EMPLOYMENT TRIBUNALS

Claimant: Ms M Creedon

Respondent: Department for Work and Pensions

Heard at: Manchester **On:** 13-17 March & 28 April 2023

Before: Employment Judge Phil Allen
Ms L Atkinson
Dr B Tirohl

REPRESENTATION:

Claimant: Dr M Ahmed, counsel
Respondent: Mr J Hurd, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The respondent did breach the duty to make reasonable adjustments contrary to sections 20 and 21 of the Equality Act 2010 by not temporarily postponing meetings or discussions pending the completion of therapy. That claim for breach of the duty to make reasonable adjustments succeeds.

2. The respondent did not breach the duty to make reasonable adjustments in the other ways alleged. The other claims under sections 20 and 21 of the Equality Act 2010 did not succeed and are dismissed.

3. The respondent did subject the claimant to unlawful harassment related to disability by its employees attending the claimant's home on 17 September 2021 including having discussions with the claimant's neighbours. That claim for harassment under section 26 of the Equality Act 2010 succeeds.

4. The claimant's claim for harassment related to disability as found, was brought within the time required by section 123 of the Equality Act 2010 because, whilst it was not brought within the primary time limit, it was brought within such other period as the Tribunal thought to be just and equitable.

5. The respondent did not subject the claimant to harassment related to disability in the other ways alleged. The claimant's other claims under section 26 of the Equality Act 2010 did not succeed and are dismissed.

6. The respondent did not subject the claimant to a detriment because the claimant had done a protected act. The claims for victimisation under section 27 of the Equality Act 2010 did not succeed and are dismissed.

7. Neither the claimant nor the respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance procedures, and it was not just and equitable to decrease or increase any relevant award as a result.

REASONS

Introduction

1. The claimant was employed by the respondent as an employee advisor (executive officer) from 7 December 2020 until she resigned with immediate effect on 30 November 2021. The claimant has various disabilities. She alleged that she was subjected to unlawful harassment related to disability and victimisation. She also alleged that the respondent breached its duty to make reasonable adjustments. The respondent denied the claims.

Claims and Issues

2. A preliminary hearing (case management) was previously conducted on 5 October 2022. At that hearing, a list of issues was agreed. It was appended to the case management order.

3. At the start of this hearing, it was confirmed with the parties that the issues appended to the previous case management order remained the ones which needed to be determined. That was confirmed, save for the deletion of issues four to seven which related to disability, as the respondent had conceded that all four of the alleged disabilities relied upon were disabilities as defined by the Equality Act 2010 at the relevant time. Issue eight, regarding knowledge, remained an issue, but the respondent's representative confirmed that it was accepted that by 5 September 2021 the respondent had constructive knowledge of the claimant's disabilities.

4. In this Judgment the Tribunal has determined the liability issues only, as it was confirmed at the start of the hearing that the liability issues would be determined first. The remedy issues were left to be determined later, only if the claimant succeeded in her claim, with the exception of issue thirty-two which it was agreed would be determined alongside the disability issues.

5. The list of issues is appended to this Judgment.

Procedure

6. Both parties were represented by counsel at the hearing. The hearing was conducted in-person with both parties and all witnesses attending in-person at the Employment Tribunal in Manchester.

7. An agreed bundle of documents was prepared in advance of the hearing. The bundle ran to 711 pages. On the first day of the hearing the Tribunal read the pages

which were referred to in the witness statements and (with the agreement of the claimant's counsel) the pages referred to in the respondent's written submissions. The Tribunal was also referred to some additional pages during the hearing. Where a number is referred to in brackets in this Judgment, that is reference to the page number in the agreed bundle.

8. The Tribunal was provided with witness statements prepared by the following witnesses: the claimant; Mr William Holt, employee adviser/manager; Ms Christine Owen, work coach team leader; Mrs Carol Speakman, work coach team leader; and Mr Mark Hardy, senior operations manager. On the first day of hearing, the Tribunal read the witness statements.

9. At the start of the hearing the Tribunal was also provided with an agreed cast list and an agreed chronology. The respondent provided a written submission document, which the claimant's counsel confirmed he was happy for the Tribunal to read.

10. Reasonable adjustments for the claimant had been discussed at the preliminary hearing (case management), after an application by the claimant for the final hearing to be conducted by video had been refused in the light of the respondent's objections. It was identified that additional breaks would be required, and movement breaks might need to be taken by the claimant to stand and stretch periodically. At the start of this hearing adjustments were again discussed and it was emphasised that (particularly during the time when she was giving evidence) the claimant could ask for breaks if she felt that a break was required. The claimant also handed to the Tribunal a letter about her conditions from Dr Muazzam, dated 17 October 2022, to assist the Tribunal in understanding her disabilities.

11. A proposed timetable had been included in the case management order made following the preliminary hearing. At the start of this hearing that was re-visited. The respondent's representative initially indicated that he would need no more than one day to cross-examine the claimant. The claimant's counsel proposed that the claimant's evidence should start on the second day, so that she was not part-heard overnight. That approach was agreed and the entire first day was taken for reading. The claimant's evidence was heard on the second day, when she was cross-examined by the respondent's counsel. As it turned out, it was not possible to hear all of the claimant's evidence in a single day and her evidence was also heard on the morning of the third day as well (when she was also asked questions by the Tribunal and re-examined).

12. The claimant requested that, when giving evidence, her chair should face the panel and not the respondent's counsel or witnesses, as she felt to have to do so would be triggering for her. The respondent had no objection to that arrangement, and accordingly the claimant gave evidence seated in that way.

13. The claimant clearly (and understandably) found that giving evidence was difficult for her. She was emotional for much of the time during which she gave evidence. The Tribunal ensured that regular breaks were taken and there were also pauses during the evidence to enable the claimant to compose herself. The mid-afternoon break on the second day of hearing was taken slightly earlier than usual at the claimant's request. On her return from the break, the claimant requested that the

hearing be stopped for the day and re-start the next morning. The respondent did not object to the request and indeed the respondent's counsel emphasised the Tribunal's duty to make reasonable adjustments. Accordingly, the hearing was adjourned mid-afternoon on the second day and the remainder of the claimant's evidence was heard on the morning of the third day. The claimant had difficulty in limiting her answers to the questions asked and almost invariably went on to address other matters when answering. To assist her in ensuring that the time during which she was giving evidence was kept to a minimum, it was suggested and agreed that the Judge would indicate to her when she did not need to say any more having given her answer to the question. The parties were also reminded of the Equal Treatment Bench Book. Time limiting the cross-examination of the claimant was discussed, but as a result of the approach taken by the respondent's representative, that was not necessary.

14. The claimant's representative initially estimated that one day would be required to cross-examine all four of the respondent's witnesses. Mr Holt's evidence was heard on the afternoon of the third day. The evidence of the three remaining witnesses for the respondent were heard on Friday 17 March 2023. Unfortunately, the Tribunal was unable to sit on the Thursday due to industrial action on the railway.

15. The respondent provided the Tribunal with an additional document at the end of the third day (the record of calls made from Ms Owen's personal mobile phone on or around 17 September 2021). The claimant's counsel did not object to the Tribunal seeing that document; but he did highlight its late disclosure and reserved the right to raise the issue in relation to costs.

16. All of the evidence having been heard in the time listed (but not submissions), both representatives expressed the view that oral submissions (in addition to written submissions) would be preferable and required in this case. Accordingly, the case was re-listed for a further day during which submissions were heard, and thereafter the panel considered and reached its decision (Judgment having been reserved). Written submissions were provided seven days prior to the hearing recommencing (with the agreement of the parties) and oral submissions were limited to no more than half an hour each (with agreement). Each of the parties provide a written submission document, and also made oral submissions.

17. Judgment was reserved and accordingly the Tribunal provides the Judgment and reasons outlined below.

Facts

18. The Tribunal heard some evidence about matters which pre-dated the period in question and/or which was not relevant to determination of the issues which the Tribunal was required to determine. The facts set out in this Judgment do not address all of the evidence heard, nor do they cover all of the matters about which the claimant was aggrieved and concerned.

19. The claimant suffers from Post-Traumatic Stress Disorder, Generalised Anxiety Disorder, Psoriatic Arthritis, and Temporomandibular Joint Disorder. The respondent accepted that each of those conditions was a disability at the relevant time.

20. The Tribunal was referred to a number of detailed policies operated by the respondent, including various versions of the grievance and issue resolution procedure, the attendance policy, the attendance management procedures and the sick leave and sick pay policy and procedure.

21. In the attendance policy (104) the respondent set out its policy principles. Those emphasised a work-focussed approach which involved early intervention to enable any help and support to be identified. Review meetings during continuous sickness absence were to take place and provide an opportunity to identify any help needed to enable the employee to return to work as soon as they were well enough. The respondent made a commitment to promoting a culture of attendance where employees felt valued, supported and committed to the business. It said attendance would be managed fairly and effectively in a clear and transparent way.

22. In the attendance management procedures (160), amongst other things it said:

a. Managers must: act early, sensitively and constructively to address health issues; take decisions that are reasonable, proportionate and based only on the circumstances of the case;

b. Managers should be flexible and practicable in applying deadlines in the procedures;

c. Managers must carry out a stress management plan as soon as possible if the absence is stress-related;

d. The manager must keep in regular, appropriate contact with the employee during their absence in accordance with agreed arrangements. This contact must not be overly prescriptive. Keeping in touch must be positive, supportive, and appropriate to the individual circumstances (166);

e. After fourteen consecutive days the manager must arrange a keep in touch discussion with the employee to explore the support needed to help the employee return to work. If the absence continued beyond twenty-eight days it said it was important to have regular formal review meetings, normally on a monthly basis (173); and

f. At the review meeting the manager must be sensitive and supportive, trying in all cases to help the employee overcome their illness and return to work (174).

