when action could have been taken in respect of a patient already without the benefit of the information which derived from the ward round. Furthermore, the storage of confidential patient information in a paper system, carried around a ward and potentially left unattended by a PA, constituted a potential risk of breach of confidentiality and data protection obligations.

146. Nevertheless, the requirement of the claimant to make real-time entries into EPR did put her at a disadvantage when compared to someone who did not share her disability. That disadvantage arose because of the fast pace of ward rounds and the need, therefore, to enter information at speed. The information also needed to be entered fully and accurately if a risk to patient safety was to be avoided. When the claimant undertook this task, it caused her inevitable stress because her dyslexia symptoms inhibited her ability to process information and transcribe it onto EPR quickly and with confidence as to its accuracy. The claimant was slower in transposing the information than a person with whom she did not share her disability which rendered her in turn liable to be criticised and be regarded as not pulling her weight or performing at the level of her PA peers.

147. The respondent submits that the chronology is important in assessing what was known and when about the claimant's disability and the need to take any steps in respect of it. The tribunal agrees.

148. That chronology indicates that, prior to the claimant commencing her employment, there was no indication that, whilst the claimant suffered from dyslexia type symptoms, she would be unable to carry out ward rounds using EPR. Nor was that evident when she commenced her employment and underwent a process of induction including an initial meeting with Dr Hoye. Again, at that stage, all the respondent knew or could reasonably know was that the claimant benefited from using off-white paper, changing the background colour of text and telling her peers that she had dyslexia symptoms.

149. That situation fundamentally changed on 8 June when Dr Hoye raised with the claimant "poor/inappropriate documentation". She recorded the claimant as telling her that she felt that her dyslexia was inhibiting her EPR progress as she took more time to enter data. At this point in time certainly, Dr Hoye was aware that the claimant was struggling inputting information into EPR and that the claimant raised her dyslexia as the key inhibitor. The tribunal does not consider that situation to be objectively surprising. It is difficult to understand how the respondent cannot at this point have recognised a need to consider making reasonable adjustments, particularly in the context of such a common impairment with such well-known affects it typically has on an individual processing information and transposing it accurately. Nevertheless, the respondent remained essentially blind to the issue without seeing any need for further investigation. Telling the claimant to do more ward rounds for more practice and to gain confidence was never likely to provide a solution for someone with a lifelong impairment, which would not be corrected with practice. The claimant becoming more used to making notes in EPR was not going to make her quicker or more accurate or remove the stress that she felt in carrying out this pressurised and highly important task. Suggesting that the claimant alternate patients with another junior medic was not an unhelpful suggestion, but by no means a solution – the claimant would still have to write patient information into EPR as the consultant examined the patient. She would simply have more time between patients to prepare the next patient's history. Furthermore, no system was in any event put in place to ensure that the claimant was able to alternate patients on each ward round. An FY1 doctor was identified to work alongside the claimant over the subsequent 2 week period, but her rota did not always coincide with that of the claimant and she rotated into a different work area shortly thereafter in any event. Dr Hoye did not monitor the effectiveness of this suggestion or seek to make any alternative arrangements when the FY1 doctor was not available. There might have been occasions when the claimant could ask someone else to alternate with her, but the evidence is that the claimant having the benefit of such an arrangement during her period of working as a PA was variable and haphazard.

150. The consultants with whom the claimant worked were not advised of the desirability to change arrangements for ward rounds in a way which would help the claimant. The tribunal has noted Dr Callaghan's criticism of

the claimant. On 14 July, she made criticisms of the claimant's clinical practice and knowledge, but also that the claimant did not understand how the acute floor operated and that all the ward rounds went too fast for her to keep up with. Despite the claimant's disclosures at the 8 June meeting, Dr Hoye did not think that this feedback was relatable to the claimant's dyslexia impairment. Nor were any adjustments seen as necessary by Miss Ratcliffe, the claimant's line manager. She put the onus on the claimant to spell something out, which ought not reasonably have been needed to be spelled out any further.

151. There is no evidence of any steps then taken to assess the claimant prior to the educational supervision meeting with Dr Hoye on 28 September. Dr Hoye did seek to be constructive and supportive in number of respects at this meeting. However, she described the claimant's learning trajectory in terms of IT skills and documentation as slow. Dr Hoye was aware that a consultant on ward rounds had taken over the task of typing information into EPR from the claimant. Dr Hoye, against this background, suggested that the claimant shared with more senior colleagues how her dyslexia impacted on her ability to use EPR as speedily as others. It was said then that ward round adaptations could be made with reference again to the alternative notetaking arrangement which, as stated above, did not alleviate the claimant's disadvantage. The onus was on the claimant to inform others about her difficulties in the hope that they would then make adaptations to assist her.

152. Dr Hoye did foresee that a move to general medicine might assist the claimant given a more stable patient population which would enhance her familiarity of the patients whose history/treatment would recorded on EPR. The claimant was also provided with a template document with headings pre-populated which could be copied into EPR and allow the claimant to concentrate on inserting relevant information. That was also a helpful suggestion, albeit not a solution. The claimant was then tasked with looking into any additional IT support including Dragon dictation.