23. In the sick leave and sick pay policy (187) it said there would be regular contact during absence. It stated that it may include visits to the employee's home with the employee's agreement.

24. In the Attendance Policy (195) it talked about keeping in touch through regular and appropriate review.

25. In the Attendance Management Procedures there was a section on formal action for continuous long-term absence (227). That recorded that absence was

long-term once it reached twenty-eight consecutive calendar days. The policy went on to say:

> "*After 14 consecutive days the manager must arrange a keep in touch discussion with the employee to explore the support needed to help the employee return to work. If the absence continues beyond 28 days it is important to have regular formal review meetings, normally on a monthly basis, to explore the support needed, but also to consider whether the employee is likely to return within a reasonable time frame"*

26. Prior to starting work with the respondent, a pre-employment occupational health report was prepared regarding the claimant, following a consultation on 10 November 2020 (277). That report confirmed that the claimant was fit to carry out the full remit of the role for which she had applied, subject to some reasonable adjustments. There was reference to the claimant benefitting from workplace and equipment assessments. The claimant's Generalised Anxiety Disorder and psoriatic arthritis were detailed, albeit it recorded that the claimant had made full recovery from the former, something which the claimant denied. Mr Holt's evidence was that he had not seen that report, it being a report obtained and provided before the claimant started employment.

27. The claimant commenced employment with the respondent on 7 December 2020. She was initially engaged on a fixed term contract to 6 December 2021. Shortly after the start of her employment, the claimant recorded Hannah Bellis on the respondent's system as being her next of kin, having exchanged text messages with Ms Bellis asking for her contact details (292). There was no dispute that Ms Bellis' name (as emergency contact) was recorded on the respondent's systems. The claimant contended that her details were also recorded. The respondent denied that any details were recorded on the system (at least by 17 September 2021 when they were checked by Mr Holt). The Tribunal was provided with various screenshots from the respondent's systems, but it was not provided with any screenshot which showed Ms Bellis' contact details as recorded on the system itself.

28. The claimant commenced working from home on 8 January 2021. She passed her probationary period on 10 June 2021. Her fixed term contract was extended by six months to 20 June 2022, on 6 August 2021 (345).

29. William Holt was the claimant's line manager from the start of her employment until September 2021. During the period prior to 5 September 2021, some issues arose regarding the claimant and, in particular, her relationships with colleagues. The claimant also had her office changed on various occasions; the claimant contended without her agreement. The Tribunal was shown documents which recorded the claimant raising issues and Mr Holt was questioned about them. There was no evidence that the claimant ever raised a formal complaint or grievance, and it was Mr Holt's evidence that the claimant did not wish to raise any of the issues formally. Some of those issues clearly formed the background to the claimant's issues from 5 September 2021 and explained the claimant's concerns about the involvement of certain individuals after that date. In determining the matters raised in the list of issues, it was neither necessary nor appropriate for the Tribunal to make any findings about what occurred prior to 5 September 2021. The claimant did access and receive four sessions of therapy via the respondent during this period.

30. At 5.30 pm on Sunday 5 September 2021 the claimant sent an email to Mr Holt and her trade union representative, Ms Lindsay Curtis. That email (571) was headed "*Union request for grievance process and Documentation/Signed off*". It began by saying "*I am writing due to Kate Lagan's behaviour which I raised to you to address*" and concluded by saying "*Lindsay, can you please send the Grievance process and forms and ill complete the full process. The above is not the grievance and will be addressed in points, ill be in contact with the fit note*". The content of the email primarily addressed a complaint about Ms Lagan, but it was also clearly critical of others, including Mr Holt.

31. Within the email, the claimant stated that what had occurred was making her physically sick and suicidal. She also stated: "*My doctor has also been alerted to feeling suicidal*". She referred to: the events as having affected her mental health extremely negatively; victimisation; and "*DWP have duty of care and I'm protected under the Equality Act, with my health conditions, that have been overlooked in these circumstances*". She stated that she was requesting occupational health's involvement (now). From her evidence to the Tribunal, it was clear that what the claimant was seeking, and expected, was to be able to access EBT therapy through the occupational health provider.

32. It was the evidence of both Ms Owen and Mrs Speakman that, prior to these proceedings, they had never seen the email of 5 September from the claimant. They were not provided with a copy by Mr Holt. When challenged about it, Ms Owen stated that she did not believe it would have been helpful to have seen the content. The Tribunal would observe that it was obvious that those managing the claimant's absence would have found it of assistance to have seen this email and its content, but accepted the evidence of Ms Owen and Mrs Speakman that they had not seen it.

33. The claimant was absent from work on ill health grounds from Monday 6 September 2021, albeit that the claimant alleged that she was told to log on to her computer each day by Ms Jones and did so until she spoke to the respondent. On the morning of Monday 6 September Mr Holt read the email. He was also telephoned by Ms Curtis, the trade union representative, who told him that she had been speaking to the claimant that morning and she proposed that Mr Holt should have no further dealings with the claimant. Mr Holt also spoke to his manager, Ms Lisa Jones. Mr Holt's evidence was that Ms Jones told him that he should have no further involvement with the claimant. It was also his evidence that Ms Jones had spoken to Ms Curtis as well, albeit as the Tribunal did not hear from either of them we did not hear what was said. There was a lack of any notes made of any of the conversations at the time including, in particular, by Mr Holt. Mr Holt was questioned by the claimant's representative about the absence of any fuller response by him to the serious matters raised in the claimant's email; and he was clear in his evidence that it was his understanding that he would not have any further dealings with the claimant and that Ms Owen would be handling her absence management issues. He said that he had walked away because he was asked to; the claimant having advised that she was going to raise a grievance.

34. Ms Jones emailed Ms Owen at 5.41 on 6 September (383) and asked her to take over the absence management of the claimant. She was informed that the claimant needed an urgent occupational Health referral as she was citing mental health and Ms Jones referred to the possible grievance. Ms Owen was asked to

speak to Ms McLaughlin (her own line manager) and Mr Holt the following day. Mr Holt's evidence was that when he spoke to Ms Owen, he provided only relevant contact details. It was also clear that some emails had been forwarded.

35. The claimant herself signed an occupational health referral consent form on 8 September 2021 (391). The claimant's evidence to the Tribunal was that she was very low in the week commencing 6 September. The claimant contacted the police on 8 September expressing suicidal thoughts, something which was evidenced by a redacted copy of the police logs provided to the Tribunal (394). The claimant, in her answers to questions, explained that her mental health was in crisis at this point and there were no ifs and buts about it.

36. Ms Owen's evidence was that she endeavoured to contact the claimant on 8 September but the mobile number which she had been provided by Mr Holt by Teams Message was incorrect. The claimant said this was a false account. She also alleged that the respondent was effectively undertaking psychological warfare. The Tribunal accepted Ms Owen's evidence about this.

37. On 9 September 2021 Ms Owen obtained the correct number and telephoned and spoke to the claimant. Ms Owen first phoned the claimant at very shortly before 10 am, when the claimant was due to start a counselling call. Ms Owen then phoned and spoke to the claimant again after 11.30 am, when the counselling call had ended. There was no dispute that the two calls took place; there was dispute about what was said.

38. The claimant's evidence was that on the first call, at 9.58, Ms Owen told the claimant straight away that she needed to return to the office, otherwise she would lose her job. Ms Owen denied that was what was said, and she said that she had simply agreed to speak to the claimant later after her counselling call.

39. The counselling call took place as arranged, albeit that the claimant's evidence was that she was so affected by the preceding call with Ms Owen that the counsellor needed to spend at least some of the call grounding the claimant. The counselling was provided by the respondent, as part of the PAM Assist service.

40. At 10.01 on 9 September the claimant sent an email to Ms Owen and Ms Curtis (401). The claimant's evidence was that she did this at the start of her counselling call, having already created most of her email prior to the call from Ms Owen. Ms Owen believed the email had been sent before they had spoken. The email provided the occupational health consent form which the claimant had completed. The claimant provided her contact details. She also said "*I am really unwell to be logging on continuously so I will await your call as need to look after my wellbeing and mental health. What would be best is n agreed weekly call as excessive calls will have a detrimental affect and hinder my recovery"*. The email made no reference to the claimant having been told that she needed to return to work otherwise she would lose her job. The claimant herself suggested in the email that calls should be weekly, in contrast to what she said in evidence she said in the subsequent call, which was that they should be monthly.

41. The Tribunal was provided with the keeping in touch notes maintained by Ms Owen about the calls made, which recorded both the issues in obtaining the correct

mobile phone number on 8 September and a detailed account of the calls with the claimant on 9 September (629). The claimant contested what was recorded in the notes and contended that the notes had been made after the event by Ms Owen. According to Ms Owen's notes, amongst other things, in the second call on 9 September the following were discussed: the treatment being received from the claimant's GP and that she was using Tameside Healthy Minds; stress management plans and that one would be likely to be recommended for the claimant's return to work; the respondent's keeping in touch process and the frequency of such contact; an occupational health referral; the outstanding work and the claimant's concerns about it; and that the claimant's trade union representative had provided her with the grievance procedure so it did not need to be re-issued. A central issue of dispute was that Ms Owen's note recorded that it was agreed that a fourteen day keeping in touch review was arranged for noon on Friday 17 September, and Ms Owen confirmed in evidence that was what had been arranged in that call. The claimant strongly denied that was what had been arranged, she asserted that what had been agreed was that contact would only occur monthly, as that was what the claimant considered to be appropriate contact. The claimant's evidence was that she was too sick to be on-line and being on-line and/or in contact with the respondent heightened her state of distress.

42. Ms Owen emailed the claimant at 1.15 pm on 9 September (399). The email referred to the earlier conversation and the mix up with the mobile number the previous day. It confirmed that the claimant was already engaged with Pam Assist. It referred to the claimant's concerns about outstanding work and asked the claimant to send the information so that Ms Owen could ensure that Mr Holt's team picked anything up in the claimant's absence. In the email Ms Owen also said: "*Going forward I have agreed weekly kits with the next kit incorporating the 14 day review to save a further kit – Next KIT 17/09/21 at 12.00. As discussed if you need to contact me outside the kit arrangements that is ok to do so".*

43. On 10 September 2021 at 12.57 the claimant sent Ms Owen an email (397). The majority of the email addressed work issues. In the email the claimant thanked Ms Owen for the explanation about the absence of a follow up call and why she was now the point of contact. The email ended by saying "*I think that's it for now. I have left billy's email on my out of office for people to contact him in my absence also, until 4 October*". Billy was Mr Holt, and was the appropriate out of office contact as the manager of the claimant's team. The claimant's evidence was that what she had said she believed made it clear that she would not be contactable until 4 October (which was the date when her fit note expired). In any event, it was the claimant's evidence that after sending this email she logged off from the respondent's systems, put the laptop away, and did not log back on again (prior to the events of 17 September).

44. Ms Owen responded to the claimant's email at 1.15 pm on 10 September (396). She explained that she was waiting for the claimant's records to be transferred on the occupational health portal and that might not be until the following week. She ended her email "*Take care and I'll speak to you next week*". The claimant's evidence was that she did not see this email at the time as she had logged off from the respondent's system.

45. Ms Owen referred the claimant to the occupational health provider on 10 September 2021 (414). Ms Owen also asked for the contact manager details to be transferred on the system so that she could complete the urgent referral (420). On 13 September Ms Owen also emailed the claimant to confirm that the occupational health referral had been made (436); an email which the claimant would not have seen at the time as she was not logged on to the system.

46. It was the evidence of Mr Holt that he remained the relevant contact manager on the respondent's systems for the claimant and the person who had access to her relevant records on the HR system, until they were transferred to Mrs Speakman in October 2021. His evidence was that Ms Owen was taking responsibility for the absence management of the claimant and it was important that she made the occupational health referral so that any report would be returned to her, but the other management access was not transferred to Ms Owen.

47. The Tribunal was provided with a copy of the referral form which the respondent asserted was the one submitted by Ms Owen as part of the occupational health referral (416). Based upon the evidence which she gave about her conversation with the occupational health provider on 11 October 2021, the claimant asserted that the referral provided was not the one which Ms Owen had actually made. The claimant's case was that the referral had been created later by Ms Owen and it was fictitious. There was a dispute about the fact that the report stated that the reason for the referral was long term absence, when at that time the claimant's absence had only been for a short period. Ms Owen's evidence was that because the claimant's fit note recorded that the claimant was going to be absent for twenty-eight days, that meant that the absence was long-term.

48. The other significant area of dispute about the occupational health referral was that it made no reference to the claimant's statements about being suicidal. The claimant asserted that it should have done so. She believed that if the report had included that information, her referral would have been red-flagged and she would have been seen within forty-eight hours. That view was based upon what the claimant knew occurred for claimants to the DWP (not employees) when something similar occurred with claimant assessments. There was no evidence that the same process applied to occupational health assessments as the claimant asserted, and the respondent's witnesses denied that it did. The Tribunal accepted that it was self-evident that an occupational health provider might make arrangements for an assessment more quickly if suicide was referred to and that was identified at the time the appointment was being arranged, but if there was no process in place (as appeared to be the case for employee referrals) that might not be identified.

17 September 2021

49. It was Ms Owen's evidence that on 17 September 2021 she phoned the claimant at noon as arranged. There was no reply, and a message was left. She phoned again at 12.30. There was no reply, and a message was left. She made a third call at 2.16 pm with no reply. Ms Owen then consulted Mr Holt about next of kin contact information, as he was the person with the access to that part of the respondent's system. As explained above, Mr Holt's evidence was that whilst Ms Bellis was named as the next of kin, he found no contact details for her on the system. At 2.37 pm Mr Holt sent the claimant a text message explaining that Ms

Owen was trying to ring the claimant for her review and asking if she was free (485). At 4.30 pm Mr Holt phoned the claimant without reply. His evidence was that he was asked to phone the claimant and he believed the claimant might respond as his details would be in the claimant's phone and she would know that it was him calling. He said he never left messages in such a situation. Mr Holt's evidence was that he went home from work before anything further happened and he was not part of the decision-making about later events. Ms Owen's evidence was that she made a final call from the office at 5.32 pm without reply. The calls and attempts at contact were recorded in the notes made by Ms Owen (630) which the claimant disputed.

50. Ms Owen sent an email at 5.15 pm (439). Ms Owen's evidence was that she had no ability to send emails for the respondent when not in the office.

51. The claimant's evidence was that she had the mobile phone turned onto silent and placed it in a room with the laptop which was switched off. She did this because the phone and laptop could be triggering to her. The claimant did not receive any of the calls or messages at the time.

52. Ms Owen's evidence was that on the afternoon of 17 September she spoke to Ms Hall, HR Business Partner, and Ms McLaughlin, the customer service leader in her department, about the situation. Her evidence was that it was their advice to check the next of kin details on the respondent's system, which led to the conversations with Mr Holt and him accessing the system. Ms Owen's evidence was that in the absence of any details, as the claimant had raised the possibility of suicide in previous correspondence, and in the absence of responses to calls, she was advised by Ms Hall and Ms McLaughlin that it would be appropriate to do a welfare check by visiting the claimant's home. Ms Owen's evidence was that she learned about the claimant's references to suicide from Ms McLaughlin in her conversations with Ms McLaughlin on 17 September. The respondent placed emphasis upon the fact that this occurred on a Friday and therefore there was concern about leaving matters over the weekend.

53. It was Ms Owen's evidence that, approximately one year previously, another welfare check had been conducted for a colleague in the Hyde office of the respondent. Sadly, that welfare check had found that the colleague had died by suicide, and the person undertaking the welfare check had found the person at their house. That was part of the explanation for the decision to undertake a home visit for the claimant. Ms Owen asked a colleague, Ms Millington (another work coach team leader), to accompany her to provide additional support in case there was a need for emergency contact (and in the light of the events of the previous year).

54. When asked about whose decision it was for a home visit to be undertaken, Ms Owen referred to it being a decision made by both Ms McLaughlin and herself following the call earlier in the day between the two of them and Ms Hall, when the possibility had been discussed. She did not specifically attribute the decision as having been made by any one of the three.

55. There was no dispute that Ms Owen and Ms Millington visited the claimant's home on 17 September. They initially knocked on the door and rang the doorbell. When there was no response. They knocked harder, and Ms Millington shouted through the letterbox. They spoke to Kelly, a neighbour. They accessed Kelly's

garden, at the rear of her house, to look at the claimant's home. Ms Owen and Ms Millington saw no signs of the claimant being in the premises. The claimant did not respond; she remained on the top floor of her premises.

56. There was a dispute about the time at which Ms Owen and Ms Millington arrived at the claimant's home and therefore how long they were there. The claimant alleged that they were there from approximately 4.30 pm for two and a half hours, only leaving at just before quarter to seven. Ms Owen's evidence was that she did not leave the office until after the email at 5.15 pm had been sent. The call history which Ms Owen provided during the hearing, showed her phoning Ms Millington at 5.39 pm which would have been after she had arrived at the claimant's home. Ms Owen's evidence and the call logs suggested that the attendance at the premises was (in total) for not much more than approximately an hour.

57. There was a dispute about the parking of Ms Owen's vehicle. Ms Owen's evidence was that it was parked alongside the kerb. The claimant's evidence was that it was parked blocking her drive and she felt she was trapped in her house.

58. There was no dispute that Ms Owen and Ms Millington had spoken to Kelly and to two other neighbours. There was a dispute about what had been said to Kelly. Ms Owen's evidence was that Kelly informed her that she had not seen the claimant since 6 September. The claimant's evidence (which the respondent denied) was that Kelly felt absolutely distressed by their approach and was informed by Ms Owen that the claimant had taken something and was slumped on the floor, and they needed urgently to gain access to the claimant's premises through the back of her property. The claimant asserted that Ms Owen and Ms Millington had accessed Kelly's garden on false pretences. The Tribunal did not hear evidence from Kelly. The claimant confirmed that the evidence she provided about what she was told by Kelly, resulted from a conversation the claimant had with Kelly on 3 November 2021, it was not what the claimant knew at the time on 17 September.

59. The claimant's evidence was that she was in bed on the third floor of her house when she heard the banging on her front door. She heard Ms Millington's voice and that of Ms Owen (although she did not know Ms Owen at the time). She looked at the mobile phone and saw that she had had a number of missed calls; none of which were expected. The claimant phoned a senior church leader, Ms Karen Revell, as she felt panicked, and she described herself as being in a deep state of despair and distress. The claimant described herself as hyperventilating. The claimant's evidence was that Ms Revell told her in no circumstances to open the door. The claimant also described Ms Own and Ms Millington as speaking loudly about her health and speaking to neighbours.

60. Ms Owen's evidence was that she spoke to Ms McLaughlin about what had occurred, and Ms McLaughlin asked her to contact the police and file a report. Ms Owen telephoned the police. Her call record shows that the call was made at 6.01 pm. Her evidence was that the police told her to speak to other neighbours, which Ms Owen subsequently did. The Tribunal was provided with a heavily redacted version of the police logs from the events of 17 September (423). They show the first call as having been made at 6.05 pm.