153. The situation for the claimant did not improve. On 16 November a consultant in general medicine was suggesting the claimant become supernumerary. The claimant was said to be struggling with efficiency on ward rounds and having to write jobs on paper as well as on EPR. The consultant tended to take over the typing on EPR. The claimant was described as not being "slick like some others" and again having to write all the jobs down. The consultant found herself wondering why the claimant needed to write certain things down. Clearly, she had not been informed of the claimant's impairment.

154. The situation caused Dr Hoye to share the claimant's struggles with Dr Hoye's colleagues, describing her as nowhere near on par with her very successful PA colleagues. Dr Hoye then recognised that the claimant had dyslexia, but in the context that the claimant viewed that as being a disability which impacted upon her work rather than Dr Hoye accepting that to be the case. Indeed, it must be inferred that Dr Hoye did not straightforwardly accept any connection between the two. Dr Hoye notes that she "cannot be prejudiced" against the claimant having dyslexia - she doesn't suggest an awareness of any positive duty to assist the claimant. She records that she has made suggestions on how the claimant can use EPR "to help herself". In summarising the claimant's issues, she includes reference to the claimant not effectively supporting ward rounds and being very slow with jobs and not grasping some important concepts. She expresses an element of incredulity that the claimant is writing everything down referring to EPR as being the necessary record. She expresses disappointment in the claimant, who is recognised as the only person in her PA cohort of 22 who is in difficulty.

155. Dr Hoye presented herself as oblivious to the claimant's difficulties being related to a disability. Whilst quite separate concerns had emerged regarding the claimant's clinical practice which needed to be addressed, all the issues appeared to be being lumped together. A performance improvement plan was then prepared for the claimant which the respondent asserts had nothing to do with her disability and accepts that it certainly did not constitute the making of any adjustments to her role.

156. At and beyond the 30 November educational supervision meeting to discuss the action plan, no thought had been given to further investigating the claimant's impairment including through a referral to occupational health. Again, Dr Hoye refers to a belief that "things tend to flow easier on paper with experience". It was only as result of correspondence between the claimant and Ms Goodwin in late December that Miss Ratcliffe was prompted to think to refer the claimant to occupational health. Ms Goodwin queried whether the claimant had a disability which was affecting her performance. Indeed, in the subsequent OH referral, Miss Ratcliffe left blank the section to complete setting out any adjustments which had been tried already. It is noted that whilst occupational health were asked to discuss any support/adjustments which could be put in place with reference to the claimant's dyslexia resulting in short-term memory loss, the respondent had not properly explored those questions directly with the claimant themselves.

157. The feedback received in respect of the claimant in January was that she was slow and ineffective. At the educational supervision meeting on 9 February, after receipt of the occupational health report, it was noted that the claimant would consider a funding application for a laptop and complete a well-being questionnaire. The respondent believed that the claimant was

being assisted by a move to a place of work with a slower pace and allowing her to keep written notes as an interim measure. Occupational health had recommended additional time for record keeping, but there is no evidence from the respondent that certainly any particular period of time was allocated to assist the claimant. That is not surprising. Again, on the ground, the claimant continued to input patient notes directly into EPR as best she could. There was not a period of time she spent inputting the notes after the ward round and indeed it would not be practicable for such time to have been allowed given the need for a consultant to ensure that the notes were full and accurate by the completion of the ward round.

158. Reports continued that the claimant was considered to be slow in performing her work. No further action had occurred and no meaningful further discussion with the claimant seeking to understand her issues. Having been referred to Miss Ratcliffe's list of adjustments made for the claimant of 6 April 2021, Mrs Hurley told the tribunal that the claimant had "been encouraged to speed up".

159. The chronology, in summary, is indicative of the respondent having knowledge of the claimant's disability and disadvantage, but not appreciating itself to be under a duty to make reasonable adjustments and not in practice fully turning its mind to how the claimant's disadvantage could be overcome. Again, there is a lack of recognition that the claimant would not simply gain in confidence and experience enabling her to work more quickly. Her condition did not allow her to do so, certainly if an acceptable patient record was to be maintained.

160. The tribunal does not consider that it would have been a reasonable adjustment to require consultants to change their own practice in terms of how they completed ward rounds and the speed at which they did so. They needed to be able to control that to ensure the greatest possible efficiency in patients being seen and treated as well as in the management of their own very valuable time. Nor would it have been a reasonable adjustment to allow a written note to be taken by the claimant and time allowed after the ward round for the information to be inputted into EPR. That was, again, indeed a risk to patient safety and breach of data protection.

161. The respondent, however, continued to allow the claimant to be in a position where she was likely to fail to satisfy consultants on ward rounds regarding the speed and efficiency of her data inputting. This was in circumstances where the tribunal has been told that ordinarily a consultant would have been accompanied by a group of around 4 junior medics any of whom could have inputted the information into EPR. The evidence is

suggestive of the number of medics involved in a ward round with a consultant having been reduced during periods of the Covid pandemic. However, the evidence is then of the consultant simply picking a person, often the claimant, to accompany him or her on the ward round to take the EPR record. That was, however, in circumstances where the tribunal has not been told that the claimant was the only person available to ask and indeed the evidence is suggestive of a number of junior medical staff on each ward the claimant worked on, who would have been able to perform this function.