61. The claimant's evidence was that she telephoned the police herself. Whilst it was not entirely clear from the police logs when the claimant herself first spoke to the police, it appeared that she was on the phone by 6.10 pm and at 6.14 pm the telephone log recorded "*I'm keeping her on the line talking until we can get a line…is feeling suicidal*". At 6.18 pm the claimant is recorded as having informed the call handler that the respondent's employees had been there for an hour and they needed to leave. An entry at 6.34 pm recorded the claimant as saying that they had been outside for two hours.

62. After discussing matters with two other neighbours, Ms Millington telephoned Ms McLaughlin. Ms Owen's call history shows that as occurring at 6.37 pm. Ms McLaughlin told Ms Owen to ring the police to check whether it was appropriate for them to remain outside the house. Ms Owen then received a telephone call from a police officer, who advised her that another officer was now in contact with the claimant in her home. Ms Owen was told by the officer that she needed to leave. The claimant confirmed in evidence that Ms Owen and Ms Millington left her address at just before quarter to seven. Ms Owen's notes record that they were updated at 7.50 pm (631). An ambulance attended the claimant's house at approximately 2.45 am the following morning.

63. In answering questions, the claimant emphasised that she was in a mental health crisis on the 17 September and she stated that what occurred was triggering for her.

Events after 17 September

64. On 18 September 2021 the claimant sent a lengthy email to Mark Hardy and Tim Haworth (both senior managers) (424). She stated that the behaviour on Friday 17 September at her property had been harassing and intimidating. She identified Mr Holt, Ms Owen, Ms Millington and Ms Curtis as being the people about whom she was complaining, and stated that it was not appropriate for any of them to contact her as she said had been agreed with the police. In the Tribunal hearing the claimant was asked about why she had included Ms Curtis (her trade union representative) in the list, and the claimant explained that was because she thought she had breached confidence in previous conversations. The claimant asked to be given a different manager. She referred to her conditions under the Equality Act. She asked for an occupational health referral. The claimant also emailed Ms Owen, Mr Holt and Ms Curtis on the same day, asking to have no direct contact from them (428).

65. Mr Hardy acted upon the claimant's request. He asked Ms Owen, Ms Millington, Mr Holt, and Ms Curtis not to have any contact with the claimant (431). He appointed a new manager to be responsible for the claimant, Ms Fleming. He confirmed those actions to the claimant on 23 September (450).

66. It was the respondent's evidence that once an occupational health referral had been made, it was not possible to change the referring manager or any related information, without it having the impact of the referral being re-presented (and therefore of it falling to the bottom of the list). The claimant did not believe that to be true. Ms Owen raised with Ms Jones the issue of the pending occupational health referral and the need to change the relevant manager (430). Mr Hardy emailed himself on 21 September to say that he had spoken to Ms Hall who had told him to

keep the referring manager; with the new manager to be identified when the referral had been actioned (434).

67. On 1 October 2021 the claimant emailed Mr Hardy (449). She objected to Ms Fleming being her manager, as she said she was unsuitable and not impartial.

68. On 4 October 2021 the claimant emailed Mr Hardy (448) and provided a fit note which recorded her as not fit for work for the period from 4 October to 1 November 2021. It stated (458) "*please avoid contact as this exacerbating Maria's mental health*".

69. Mr Hardy responded to the claimant on 4 October 2021 (453). The appointed manager was changed from Ms Fleming, at the claimant's request. Mrs Carol Speakman was identified as the manager to manage the claimant's case. Mrs Speakman wrote to the claimant on 6 October 2021 to confirm the details of the claimant's occupational health appointment on 11 October (463) and to provide her contact details to the claimant.

70. On 11 October 2021 the claimant attended an occupational health assessment with Orla Fitzgerald, an occupational health nurse. The claimant alleged that Ms Fitzgerald told her about what was said in the referral and that what the claimant was told was not consistent with the copy of the referral provided in the documents for the Tribunal hearing. The report prepared by Ms Fitzgerald (468) said "*Please note Maria declined for her full report to be shared with the referring manager due to an ongoing grievance. I was therefore unable to proceed with the consultation*". The report also said "*Please re-refer your colleague should you still wish to obtain OH advice. Please adjust the OHIO access rights of managers accordingly. This will ensure that appropriate consent is acquired for the next referral".* The reason why the claimant had refused to consent to a report being provided was because the referring manager had been Ms Owen and therefore any report would be sent to her (to which the claimant objected following the events of 17 September).

The period when Mrs Speakman was the responsible manager

71. On 13 October 2021 Mrs Speakman sought advice from the Civil Service HR case workers. A summary of the advice was provided (480). The advice stated that Mrs Speakman had the option to advise the claimant that, based on the doctor's note, she would be in touch at the expiry of the current fit note. There was a notable contrast between the very and full detailed notes of the advice provided to Mrs Speakman, as compared to the cursory records of advice provided earlier in the process. That was explained by the respondent as being because the advice was being sought from Civil Service HR.

72. Mrs Speakman wrote to the claimant on 18 October 2021 (484). The letter enclosed a further Occupational Health Service consent form. The letter also stated that Mrs Speakman would really appreciate the opportunity to speak to the claimant and to agree some keeping in touch arrangements. The letter ended by stating that Mrs Speakman understood that the claimant may not feel able at the time to contact her, but said that she would be in touch at 9.30 am on 1 November. Mrs Speakman's evidence was that, every time an employee was referred to occupational health that

was a fresh referral, and there was no process for fast-tracking a re-referral or treating them differently; they simply joined the queue for occupational health referrals in the same way as anyone else.

73. On 27 October 2021 the claimant signed the occupational health consent form (499). The claimant was very critical of the further form being required, particularly as she felt that oral consent should have been sufficient, which she had originally provided on 6 September. The claimant added a note highlighting that point to the consent provided.

74. On 1 November 2021 the claimant emailed Mr Hardy (501). She provided a further fit note covering the period from 1 November to 28 November 2021 (502). The fit note said that the claimant was not fit for work and stated: "*Please refrain from contacting the patient, as this triggers her anxiousness/PTSD*". In the email, the claimant stated that the two-month delay in the occupational health review being undertaken "*has caused me further discriminatory health detriment due to the management's inappropriate handling and further contact*".

75. On 5 November 2021 Mrs Speakman took further advice from the Civil Service HR caseworkers. A summary of the advice was provided (520). That advice stated that it was important to have regular formal reviews, normally on a monthly basis once absence reached twenty-eight days. The advisor went on to say that it would be reasonable to wait for the occupational health referral. She said that if the member of staff was still refusing to engage, further advice should be obtained and "*if you haven't already done so it would be appropriate to ensure the OH clinician addresses this issue with the member of staff and specifically asks whether they are able to engage in the process and what, if any, support is required for them to engage*".

76. On 9 November 2021 the claimant emailed with further occupational health consent, raising a concern about the consents which she had needed to provide (546). The claimant also objected to Mrs Speakman as the referring manager. The occupational health appointment should have taken place on 10 November but it was cancelled due to an administrative error by the occupational health provider (537). After the claimant raised a complaint with the provider, a new appointment was provided on 12 November.

77. An occupational health assessment was undertaken with the claimant on 12 November 2021. A report was provided (554) and sent to Mrs Speakman and the claimant on 15 November (553). The report concluded with the following advice for management:

> "*Maria is not fit for work and is unlikely to be fit for work in the next 6 weeks due to her ongoing symptomology. I recommend a temporary pause on any meetings or stress reduction plans until she has completed therapy due to her ongoing symptoms and to allow time for recovery. Maria has confirmed that she will contact management when her fit note is due to be renewed. She wants the DWP to refer her for EMDR therapy and wants to be transferred to a manager in a different district moving forward.*

> *Unfortunately, I am unable to give any clear timescales on this colleague's return to work, nor offer a prognosis of recovery as she currently has no appropriate treatment, it is difficult to determine at this point her ultimate capability to return to work. Furthermore, there are no adjustments or modifications that could be put in place to facilitate a return to work at this time, as her current symptomology remains to have a significant impact on her"*

78. On 15 November Mrs Speakman took further advice from the Civil Service HR case workers. Advice was provided by Steven and a record of the advice was provided (556). In the advice it was said that "*the position of no contact has already gone on for too long as we discussed*". The advisor went on to say "*I advised that despite the OHS advice, DWP cannot be in a position where it cannot engage/communicate with its employees on a long-term absence, particularly when the barriers to returning to work are work related stress and there is no timescale for being able to return to work. This is not a reasonable solution*". The advisor recommended scheduling a formal review on the date the current fit note was due to expire and said that Mrs Speakman could respect the advice of no contact up until that date.

79. At the end of the note of the advice given, the following was recorded by the advisor "*We discussed that if the* [member of staff] *states they are unfit to attend, you could explore with them any adjustments for them to participate i.e. extra breaks, email communication. If the* [member of staff] *chooses not to attend, you have the option of explaining to the* [member of staff] *that decisions on whether to support the absence can be made based on the current (or lack thereof) information available. We discussed that it would be appropriate to follow the OHS advice regarding referral back in 6 weeks".*

80. On the same day Mrs Speakman emailed the claimant (559) to explain that if the claimant telephoned a particular number and requested the EMDR therapy sessions and stated it had been recommended in an OH report, she would be able to arrange the sessions. The claimant did not in fact ever arrange to receive the sessions. From the evidence heard from the claimant, this appeared to be for two reasons: the claimant's concerns about the respondent's access to documentation relating to and arising from the EMDR; and the end of the claimant's employment.

81. On 18 November 2021 the claimant was offered new employment by another employer, which was due to start on 4 January 2022 (567). The claimant's evidence was that the offer was subject to references, but she did in fact subsequently commence that employment on 4 January. It was also her evidence that the recruitment process had been quick, and she had only applied very shortly before the position was offered to her.

82. In a letter dated 26 November 2021, Mrs Speakman wrote to the claimant (577). She had sent a draft version of her proposed letter to Mr Hardy first for approval. The letter invited the claimant to a meeting at 9.30 am on 6 December 2021, which could be via Teams, telephone, or face to face. The aims of the meeting were set out in the letter, all of which related to discussing the claimant's ill health, the possibility of returning to work, and the recommended EMDR therapy. The letter informed the claimant that any reasonable adjustments would be considered and

gave the examples of extra breaks or email communication. The claimant was also offered the right to be accompanied by a trade union representative. That letter was sent by post on 28 November 2021. When questioned about it, Mrs Speakman explained that what was intended by what was said in the letter, was that the meeting could have been conducted entirely by email if the claimant wished to; the alternative of a Teams meeting was not offered to the claimant by Mrs Speakman because she knew that the claimant did not like meetings using the computer. The Tribunal did not find that the letter read as if communication purely by email was being offered, in place of an actual meeting.

83. When questioned about the decision to pursue a meeting even though she had been advised that contact should be paused in the occupational health and GP advice, both Mrs Speakman and Mr Hardy emphasised the HR advice provided to Mrs Speakman and emphasised their adherence to what she had been advised. It was clear that Mrs Speakman acted in reliance upon it. However, Mrs Speakman could not explain in her evidence why she had not gone back to the occupational health service to seek further advice, as had been expressly recommended by the HR advisor.

84. The claimant emailed Mrs Speakman and Mr Hardy on 28 November (579) informing them that she was awaiting a follow up fit note. The fit note was enclosed with an email to the same two people on 29 November (599). In her email the claimant said: "*The doctor has confirmed due to the continued harassing behaviour, that contact to be refrained as its affecting the PTSD and I need to recover*". The fit note, which covered the period from 29 November 2021 to 16 January 2022, recorded the claimant as not fit for work and stated: "*Please refrain from contacting the patient as this triggers the patients PTSD*".

85. Mrs Speakman responded to the claimant by email on 30 November (599). She said:

> "*Thank you for both updates and your fit note. However your monthly review is due on 6.12.21 to discuss your absence. I have sent you an invite letter yesterday via registered post explaining the need for this and the purpose of the meeting. I have offered an alternative formats for the meeting for you consider so I am attaching a copy for you to read and consider. I will await your preference."*

Resignation

86. On 30 November 2021 the claimant resigned with immediate effect. Her email to Mrs Speakman and Mr Hardy said (602):

> "*I am writing to inform you that I am resigning from my position of DWP Employer Advisor. Please accept this as my formal letter of resignation and a termination of our contract under discriminatory constructive dismissal, with harassment. I feel that I am left with no choice but to resign in light of my recent experiences by DWP management regarding your caution for harassment & intimidation & gaining access to the general public property under fraudulent and falsified accounts by the police on 17th Sept 2021, continuous disability discrimination, bullying & discrimination of completing the*

grievance procedure by deletion of evidence and manipulation of the process to cause further barriers, with manipulation and barriers to Occupational Health support causing severe mental health detriment/trauma.

DWP have fundamentally breached the contract by the continuous undue/disproportionate/disability discrimination treatment.

I consider all these to be a fundamental/unreasonable breach of the contract on your part"

87. There was no reference in the claimant's resignation email to the fact that Ms Speakman had insisted on holding a meeting or to that meeting at all. The reference to a caution, reflected the claimant's contention that the respondent had received a formal police caution following the events of 17 September 2021, something which the respondent denied (and there was no evidence to substantiate).

88. In evidence, the claimant explained that her mental health was already in tatters and (contrary to what was said in the resignation email) she resigned following receipt of the letter.

89. Following the resignation, further emails were exchanged regarding the claimant's property. The claimant sent a further email on 7 December (633) in response to requests for sheets recording the claimant's annual leave and flexitime. She asked the respondent not to contact her further and explained her resignation as being as a result of "*harassing & disability discriminating behaviour against me*".

90. ACAS Early Conciliation took place between 26 November 2021 and 7 January 2022. The Employment Tribunal claim was entered on 7 April 2022.

The Law

The duty to make reasonable adjustments

91. Section 20 of the Equality Act 2010 provides:

> **(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
>
> **(2) The duty comprises the following three requirements.**
>
> **(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.**

92. Section 21 of the Equality Act 2010 provides that a failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments.

Schedule 8 of the same Act also contains provisions regarding reasonable adjustments at work.

93. **Environment Agency v Rowan [2008] IRLR 20** is authority that the matters a Tribunal must identify in relation to a claim of discrimination on the grounds of failure to make reasonable adjustments are:

a. the provision, criterion or practice applied by or on behalf of an employer;

b. the identity of non-disabled comparators (where appropriate); and

c. the nature and extent of the substantial disadvantage suffered by the claimant.

94. The requirement can involve treating a person with a disability more favourably than those who are not disabled (**Redcar and Cleveland Primary Care Trust v Lonsdale UKEAT/0090/12**).

95. Whether something is a provision, criterion or practice should not be approached too restrictively or technically, it is intended that the phrase should be construed widely (Dr Ahmed relied upon **Archibold v Fife Council** as authority for this). A one-off act can be a PCP, but it is not necessarily the case that it is. Dr Ahmed also referred to the decision of the Court of Appeal in **Ishola v Transport for London** [2020] EWCA Civ 112 in which it was held that a practice connoted some form of continuum, in the sense that it is the way in which things generally are or will be done (or would be done again in the future if the hypothetical similar case arose).

96. Dr Ahmed's submissions emphasised that a substantial disadvantage is one which is more than minor or trivial. He emphasised the importance of identifying the substantial disadvantage with reference to the PCP (relying upon **Nottingham City Transport v Harvey** UKEAT/0032/12 and **Newham Sixth Form College v Sanders** [2014] EWCA Civ 7434). There is no requirement for a comparator. When considering whether the proposed adjustment is reasonable, the Tribunal has to apply an objective test. The focus is not on the respondent's thought processes when determining whether the adjustment is reasonable. When considering whether a proposed adjustment is reasonable it is particularly important that the Tribunal considers the extent to which taking the step in question would alleviate the disadvantage, as confirmed in **Rowan**. Dr Ahmed also highlighted paragraph 6.28 of the Equality and Human Rights Commission's code of practice on employment which sets out some of the factors which might be taken into account when deciding what was a reasonable step for an employer to have to take (the list included the practicability of the step, the costs of making the adjustment, the extent of any disruption caused, and the size of the employer).

97. In terms of knowledge of disability and reasonable adjustments, the duty only applies if the respondent: knew or could reasonably be expected to know that the claimant had the disability; and knew or could reasonably be expected to know that the claimant was likely to be placed at a substantial disadvantage compared with persons who are not disabled (that is aware of the disadvantage caused by the application of the PCP). The question of whether the respondent could reasonably

be expected to know of the disability and/or the substantial disadvantage is a question of fact for the Tribunal. The focus is on the impact of the impairment and whether it satisfies the statutory test, and not the label given to any impairment (**Jennings v Barts and The London NHS Trust UKEAT/0056/12**).

98. Mr Hurd emphasised the case of **Project Management Institute v Latif** [2007] IRLR 579 in which the EAT set out how the burden of proof provisions apply to a claim for breach of the duty to make reasonable adjustments. He submitted that the Judgment made clear that:

a. The burden of proof in relation to proving the PCP and demonstrating the substantial disadvantage remained with the claimant;

b. It is for the claimant to identify what adjustments the respondent should have made, and unless there is evidence before the Tribunal, which at least on the face of it appears reasonable and would mitigate or eliminate the disadvantage, the burden does not shift; and

c. The burden is then reversed once a potentially reasonable adjustment has been identified, and it is for the respondent to demonstrate that they have taken reasonable steps to eliminate or mitigate the substantial disadvantage.

99. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case. That applies to all the forms of discrimination alleged. It provides as follows:

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

100. In short, a two-stage approach is envisaged:

i. at the first stage, the Tribunal must consider whether the claimant has proved facts on a balance of probabilities from which the Tribunal could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This can be described as the prima facie case. However, it is not enough for the claimant to show merely that she has been treated unfavourably; there must be something more.

ii. The second stage is reached where a claimant has succeeded in making out a prima facie case. In that event, there is a reversal of the burden of proof: it shifts to the respondent. Section 123(2) of the Equality Act 2010 provides that the Tribunal must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. The standard of proof is again the balance of probabilities. However, to discharge the burden of proof, there must be

cogent evidence that the treatment was in no sense whatsoever because of the protected characteristic.

101. In his submissions Dr Ahmed referred to a number of the key authorities on the burden of proof, including **Igen Ltd v Wong** [2005] ICR 931, **Hewage v Grampian Health Board** [2012] ICR 1054 and **Madarassy v Nomura International Plc** [2007] ICR 867.

Victimisation

102. Section 27 of the Equality Act 2010 says:

> **"(1) A person (A) victimises another person (B) if A subjects B to a detriment because – (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act – (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act…"**

103. The first question is whether the claimant did a protected act. If the claimant has done the protected act, for victimisation the next question for the Tribunal is whether the respondent subjected the claimant to a detriment because of that protected act, in the sense that the protected act had a material or significant influence on subsequent detrimental treatment.

104. Mr Hurd emphasised that the choice of language used when doing a protected act could not be too vague, it must be clear from the words used and their context that an allegation is being made that the respondent has contravened the Equality Act 2010, relying upon **Chalmers v Airpoint Ltd** UKEAT/0031/19 as an example.

105. The exercise has to be approached in accordance with the burden of proof. If the claimant proves facts from which the Tribunal could reasonably conclude that her protected act had a material influence on subsequent detrimental treatment, her case would succeed, unless the respondent could establish a non-discriminatory reason for that treatment.