162. The respondent has not persuaded the tribunal that the respondent would in any way have been negatively affected had the claimant not undertaken the EPR inputting during ward rounds. Nor is there any evidence that other staff would have been adversely affected if their involvement in inputting information during the ward round was increased. The tribunal appreciates that it would not be reasonable to require an employer to disapply, for an employee, the essential requirements of her job. Reasonable adjustments can, however, involve the removal or reduction of elements of a role. The claimant could still carry out the substantive role of a PA. The claimant's disadvantage would have been alleviated had the respondent engaged in a structured manner with consultants so that there was an understanding amongst them of the claimant's disability and how it affected her work with particular reference to inputting patient records at speed on ward rounds. The respondent could then have worked with the consultants to ensure that the claimant was not asked to carry out this function or on far fewer occasions when perhaps (exceptionally) no alternative medic was available and, in which case, the consultant would be mindful of the claimant's concerns and limitations. Clearly, the respondent was able to contemplate a system whereby the claimant only took notes of alternative patients with another junior medic. The tribunal does not consider that this arrangement was ever properly put in place as already described, but certainly on balance an arrangement could have been put in place which would have removed or largely removed the claimant from this responsibility and this would have been a reasonable adjustment in all of the circumstances. Subject to time limit issues, the claimant's claim would succeed in this respect and for the period from 8 June 2020 (the respondent's date of knowledge of the affects of the impairment) to 4 May 2021, from which date the claimant was unfit to work with no imminent prospect of return (and not one which would have been allowed by the straightforward implementation of this adjustment to her work).

163. The next PCP involves the respondent disallowing flexible working and requiring PAs to adhere to mandatory rota changes which involved moving sites to a different hospital within the trust. This essentially relates to the respondent's practice of rotating PAs across 2 different hospital sites.

The claimant was required to work at the Calderdale hospital site in Halifax rather than just at Huddersfield. The claimant had an issue relating to her disability in that it took her longer to become orientated with a different ward. However, in the period prior to the claimant's sickness absence, the claimant fully understood the respondent's wish that she gained experience in different medical disciplines and she was wishing to gain that variety of experience herself. The key issue for her relating to working on different sites (as opposed to different wards) was one of additional travel time which might affect the claimant's ability to care for her elderly parents. It is not the case that the claimant's additional travel time exacerbated her dyslexia symptoms – there was no substantial disadvantage. In all the circumstances, it would not have been a reasonable adjustment in this period to confine the claimant to the Huddersfield site, effectively because of the claimant's caring responsibilities.

164. Similarly, it would not have been a reasonable adjustment to remove the claimant from the out of hours rota following the occupational health report of 27 January 2022. Again, as regards the earlier period, prior to the claimant being absent on long-term sick leave, the issue was not simply the hours. The claimant's out of hours commitment in each eight week cycle was not significant. There is no evidence that she could not work the out of hours rota as allocated and, if there was a difficulty, it is clearly a difficulty which related to her caring responsibilities, not her dyslexia. The only argument remaining is that out of hours work involved working in acute medicine at whichever site the claimant was based from time to time. That meant a change in working environment. Again, the claimant was disadvantaged if she was required to work on a regular or short notice basis if wards were unfamiliar to her and if she required additional time to become orientated as to how the ward operated and/or where everything was. The claimant in continuing to be required to work out of hours was, however, being required to work again on the acute ward in Huddersfield. This is where the claimant had spent the first 6 months of her employment with the respondent. It was not, therefore, an unfamiliar environment which would take a significant period of re-orientation. It would then in any event become a familiar location for out of hours work. On the other hand, the respondent needed to utilise PAs on out of hours shifts to fill gaps in service provision and was not asking the claimant to work such hours excessively or without good reason. There is no evidence of a material affect on the claimant of lower staffing levels when working OOH. As regards the claim before the tribunal, with reference to the OH report of January 2022, a duty to make reasonable adjustments did not arise in any event, in circumstances where the claimant was never within the period to which this claim then relates fit to resume work.

165. Finally, it is suggested as a reasonable adjustment that the claimant be offered a four week phased return to work followed by a three month settling in period as recommended by the stage 4 grievance panel. Again, the claimant was not after this grievance outcome in a position to return to

work due to her continuing ill-health. How any return to work would have transpired is speculative, but the tribunal does not accept, for instance, that correspondence indicated that the claimant would be provided with the assistance of a buddy for a 2 week period only. The respondent was unable to specify who might act as a buddy beyond that period, not least given the fluidity of working arrangements. However, the continuing provision of a buddy was not ruled out.