106. If the Tribunal concludes that the protected act played no part in the treatment of the claimant, the victimisation complaint fails even if that treatment was otherwise unreasonable, harsh or inappropriate. Unreasonable behaviour itself does not necessarily give rise to any inference that there has been discriminatory treatment.

107. The word detriment in section 27 is to be interpreted widely. The key test is for the Tribunal to ask itself: is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment? An unjustified sense of grievance would not pass this test, but the test is framed by reference to a reasonable worker, so it would be enough if a reasonable worker would or might take such a view. Dr Ahmed referred to **Jesudason v Alder Hey Children's NHS Foundation Trust** [2020] EWCA Civ 73. In his submissions he also

relied upon **Chief Constable of Greater Manchester v Bailey** [2017] EWCA Civ 425.

Harassment

108. Section 26 of the Equality Act 2010 says:

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

109. The EAT in **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336, stated that harassment is defined in a way that focuses on three elements: (a) unwanted conduct; (b) having the purpose or effect of either: (i) violating the claimant's dignity; or (ii) creating an adverse environment for her; (c) on the prohibited grounds. Although many cases will involve considerable overlap between the three elements, the EAT held that it would normally be a 'healthy discipline' for Tribunals to address each factor separately and ensure that factual findings are made on each of them.

110. The alternative bases in element (b) of purpose or effect must be respected so that, for example, a respondent can be liable for effects, even if they were not its purpose (and vice versa).

111. Even if the conduct has had the proscribed effect, it must also be reasonable that it did so. The test in this regard has both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the claimant's point of view; the subjective element. It must also ask, however, whether it was reasonable of the claimant to consider that conduct had that requisite effect; the objective element. The claimant's representative highlighted that the claimant's subjective perception of the conduct in question must be considered. Mr Hurd in his submissions referred to the guidance given in **The Revered Cannon J C Pemberton v The Right Reverend Richard Inwood, Former Acting Bishop of Southwell & Nottingham** [2018] EWCA Civ 564:

> "*In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then*

> *the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so"*

112. In his submissions Mr Hurd quoted the following passages from the Judgment in **Dhaliwal**:

> "*14 … it is important to note the formal breakdown of "element (2)" into two alternative bases of liability - "purpose" and "effect". That means that a respondent may be held liable on the basis that the effect of his conduct has been to produce the proscribed consequences even if that was not his purpose; and, conversely, that he may be liable if he acted for the purposes of producing the proscribed consequences but did not in fact do so (or in any event has not been shown to have done so). … in most cases the primary focus will be on the effect of the unwanted conduct rather than on the respondent's purpose …*
>
> *15 … [Further], although the proviso in subsection (2) is rather clumsily expressed, its broad thrust seems to us to be clear. A respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That … creates an objective standard. … The proscribed consequences are, of their nature, concerned with the feelings of the putative victim: that is, the victim must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created. That can, if you like, be described as introducing a "subjective" element; but overall the criterion is objective because what the tribunal is required to consider is whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Thus if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt. … …*
>
> *22 … Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused … it is also*

> *important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.*

113. Mr Hurd also highlighted that the importance of the context in which the words or behaviour was used was significant, citing from Elias LJ's decision in **Land Registry v Grant** [2011] EWCA Civ 769:

> *"When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable"*

114. He also relied upon the same case to emphasise the guidance given on the words used in the statutory test, when it was observed that:

> "*Tribunals must not cheapen the significance of these words. They are important to control to prevent trivial acts causing minor upsets being caught by the concept of harassment."*

115. Mr Hurd also relied upon what was said by the EAT in **Weeks v Newham College** UKEAT/0630/11 about part of the statutory test:

> "*it must be remembered that the word is "environment". An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the office or staff-room concerned. We cannot say that the frequency of use of such words is irrelevant."*

116. In his submissions, Mr Hurd addressed what was required for harassment to be related to the protected characteristic (her disability). He correctly emphasised that it was not enough for the claimant to believe that the conduct related to the protected characteristic, the Tribunal must make findings on the issue (**Tees Esk and Wear Valleys NHS Foundation Trust v Aslam** UKEAT/0039/19). He also identified the "*broader enquiry*" envisaged in **Bukkali v Greater Manchester Buses (South) Limited** UKEAT/0176/17 which should be undertaken with "*a more intense focus on the context of the offending words or behaviour*". He also submitted that in **GMB v Henderson** [2016] EWCA Civ 1049 the Court of Appeal suggested that the Tribunal should give "*consideration to the mental processes of the putative harasser*".

117. In his submissions on harassment, Dr Ahmed quoted from the Court of Appeal judgment in **Pemberton v Inwood** [2018] EWCA Civ 564.

Time limits/jurisdiction

118. Section 123 of the Equality Act 2010 provides that proceedings must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation), or

such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

119. The key date is when the act of discrimination occurred. The Tribunal also needs to determine whether the discrimination alleged is conduct extending over a period, and, if so, when the continuing act ceased. Dr Ahmed referred to the well-known principles set out in **Commissioner of Police of the Metropolis v Hendricks** [2003] ICR 530 and the case of **Lyfar v Brighton and Hove University Hospitals Trust** [2006] EWCA Civ 1548.

120. If out of time, the Tribunal needs to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble** [1997] IRLR 336 (an authority referred to be Dr Ahmed). Those factors are: the length of, and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the relevant respondent has cooperated with any request for information; the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once she knew of the possibility of taking action. Subsequent case law has said that those are factors which illuminate the task of reaching a decision, but their relevance depends upon the facts of the particular case. Dr Ahmed submitted that there was no obligation on the Tribunal to go through the list and the Tribunal is entitled to take into account anything which it deems to be relevant (relying upon **Southwark London Borough v Afolosi** UKEAT/0243/19, he also quoted from the decision in **Abertawe Bro Morgannwg University Health Board v Morgan** [2018] ICR 1194). It has been emphasised that the best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, with factors which are almost always relevant to consider when exercising any discretion whether to extend time being: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh). **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 confirmed that the exercise of a discretion should be the exception rather than the rule and that time limits should be exercised strictly in employment cases.

The ACAS code

121. As the Tribunal was required to do, it took account of the ACAS code of practice on disciplinary and grievance procedures. With regard to grievances, the first heading in the code explains that the employee should let the employer know the nature of the grievance. It goes on to say that where it is not possible to resolve a grievance informally, employees should raise the matter formally without unreasonable delay, with a manager who is not the subject of the grievance. It should be in writing and set out the nature of the grievance. Where there is an unreasonable failure to comply with the code, section 207A of the Trade Union &

Labour Relations (Consolidation) Act 1992 provides that a Tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce (or increase) any award by no more than 25%.

Conclusions – applying the Law to the Facts

122. It was clearly the claimant's belief that she was subject to a conspiracy and that there had been collusion between her managers at the respondent which had led to some of the matters about which she complained, including things such as the visit on 17 September. The Tribunal did not find that to have been the case. As is explained below, the Tribunal identified examples of poor decisions and management and it has found discrimination, but those were not found to be as a result of conspiracy or collusion. In the evidence that they gave, the Tribunal found some of the respondent's witnesses to be unimpressive, but it did not find that any of those involved subjected the claimant to the conspiracy which she alleged (or any related conspiracy).

123. In his submissions, the claimant's representative submitted that the Tribunal should draw inferences from the respondent's approach to the proceedings and to the delayed acceptance that the claimant had a disability or disabilities at the relevant time. The Tribunal did not do so, it not being considered something which should, or did in this case, result in such inferences being drawn. The claimant's representative also placed considerable emphasis on Mr Holt's lack of response to 5 September email which contained complaints and serious matters and the fact that formal procedures were not followed. The Tribunal also did not draw any conclusions on the relevant facts from that lack of response. It was noted the Mr Holt was told to step back from managing the claimant and he did so. Whether or not the email should have been responded to and/or whether it should have been treated as a grievance (even though it explicitly said that a grievance would follow) was not something which the Tribunal found assisted in determining the issues which it needed to determine.

124. In terms of the claimant's evidence generally, the Tribunal accepted that the claimant gave evidence about her perception of events as she saw them. The claimant has a particular view of the way in which matters occurred and impacted upon her, and she was not open to other explanations about events and why they had occurred. What the claimant saw, was not necessarily a shared perception. On many of the disputes of facts, the claimant's evidence was unreliable. An example was that the Tribunal did not accept that Ms Owen would have spoken to (or did speak to) the claimant in the way the claimant stated in evidence in her very first telephone call with the claimant on 9 September 2021. The Tribunal did not accept that Ms Owen told the claimant that she needed to return to the office otherwise she would lose her job, as it was (based upon her evidence and seeing her as a witness) inconceivable that Ms Owen would have done so in the first conversation (and, if she had, the claimant would certainly have referred to it in her subsequent emails). The Tribunal accepted that when she gave the evidence, the claimant was genuinely evidencing what she now believed to be correct. The Tribunal also accepted the claimant's evidence about how she felt at the time of the relevant events. However, where there was a dispute of facts, the Tribunal found the claimant's evidence about the actual facts and what occurred, to be unreliable.

125. The first of the issues in the list of issues were related to jurisdiction and time limits. The Tribunal did not start by considering those issues, but rather those issues were left to be considered once the other issues had been determined.

Knowledge (issue 8)

126. In terms of knowledge (issue 8), as recorded above, it was accepted by the respondent that by 5 September 2021 the respondent had constructive knowledge of the claimant's disabilities. As the matters alleged and to be determined in accordance with the list of issues all occurred after the 5 September 2021, it was not necessary for the Tribunal to further consider the issue of the respondent's knowledge of the claimant's disabilities.

The duty to make reasonable adjustments

127. At issue ten, the Tribunal was required to decide whether the respondent applied any of the PCPs relied upon to the claimant. Those PCPs were: the respondent's absence management process, including referral to occupational health; undertaking meetings as part of the absence management process; and attending employees' home addresses when they were unable to make contact via telephone and email. The Tribunal accepted that all three of the PCPs relied upon were applied to the claimant. The evidence of Ms Owen made clear that the third PCP was something which the respondent did as a standard practice in circumstances where there was a concern about the employee's health (where a suicide risk had been identified). It was not simply a decision made about the claimant's own personal circumstances, it was Ms Owen's evidence that it was a step that the respondent would have taken for others in comparable circumstances (in particular following the event which had occurred the year before).

PCP issue 10(a) and reasonable adjustment issue 14(a)

128. For the first PCP (the respondent's absence management process, including referral to occupational health), the question of whether the claimant suffered a substantial disadvantage as a result of the application of the PCP to her, was somewhat complicated.

129. When considering the reasonable adjustment sought, the claimant's evidence was that she believed she should have had a quicker occupational health referral, as she believed she should have been red-flagged (based on her experience of claimants and not employees). The claimant believed that a quicker referral to occupational health would have meant that she accessed therapy services more quickly. The claimant was able to (and did) argue that a delay in accessing the therapy services which the respondent made available, placed her at a substantial disadvantage. However, that argument was focussed on the reasonable adjustment sought and not the PCP.

130. The PCP relied upon was the respondent's absence management process, including referral to occupational health. That provision or practice did not place the claimant at a substantial disadvantage when compared to others. The absence management process and a referral under it, was not disadvantageous to the claimant. As a result, her claim based upon the PCP pleaded and recorded in the list

of issues, did not (and could not) succeed. There was no substantial disadvantage suffered as a result of the application of the PCP itself to the claimant. The Tribunal did not find that the PCP relied upon placed the claimant at a substantial disadvantage in comparison with those who do not have a disability The PCP could not be read as being that the respondent had dragged out or extended the process. The reasonable adjustment sought, that is progressing the occupational health request on a shorter timescale, did address any substantial disadvantage suffered by the claimant as a result of the application of the PCP.

131. In any event, the Tribunal also considered the issue of the alleged occupational health referral and whether it should have been made on a shorter timescale (that is whether this would have been found to have been a reasonable adjustment which the respondent was under a duty to make, if it had addressed a substantial disadvantage suffered by the claimant in comparison to those without a disability). In his submissions, Mr Hurd addressed at length the timetable of the referral(s) and the timescales for each step. The Tribunal will not set out the entirety of those detailed submissions in this Judgment. However, the Tribunal did accept Mr Hurd's submission that, despite the claimant's assertions of deliberate delays or manipulations/obstructions in the time frame for the occupational health referral, there was no evidence to support any such assertion. In broad terms the timescale of the referral was found to be as follows:

a. On Sunday 5 September the claimant first made a request for an occupational health referral. After a change in the claimant's referring manager, a referral was made on 10 September. The Tribunal did not find there to be an unreasonable delay in the time taken to make that initial referral;

b. There was a delay between the referral being made on 10 September and the occupational health appointment on 11 October, but that delay was about the delay which applied generally at the time in the provision of occupational health services, it was not as a result of specific decisions made about the claimant or her referral. The Tribunal found that to be a lengthy period and it would generally have expected an employer (of this size) to have in place a procedure to fast-track referrals if they needed to do so, where waits were that long. However, the Tribunal accepted that the respondent had no such procedure in place with its provider;

c. The delay from the appointment on 11 October until the re-referral on 2 November was because the claimant declined to consent to a report being provided to the respondent, as a result of the identity of the referring manager. That stalled the process (and was as a result of the claimant's own decision);

d. The gap from the re-referral on 2 November to the second appointment on 12 November was not an unreasonable delay. The last two days of that period were as a result of an error by the provider, and it was notable that a new appointment was provided very quickly following that error; and

e. The occupational health report was provided very quickly following the appointment (on 15 November).

132. The Tribunal accepted the claimant's contention that the time from the initial request for an occupational health referral to the report, was long. As recorded in summary above, there were explanations for some of the period, some of which were influenced by (or caused by) a decision made by the claimant. It was necessary to look at the time by considering its constituent parts and not simply the total time taken. For that reason, even had the Tribunal found that progressing the occupational health request on a shorter timescale could have been a reasonable adjustment which alleviated a substantial disadvantage suffered as a result of the application of a PCP relied upon, it would not have found on the facts of this case that progressing the request was an adjustment which the respondent could reasonably have made (and would have been under a duty to have made).

133. In the light of those decisions on the occupational health referral PCP/adjustment, it was not necessary to determine issue thirteen for that part of the allegation (whether the Respondent knew or could reasonably have been expected to have known of the substantial disadvantage which the Claimant claims to have suffered). As already addressed, it was not clear to the Tribunal what the substantial disadvantage suffered was, as a result of the PCP relied upon. For the same reasons, the respondent would not have known and could not reasonably have been expected to know. With regard to the adjustment sought more generally, at the time that she first sought an occupational health referral, the respondent would not have known about the claimant's particular need for a rapid occupational health referral and the reason why she believed she would be disadvantaged if it did not occur. Later in the process, the respondent would have been aware of the claimant's belief/reason, because the claimant emphasised that she wanted a referral more quickly in strong terms and she explained her wish to access therapy. It is not necessary for the Tribunal to determine when precisely that knowledge changed.

PCP issue 10(b) and reasonable adjustment issue 14(d)

134. The second PCP relied upon, was undertaking meetings as part of the absence management process. The reasonable adjustment sought was a temporary postponement of meetings or discussions pending the completion of therapy.

135. The claimant herself evidenced that she suffered a substantial disadvantage as a result of her disability (or disabilities), by the insistence on meetings under the absence management process. That was supported by the advice provided to the respondent in the occupational health report, as well as being emphasised in the fit notes provided by the GP. The nature of the claimant's impairment(s) meant that she was less able to engage in such meetings, particularly at the time when her mental health had deteriorated. Such meetings clearly placed her at a substantial disadvantage, when compared with those without her disability (who would not have been disadvantaged at all by needing to meet, or even if they were, the disadvantage would not have been as marked).

136. Did the Respondent know or could it reasonably have been expected to know of that substantial disadvantage? The respondent was certainly aware of the substantial disadvantage following the events of 17 September and the claimant's

email of the following day. The respondent had tried to meet with the claimant and the issues had arisen. The respondent was further informed of the substantial disadvantage which arose from meetings and/or contact by the GP fit note of 1 November 2021, the occupational health report of 15 November 2021 and the further fit note provided on 29 November 2021.

137. The next question is whether the respondent failed to take such steps as were reasonable to avoid the disadvantage? In the list of issues, it was recorded that the reasonable adjustment which the claimant asserted the respondent should have made was the temporary postponement of meetings or discussions pending the completion of therapy. In considering this, the Tribunal focussed upon Mrs Speakman's correspondence of November 2021 and her insistence that a meeting must take place on 6 December 2021. That insistence was based on the advice which Mrs Speakman had received from the HR advisors and which the Tribunal had the benefit of reading in full.

138. The Tribunal accepted that an employer needs to make and maintain some contact with an absent employee. The Tribunal also understood why the HR Advisor (Steven) advised that there should be contact with someone who was absent on a long-term basis. A complete absence of contact on a long-term basis would not have been a reasonable adjustment. However, what the Tribunal found to be absent from the advice provided by Steven (as recorded in the note), was any genuine consideration of the fact that the whole point of the duty to make reasonable adjustments is that it can require exceptional arrangements to be put in place for specific employees in the light of their own impairment, the impact which it has upon them, and all the circumstances.

139. What was contended to be the reasonable adjustment was not an indefinite ban on meeting, it was a temporary postponement of meetings pending the completion of therapy. That therapy was due to be provided over six weeks. The Tribunal found that delaying meeting with the claimant for a period of six weeks was an adjustment which the respondent could and should have made. It found that would have been reasonable. Such a delay would (or at least could) have had the effect of avoiding the disadvantage which the claimant suffered compared to others by being required to attend a meeting (when she was suffering from a significant episode as a result of her impairment(s)). The adjustment sought was a temporary one, and the Tribunal found that temporary adjustment was reasonable. To the extent that the HR advice provided to Mrs Speakman said otherwise, that advice was wrong.

140. In considering the reasonableness of the adjustment sought, the Tribunal noted that there was no evidence that a meeting undertaken more quickly without the pause, would have facilitated the claimant returning to work more quickly. The medical advice at the time was that the claimant was not well enough to return and would not be for a period which exceeded the delay being sought for the meeting taking place. Whilst the invite to the meeting (proposed for 6 December) set out what was to be discussed, in practice there was no genuine pressing need for a meeting to take place, as the claimant's health was not good enough for her to return. The list in the letter identified a number of things to be discussed. Whilst that list may have been appropriate for others in other circumstances, in practice, for the claimant, it would have been likely to have been too much too soon even if the claimant had

been able to attend the meeting. As a result, delaying discussing those matters for a temporary period would have been reasonable and would have had no adverse consequences for the respondent (aside from not adhering to what was said to be its policy). The Tribunal also noted that, despite the emphasis placed by her on following the HR advice given, Mrs Speakman insisted on the meeting going ahead without referring back to the occupational health service as had been recommended by both HR advisors and, in particular, seeking advice on what support was required for the claimant to engage (as had been recommended in the 5 November 2021 HR advice).