166. The reasonable adjustment complaint is also pursued on the basis that the provision of auxiliary aids/services would have alleviated any disadvantage experienced by the claimant. The auxiliary aid of the provision of a laptop for the claimant's sole use on the ward was recommended by occupational health dated 29 January 2021. The tribunal agrees that the respondent was entitled to understand why the claimant might need a personal laptop and, in particular, how it might have helped overcome the disadvantages caused to her by her dyslexia. Indeed, the reason struggled to emerge clearly through these tribunal proceedings. It did, however, become clear eventually. The claimant's evidence regarding the difficulty in terms of locating a working laptop is the best evidence available to the tribunal of the situation on the ground and is supported by the email evidence of Mr Walsh. Dr Hoye may be correct that the situation had improved at some point regarding the availability of laptops and the speed at which they could be repaired, but that point of improvement could not be identified and her evidence disclosed that there had indeed been an issue. The claimant was disadvantaged if she could not readily locate a laptop due to the initial stress it caused her which in turn would impact on her ability to process information quickly and clearly. A laptop would nevertheless always be located prior to a ward round given the presence of a consultant who would have insisted on its provision to enable the real time entry of information onto EPR.

167. The claimant, however, could be faced with a number of different types of laptop with different keys/layout and different versions of an integrated mousepad. Whilst an element of customisation might have been possible through the claimant's individual login profile, the claimant would have been thrown by having to use different types of hardware which would inevitably have impacted negatively on her ability to process information and record it.

168. The evidence is that the respondent did not recognise why the claimant's use of a personal laptop was necessary. It ought, however, reasonably to have known. The respondent was struggling to understand its purpose, but again there is a distinct lack of evidence of proper and constructive discussion with the claimant. If that discussion had occurred,

then the information set out above would have become apparent to the respondent. In the period therefore from the provision of the occupational health report dated 29 January 2021 until the claimant's absence on sick leave on 4 May 2021 there was a failure to make a reasonable adjustment in not providing this equipment. Again, the evidence is of no steps having been taken to provide what was ultimately determined by the grievance panel as an item of equipment which ought reasonably to be provided to the claimant for her support. Subject to issues of time limits, this reasonable adjustment complaint would succeed.

169. The claimant also maintains that Dragon dictation or equivalent voice recognition software ought reasonably to have been provided to her to alleviate disadvantages. Despite a grant having been awarded through Access to Work ultimately and the respondent determining that it should be provided as part of the grievance outcome, the tribunal still cannot conclude that this would have alleviated any disadvantage. It struck the tribunal that the claimant herself did not know how and to what extent it might assist her. What is clear to the tribunal is that it would not have been used by the claimant during the ward rounds. Whilst the system of dictation may have provided a means of removing background distracting noise, the claimant would still have had to speak into a microphone during a busy ward round with background noise and with the claimant still having to hear and process what was being said as she was entering information onto EPR. Dragon dictation might have been of assistance had the claimant spent part of her working day in a quieter location with time allocated for specific notetaking tasks (not feasible in the context of the need for a contemporaneous record of ward rounds) or if, for instance, she was based in a clinic seeing a single patient at a time. There is no evidence however that she would have worked in such environments where she might realistically have benefited from voice activated dictation.

170. The tribunal also does not conclude that it would have been a reasonable adjustment in the period prior to the claimant's sickness absence to provide the additional support of a mentor and buddy. The claimant did have access to Dr Hoye as effectively a form of mentoring. Clearly their relationship did not run smoothly, but the tribunal cannot conclude that if a different individual, not in the claimant's management chain, had been allocated to act as a sounding board, that the claimant's disadvantages would have been alleviated. The claimant's disadvantages would not have been alleviated by simply having someone to discuss clinical issues or her concerns with. She needed particular steps to be taken to remove the burden of inputting data during ward rounds. The evidence as regards the availability of a buddy is that the hospital environment was too fluid in terms of staffing and rota changes to ensure that the claimant always (or even for the majority or a major part of her time) worked alongside any other junior medic consistently. Again, the claimant did not need someone shadowing her work but rather a system in place which ensured that on ward rounds in

particular there was an understanding and recognition of her difficulties and the need for greater leeway to be given to her in performing certain tasks to overcome those difficulties. It is clear, following the grievance process, that the respondent could not (reasonably) commit to the claimant having a permanent single designated buddy, albeit of course the claimant did never return to work following sickness to put that to the test.

171. The claimant next brings a complaint of discrimination arising from disability where the unfavourable treatment relied upon is, firstly, the initiation of performance management proceedings. The tribunal does indeed conclude that performance management proceedings of an informal nature, but as part of a formal performance management process, were initiated on 30 November 2020. The claimant was not unreasonable in viewing it as detrimental for her to be placed on what was termed and indeed in reality was a form of performance improvement plan where a failure to show an improvement could lead to action under the formal stages of the respondent's policy which could again indeed end with the termination of her employment. The supportive element of such a process does not prevent this from constituting unfavourable treatment.

172. The decision of Dr Hoye and Miss Ratcliffe to address the performance concerns through their action plan did then arise from the claimant's disability. As already recounted, the discussion on 30 November did arise out of feedback that the claimant was struggling to keep up with ward rounds and a belief that she had to document them afterwards. The respondent wished to reduce her use of her own notebook and ensure that patient data was on EPR. The claimant's learning trajectory was compared adversely to her peers.

173. Whilst the concerns about the claimant's performance went wider than her ability and speed in processing and recording information (and the clinical/patient safety issues would have involved the claimant having to show progress against defined objectives in any event), it must be concluded that the claimant's performance difficulties arising in consequence of the symptoms of her dyslexia were at the very least a material influence on the procedure which the respondent adopted.

174. The respondent certainly had a legitimate aim in wishing to ensure that the efficiency of its service was maximised, patient safety maintained and that the claimant should progress in her professional development. However, against the background of the lack of implementation or even due consideration of reasonable adjustments already described, placing the claimant on this plan cannot be viewed as proportionate. The respondent's performance management policy itself envisages that the respondent will look at reasonable adjustments as part of any performance management

process. It is clear from the evidence of the respondent's witnesses that they did not consider disability in the context of an explanation for the claimant's performance issues or in terms of adjustments which could be made to assist her. Whilst the tribunal accepts that the respondent did not simply do nothing, it did not engage with the issue to the extent that effective adjustments were in place which might have assisted the claimant in performing her record-keeping role.

175. The claimant's complaint of discrimination arising from disability must in this respect succeed, subject to time limit issues.

176. The second aspect of this Section 15 claim relates to the respondent's failure to pay the claimant her full salary for the duration she remained on sick leave. The tribunal is not, however, in a position to conclude that the claimant's sickness arose from her disability. She was certainly not absent because of her dyslexia symptoms. She was absent due to stress including work-related stress, but clearly there were a lot of things going on in the claimant's life which rendered her susceptible to poor mental health, not least recent bereavement, the strain of her caring responsibilities and the pressure she felt under in performing her PA role other than related to her dyslexia symptoms. Those symptoms were a background to, but not causative of, her absence. The respondent did not pay the claimant her full salary throughout a period of sickness because it was applying its own sick pay policies. That was in circumstances certainly where it would not have been a reasonable adjustment to increase the claimant's pay. That would not have alleviated any disadvantage and not resulted in any encouragement or improvement in the claimant's chances of returning to work. Had there been the requisite unfavourable treatment, the respondent's actions would have been proportionate in furtherance of a legitimate aim in the application of its sick pay policy.

177. The claimant then brings a number of indirect disability discrimination complaints.

178. The first two PCPs relied on are the issuing of performance management proceedings when a PA was not meeting expectations and then their escalation to a formal level if it deemed the employee had not made sufficient progress/improvement within several months. The respondent accepts that it operated those practices. However, there is then no evidential basis upon which the tribunal could conclude that this put or would put other PAs with dyslexia at a particular disadvantage when compared with non-disabled PAs. Such disadvantage cannot simply be assumed. As an impairment, dyslexia symptoms are on a spectrum and many of those with dyslexia will be able to function without any disadvantage, including in terms of the application of performance management policies. The escalation of the application of the policy to a formal level in fact occurred, not due to a lack of progress, but in particular

due to fresh and freestanding complaints raised about the claimant relating to patient safety which cannot be said to have arisen due to the claimant's dyslexia.

179. The third PCP is of the respondent subjecting PAs to mandatory rota changes which disrupted their working schedules. However, there were no rota changes disrupting working schedules, but rather a schedule of working which involved working in accordance with an eight week rota and where on a 6 or 4 monthly basis PAs may be rotated around different departments. Again, however, evidence of a group disadvantage is lacking.

180. Finally, it is said that the respondent declined to respond to PAs queries when they sought further clarity on the matter of their working arrangements. That is not in fact a general PCP but is very much focused on a chain of communication over a short period of time with Mrs Hurley. It might be said from that correspondence that Mrs Hurley operated a practice of seeking to discuss matters before confirming an outcome in email rather than entering into an initial email correspondence. In any event, the evidence does not amount to a refusal to respond but rather a preference to understand more before responding and to ensure that the outcome was clearly recorded. Again, there is no evidence of group disadvantage.

181. The complaints of indirect disability discrimination must fail and are dismissed.

182. The claimant then has a number of separate complaints of disability-related harassment. These include reference to Dr Hoye's behaviour and in particular her shouting during a supervision meeting on 28 September 2020 and then on 30 November. The tribunal's factual findings do not support that behaviour on the part of Dr Hoye having occurred.

183. Within the 28 September meeting, Dr Hoye did comment that the claimant was slow, but the claimant would indeed agree that she was slow in completing certain tasks. This was not an illegitimate comment to make and certainly in the context of the supervision meeting cannot be said to have in itself created the necessary humiliating or offensive environment for the claimant. It was not reasonable for the conduct to have that effect.

184. The claimant also complains about other clinical supervisors complaining about her being slow which initiated the meeting on 30 November 2020 at which the action plan was discussed. Feedback was given that the claimant was very slow with jobs. That was a factual perception and again an element of criticism that the clinical supervisors were allowed to make in the context of being asked to give feedback on the claimant's performance. Again, in context, the conduct did not create the

type of environment necessary in a claim of harassment. It was not reasonable for the conduct to have that effect.

185. The claimant complains that Dr Hoye suggested at the 30 November meeting that the claimant would not have come to the meeting if she had known what it was about. That was not a comment related to the claimant's disability. Dr Hoye did not, it is absolutely clear, think of the claimant in terms of her disability. She considered that the claimant did not readily accept criticism and Dr Hoye did not wish either the claimant to be concerned in advance of the meeting or to cause her to question the purpose of the meeting which Dr Hoye felt would inevitably have resulted in significant correspondence. Dr Hoye did misjudge the situation and her approach rather backfired in terms of an ability to have a constructive discussion with the claimant. In no sense whatsoever, however, was the treatment of the claimant related to her disability.

186. Finally, the claimant raises as an act of harassment the collective complaint from the medics working on the elderly patients' ward. The claimant's assertion that those individuals were ill disposed towards her for any reason related to her disability is indeed simply that – an assertion. The tribunal has no evidential basis upon which it could conclude that the concerns were anything other than genuine concerns focusing on issues of patient safety which the medical staff were reasonably entitled to make. It is noted in the complaint that the claimant takes substantially longer at tasks, continuing that it should be recognised by the claimant and the respondent whether she needs further support which did not seem to be provided at the current time. That indeed is suggestive of those making the complaint not being aware of the claimant's dyslexia and commenting with reference to it. It is not conduct which could be reasonably viewed as having the proscribed effect.

187. The claimant also complains about being lured to the meeting on 30 November 2020 to discuss performance issues as an act of direct disability discrimination. Reference is made to her being presented with a pre-populated action plan with no reference to reasonable adjustments and being advised that her employment might be terminated. The tribunal's factual findings are that the claimant was not told that her employment might be terminated, rather the claimant understood that this is where an action plan might ultimately lead with the respondent also referring to how matters might be potential escalated. In any event, any employee would have been warned by the respondent of potential next steps. The tribunal has also already considered these issues in the context of the complaint of harassment. The claimant's difficulty, in this particular complaint, is the need for her treatment to be less favourable than how a hypothetical employee with perceived performance issues, but who was not disabled, would have been treated. Again, the claimant complains that Dr Hoye suggested at the 30 November meeting that the claimant would not have come to the meeting

if she had known what it was about. That was not a comment made because of the claimant's disability. Dr Hoye was not thinking of the claimant in terms of her disability. She considered that the claimant did not readily accept criticism and Dr Hoye did not wish either the claimant to be concerned in advance of the meeting or to cause her to question the purpose of the meeting which Dr Hoye felt would inevitably have resulted in significant correspondence. There are no facts shown from which the tribunal could reasonably conclude that performance issues would have been treated any differently, including in the pre-population of an action plan, in the case of an employee where there were genuine performance concerns, but who was not disabled. The claim of direct discrimination must fail.

188. The complaints of the claimant which are well-founded are nevertheless subject to issues regarding applicable time limits. The tribunal understands that time limits are to be strictly applied. The authorities recognise that, particularly with regard to claims alleging a failure to make reasonable adjustments, it may be far from straightforward for an employee to appreciate when a reasonable time has expired for such adjustment to have been made. In this case, the claimant certainly and on a reasonable basis saw her attempts to have adjustments put in place as a continuing situation. She pursued a grievance through all of the respondent's grievance stages before bringing her employment tribunal complaint. That is what she thought she ought and had to do. The key issue for the tribunal is then one of balance of prejudice. The respondent has not been inhibited in the evidence it has been able to call by reason of the claimant lodging her complaint only after a period of extended sickness absence. Indeed, the matters raised in these tribunal proceedings are the same as those canvassed throughout the grievance process. The prejudice of not allowing the claims to proceed would fall far more heavily on the claimant who otherwise would not have the ability to have her claims determined in her favour.

189. Similar arguments apply in respect of the complaint of discrimination arising from disability relating to the managing performance process. The period from which time ran in this complaint is clearly easier to ascertain in the sense that the claimant was put on an action plan at a certain date albeit the action plan had a continuing effect and was never removed. Fundamentally, for the tribunal, the claimant's reason for not bringing an earlier claim is identical to that set out in her complaint of a failure to make reasonable adjustments and again in circumstances where the removal of the plan from her record was an aspect of her grievance. The balance of prejudice is again in her favour.

190. In conclusion it is just and equitable to extend time to allow complaints alleging a failure to make reasonable adjustments and discrimination arising from disability to be heard such that those claims which have been determined to be well founded subject to time limit issues

can indeed result in declarations of the tribunal that the claimant has suffered unlawful disability discrimination.

Employment Judge Maidment

Date 27 April 2023

ANNEX

Matters of Jurisdiction

Time limits

1. Have the Claimant's ('C's') claims of: failure to make reasonable adjustments, discrimination arising from a disability, indirect discrimination (disability), harassment (disability), direct discrimination (disability), unlawful deduction of wages, and personal injury (arising from discrimination), been brought within three months of the acts complained of taking account of the effect of the 'stop the clock' provisions in respect of early conciliation? (EqA 2010, ss. 123(1)(a) and 140B)).

2. In respect of C's complaints which derive from the Respondent's ('R's') failure to do something, namely the failure to make reasonable adjustments, when is R to be treated as having decided those things? (EqA 2010, s. 123(4)).

3. In respect of any individual complaints which are out of time, do they form part of a continuing course of conduct taken together with acts which are in time? (EqA 2010, s. 123(3)(a)).

4. If the complaints were not submitted in time, would it be just and equitable to extend time? (EqA 2010, s. 123(1)(b)). This is to be considered with particular regard to:

    (a) C's inaccess to legal advice at the time of the acts alleged;
    (b) C's unawareness of time limits at the time of the acts alleged;
    (c) The prejudice to C if the claim(s) were to be time-barred due to the mental illness she has suffered in consequence of her complaints;
    (d) C's timely pursuit of an internal resolution in raising a Grievance before resorting to Tribunal proceedings;
    (e) C's disability and the constraints that this places upon her.

Status

5. Was C an employee of R within the meaning of section 83(2)(a) of the Equality Act 2010? (This is not in dispute).

Disability

6. Was C a disabled person for the purposes of the Equality Act 2010 at the relevant time by reason of SpLD? (EqA 2010, s. 6 and Schedule 1). In particular, at the relevant time:
    (a) Did C have a physical or mental impairment, namely SpLD? (EqA 2010, s. 6(1)(a)).
    (b) If so, was it long-term? (EqA 2010, s. 6(1)(b), Schedule 1).
    (c) If so, did it have a substantial adverse effect (on that long-term basis) on C's ability to carry out normal day-to-day activities? (EqA 2010, s. 6(1)(b), Schedule 1).
7. Paragraph 6 is not in dispute.

Claims - Equality Act 2010

Failure to make reasonable adjustments (EqA 2010, s. 20, s. 21)

8. The Tribunal must decide whether R failed to make reasonable adjustments in respect of C. Issues include questions of:

9. On account of her disability, was C at a substantial disadvantage at work compared with non-disabled PAs without the provision of certain auxiliary aids and services? (EqA 2010, s. 20(5), s. 20(11)).

10. If so, did R take reasonable steps to avoid this disadvantage in its provision of auxiliary aids and services? (EqA 2010, s. 20(5)). C contends that the provision of the following aids/services would have been reasonable but these were not implemented by R and/or were not offered in a timely manner whilst C remained an active member of the workforce:

    (a) A laptop for her sole use on the ward;
    (b) A mentor and/or buddy; and
    (c) Dragon Speak or equivalent voice recognition software.

11. Did R apply one or more PCPs to C? (EqA 2010, s. 20(3)). C relies on the following PCPs:

    (a) R discouraged the making of written notes during ward rounds;
    (b) R disallowed flexible working and required PAs to adhere to mandatory rota changes which included moving sites to a different hospital within the Trust.

12. In respect of each of the PCPs relied upon, did that PCP put C at a substantial disadvantage at work compared with PAs who are not disabled? (EqA 2010, s. 20(3)).

13. If so, did R know or ought it to have known that C was disabled and was likely to be disadvantaged by that PCP? (EqA 2010, Schedule 8, Part 3, para 20).

14. If so, and thus the duty to make reasonable adjustments was engaged, did R take such steps as were reasonable to alleviate that disadvantage? C submits that the following adjustments would have been reasonable but were not implemented by R and/or were not offered in a timely manner whilst C remained an active member of the workforce:

    (a) Allowing C to make written notes freely during ward rounds;
    (b) Providing C with a static, permanent position;
    (c) Removing C from the out-of-hours rota;
    (d) Offering C a four-week phased return to work followed by a three-month settling in period as recommended by the Stage 4 Grievance Panel.

Discrimination arising from a disability (EqA 2010, s. 15)

15. The Tribunal must decide whether R discriminated against C because of something(s) arising from her disability. Issues include questions of:

16. Did R know or could it have been reasonably expected to know that C had a disability? (EqA 2010, s. 15(2)) (This is not in dispute).

17. If so, did R treat C less favourably on account of something arising in consequence of her disability? (EqA 2010, s. 15(1)(a)). C relies on:

    (a) R's less favourable treatment of C in that it initiated Performance Management proceedings on account of her being *"slow"* whilst executing her role. C being *"slow"* at work compared with non-disabled colleagues arose directly in consequence of her disability. SpLD symptoms, including difficulties with reading, typing, listening, and information retention, mean that C is unable to complete certain tasks as quickly as somebody without her disability.
    (b) R's less favourable treatment of C in that it failed to pay C her full salary for the duration she has remained on sick leave. C's period of sick leave arose directly in consequence of her disability. C's SpLD

means that she requires reasonable adjustments. These were not provided by the Trust. C became unwell in consequence which culminated in her being signed off work sick.

18. If so, can R show that the treatment was a proportionate means of achieving a legitimate aim? (EqA 2010, s. 15(1)(b)). Insofar as it may be necessary, R relies on its aims of:

    (a) Maximising the efficiency of the service;
    (b) Maintaining patient safety; and
    (c) Ensuring the professional development of C.

Indirect discrimination (disability) (EqA 2010, s. 19)

19. The Tribunal must decide whether R discriminated against C indirectly on account of her disability. Issues include questions of:

20. Did R apply one or more PCPs to C? (EqA 2010, s. 19(1)). C relies on the following PCPs:

    (a) R issued Performance Management proceedings when a PA was not meeting expectations in the workplace.
    (b) R escalated Performance Management proceedings to a 'Formal' level if it deemed the employee had not made sufficient progress/improvements within several months.
    (c) R subjected PAs to mandatory rota changes which disrupted their working schedules.
    (d) R declined to respond to PAs' queries when they sought further clarity on the matter of their working arrangements.

21. In respect of each PCP relied upon, did R also apply that PCP to persons with whom C does not share the protected characteristic of disability? (EqA 2010, s. 19(2)(a)).

22. If so, did that PCP put others who shared C's protected characteristic of disability at a particular disadvantage when compared with non-disabled counterparts? (EqA 2010, s. 19(2)(b)).

23. Did the PCP put C at that disadvantage? (EqA 2010, s. 19(2)(c)).

24. If so, can R show the PCP to be a proportionate means of achieving a legitimate aim? (EqA 2010, s. 19(2)(d)). Insofar as it may be necessary, R relies on its aims of:

    (a) Maximising the efficiency of the service;
    (b) Maintaining patient safety; and
    (c) Ensuring the professional development of C.

Harassment (disability) (EqA 2010, s. 26)

25. The Tribunal must decide whether R harassed C. Issues include questions of:

26. Did R's behaviour towards C amount to:
    (a) unwanted conduct;
    (b) related to C's disability;
    (c) which had the purpose or effect of violating C's dignity and/or creating an environment that was intimidating, hostile, degrading, humiliating or offensive to C? (EqA 2010, s. 26(1)).

27. C relies on the following conduct:

    (a) Dr. Hoye shouted at C: *"I thought you were going to tell your seniors about your learning difficulty!"* during the Clinical Supervision Meeting on 28th September 2020 (Paragraph 21, Grounds of Claim).
    (b) Dr. Hoye commented that C was *"slow"* in executing IT skills and handling documentation during the Clinical Supervision Meeting on 28th September 2020, and yet offered no practical support in respect of this (Paragraph 21, Grounds of Claim).

(c) Other Clinical Supervisors complained about C *"being slow"* which initiated the first Performance Management Meeting on 30th November 2020 (Paragraph 27, Grounds of Claim).

(d) Dr. Hoye said: *"You would not have come if you knew what it was about"* in reference to deceiving C as to the true agenda of the meeting on 30th November 2020 (Paragraph 25, Grounds of Claim).

(e) Dr. Hoye shouted at C: *"It's not very nice being shouted at!"* on 30th November 2020. As she did so, she thumped the desk (Paragraph 28, Grounds of Claim).

(f) C's colleagues on the Elderly ward at HRI issued a complaint against her in respect of 'Teamwork', having consistently excluded her and impeded her ability to communicate with them (Paragraph 40, Grounds of Claim).

Direct discrimination (disability) (EqA 2010, s. 13)

28. The Tribunal must decide whether R discriminated against C directly on account of her disability. Issues include questions of:

29. Did R treat C less favourably than it treats or would have treated others? (EqA 2010, s. 13). C relies on the following:

(a) C was lured to a Performance Management Meeting under false pretences on 30th November 2020 by Dr. Hoye. At this meeting, she was presented with a pre-populated PIP which made no reference to reasonable adjustments. She was advised by Kathryn Ratcliffe that her employment may be terminated unless her performance improved.

30. Was any less-favourable treatment accorded to C because of her disability? (EqA 2010, s. 13). C submits that an appropriate hypothetical comparator is a non-disabled colleague to whom issues with working standards could be appropriately attributed to a performance issue rather than a need for reasonable adjustments.

31. Are there facts from which the Tribunal could decide, in the absence of any other explanation, that R discriminated against C? (EqA 2010, s. 136(2)).

32. If so, has R shown that it did not discriminate against C? (EqA 2010, s. 136(3)).

Personal injury (arising from discrimination)

33. The Tribunal must decide whether C has incurred personal injury arising from the alleged discriminatory treatment. Issues include questions of:

34. Did C incur personal injury at the material time? C submits that she has suffered psychiatric injury; she has been diagnosed with both anxiety and depression during her period of sick leave.

35. If the Tribunal finds any or all of the alleged discriminatory acts to be made out, was this personal injury caused by the discrimination inflicted by R?

Remedy

36. What declarations, if any, as to the rights of C and R would be appropriate? (EqA 2010, s. 124(a)).

37. What compensation, if any, should R be ordered to pay to C? (EqA 2010, s. 124(2)(b)). In particular:

    (a) What financial losses has C sustained as a result of any acts of discrimination and harassment which the Tribunal finds to be made out?
    (b) Has C made reasonable attempts to mitigate her losses?
    (c) What injury to feelings, if any, has C sustained?
    (d) What personal injury, if any, has C sustained?

(e) Did R unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s. 207A(2)).

(f) Did C unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to decrease the award of compensation? If so, by what percentage (up to a maximum of 25%)? (TULR(C)A 1992, s. 207A(3)).

(g) What interest, if any, should be added to the compensatory award?

(h) Does the compensatory award need to be grossed up to take into account the impact of taxation?

38. What recommendations, if any, would be appropriate? (EqA 2010, s. 124(2)(c)).