141. In his submissions, Mr Hurd placed some reliance upon the reference to email in the invite letter of 26 November 2021. Whilst that letter did refer to reasonable adjustments and the possibility of email communication, the Tribunal did not read the letter as clearly proposing that a meeting was not in fact required and explaining clearly that the issues could be explored solely via email. The claimant clearly did not understand that to be what was proposed. In any event, the adjustment sought which the Tribunal has found the respondent should reasonably have made, was to temporarily postpone a meeting and, based upon the medical advice, the adjustment was to postpone the meeting howsoever it would have taken place (even if an exchange of emails can be described as a meeting and is what Mrs Speakman intended to propose).

PCP issue 10(c) and reasonable adjustments issues 14(b) and (c)

142. The third PCP relied upon, was attending employees' home addresses when the respondent was unable to make contact via telephone and email, which the Tribunal has found to be a PCP which was applied in circumstances where a suicide risk was identified. The reasonable adjustments sought were contacting the claimant in writing, or contacting the claimant's next of kin.

143. The Tribunal found that the claimant suffered a substantial disadvantage as a result of the application of this PCP, as was clear from her evidence. For reasons arising from her impairment(s), the claimant found the visit to be distressing. Another employee without her disability would not have found the practice/visit to be distressing (or would not have found it distressing to the extent that the claimant did).

144. The Tribunal also found that the respondent would have been reasonably expected to know that the claimant, being an employee with PTSD, would be likely to find it more distressing to have a visit to her home by her employer, than others (without a disability) would have done. Ms Owen knew that the claimant had taken steps to avoid triggers related to work.

145. For the first of the reasonable adjustments proposed (writing to the claimant), the Tribunal found that what was proposed was not an adjustment which addressed the reason why the PCP was applied in the first place. The whole point of the PCP was to address concerns which had arisen as a result of mental health issues including suicidal ideation. Sending a letter and awaiting a response would not address that concern. The whole point of making contact was to do so in a way which obtained a relatively quick response to ensure that the risk of suicide was averted or responded to. The Tribunal did not find the adjustment proposed to be

one which was reasonable, in the light of the reason why the PCP was applied in the first place.

146. For the second reasonable adjustment proposed (contacting the claimant's next of kin), that was not a reasonable adjustment for the claimant because the respondent did not have contact details on their system at the time for the claimant's identified next of kin. The Tribunal accepted the respondent's evidence that the contact information was not recorded on the system at the time (albeit that the name of the claimant's next of kin was). The Tribunal did not accept the claimant's submissions that the address could have been obtained in other ways. In other cases where the contact information was available, contacting the next of kin first might have been a reasonable adjustment, but in this case it could not be because the respondent had tried to do so earlier in the day of the visit to the claimant's home and had been unable to do so. The Tribunal did not need to determine the question of how and why the contact details were not accessible on the respondent's system at the time that they tried to find them. It clearly would have been preferable if the contact details of the next of kin had been on the system and had been used first. The fact that they were not, was not a breach of the duty to make reasonable adjustments.

Harassment issue 16(a)

147. Turing to the allegations of harassment, the first allegation of harassment related to disability, was what was stated to be the substantial delay in progressing the occupational health referral. As has already been explained, when determining the equivalent issue as an alleged breach of the duty to make reasonable adjustments, there was a delay in time overall, but the delays were not unreasonable when the reasons for each period of the delay were considered, and it was important to consider the delays as broken down and not simply as a total.

148. The respondent submitted that the delays in obtaining an occupational health report were not related to the claimant's disability. The Tribunal agreed with that submission. The delays took place in the context of being about obtaining an occupational health review in which the claimant and her disability would have been assessed, but the delay was not of itself related to disability. The delays related to the change of managers, the time the occupational health provider took to provide an appointment after a referral was made, the claimant's unwillingness to consent to a report being sent to Ms Owen, and the time taken to re-refer the claimant for a report.

149. The Tribunal did find that the delay was conduct which was unwanted.

150. Applying the test for harassment spelt out in the section on the law above, the Tribunal certainly did not find that the purpose of any part of the delay was any of those required. The Tribunal also did not find that the delay, in and of itself, had the effect required, that is of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Whilst clearly the delay had an impact on the claimant as she evidenced, the Tribunal did not find that the effect of the delay was to violate her dignity or to create the requisite environment (taking into account what is required for that to be established, as set out in the law section above). Even had the Tribunal found the delay to have had the

requisite effect on the claimant, it would not have found that the fact that it had that effect was reasonable in all the circumstances of this case and, in particular, taking account of the length of, and reasons for, each part of the delay.

Harassment issue 16(b)

151. The second allegation of harassment was that the respondent consistently sought to contact the claimant despite express requests that they refrain from doing so. As already explained, the Tribunal accepted that the respondent was right to try to contact the claimant during absence and to maintain contact with her. The Tribunal saw no true issue with any of the respondent's attempts to contact the claimant generally (the next two harassment allegations were specific to the 17 September visit to the claimant's home and the invite to a meeting in November, which were therefore addressed separately and not as part of the more general allegation). The terminology used in this allegation the Tribunal did not find to be accurate, as the respondent did not consistently seek to contact the claimant. Some of the contact was clearly with the agreement of the claimant or in response to her contact with the respondent (indeed Dr Ahmed's submission was that the respondent failed to address the claimant's 5 September letter appropriately as it required a response/greater response than it received).

152. The Tribunal did not find that all of the respondent's contact was unwanted, although it was clear that some specific parts were.

153. Applying the test for harassment spelt out in the section on the law above, the Tribunal did not find that the purpose of the contact was those required by law to amount to harassment. The Tribunal also did not find that the contact generally had the effect required, that is of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Even if the contact had the requisite effect, it would not have been reasonable for it to do so. The frequency of contact was, generally, not unreasonable.

Harassment issue 16(c)

154. The third allegation of harassment was the conduct of Ms Owen and Ms Millington in attending the claimant's home on 17 September 2021 and attempting to enter the premises including having discussions with the claimant's neighbours in enquiring about the claimant's current location.

155. As recorded in the facts section above, much of what occurred on 17 September when the visit was undertaken to the claimant's home, was not in dispute. Ms Owen and Ms Millington did visit the claimant at her home when she was absent on ill health grounds. They did hammer on her door when she did not initially answer. They did remain outside the premises for a period of time. They did speak to three neighbours. They did access the rear of a neighbour's property and seek to view the back of the claimant's house, after speaking to the neighbour about the claimant.

156. Where there was a dispute about the facts of what actually occurred at the time of the visit, the Tribunal preferred Ms Owen's evidence to that of the claimant, and accepted that Ms Owen had accurately recalled and evidenced what occurred.

That was because of the matters which have already been recorded about the credibility of the claimant's evidence generally. The claimant herself referred to herself as being in a mental crisis state at that time, which would not have supported an accurate recollection of some of the details of what occurred. In terms of the length of the visit and the time for which Ms Owen and Ms Millington were present, Ms Owen's evidence was also supported by the other available records including Ms Owen's phone records, the time of the last email which she sent from the office (439), and the Police records (notably that at 6.18 pm the claimant herself told the call handler that they had been there for an hour, a time which she increased significantly to two hours at 6.34 pm, sixteen minutes later, suggesting that her awareness of time was inaccurate). The Tribunal also preferred Ms Owen's evidence about the conversation with Kelly, to the evidence heard from the claimant which was based upon what the claimant had been told by Kelly a month and a half later (Kelly not having attended the hearing and given evidence herself).

157. The Tribunal did, however, entirely accept as true and accurate the evidence which the claimant gave about how she felt about the home visit at the time and subsequently. It was very clear from the claimant's evidence to the Tribunal what a significant impact the visit had had upon her. Accordingly, the Tribunal found that the home visit and the conduct of it was clearly unwanted.

158. Mr Hurd submitted that the alleged harassment was not related to the claimant's disability. He submitted that the home visit was clearly motivated by concern for the claimant's welfare and was not related to her disability. The Tribunal did not accept that submission, it found that the home visit was related to the claimant's disability. The decision to visit the claimant's home and the actions which were taken whilst outside, occurred because of concerns about the claimant's mental health and her suicidal ideation. The visit would not have taken place had the claimant been absent for other reasons such as physical ill health. The Tribunal found that the home visit (and the conduct during the visit) was clearly related to the claimant's disability, because her disability (and what she had said which had arisen from it) were the very reason for the home visit and the conversations with neighbours.

159. The Tribunal did not find that the purpose of the visit, or Ms Owen and Ms Millington's conduct during the time that they were there, was to violate the claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for her. The Tribunal accepted Ms Owen's evidence about why she decided to visit the claimant's home, in conjunction with Ms McLaughlin (and based in part on the events of the previous year and what Ms McLaughlin told Ms Owen in the conversations that day about the claimant's references to suicide). Whilst the claimant herself argued strongly that the purpose of the visit was that required by the statutory test, the Tribunal did not find that it was. The Tribunal also found that the way in which the conversations with the neighbours were conducted, was because of Ms Owen and Ms Millington's concerns about the claimant and not with the requisite purpose.

160. In the course of Dr Ahmed's submissions, some emphasis was placed upon the fact that the way in which the reason for the visit had been described had varied, being described latterly as a safeguarding visit, at other times as a welfare visit, and with reference to a duty of care. The Tribunal did not find anything material turned

upon which of these explanations was used. The Tribunal did not find that the motive for the visit was invented or varied after the event. Whatever the terminology, the purpose of the visit was because of the suicide risk which Ms Owen (together with Ms McLaughlin) perceived to exist.

161. In considering the effect of the alleged harassment, the Tribunal considered in detail the elements of the statutory test. The Tribunal found that, for the claimant, the home visit (and her employer speaking to her neighbours outside the house) had the effect of creating a hostile environment. The Tribunal also found that it created a humiliating environment for her, when conversations held with her neighbours (of which the claimant was broadly aware) were considered. The Tribunal also found that, for the claimant with her mental health as it was at the time, the visit and the conversations with neighbours violated her dignity. It was very very clear to the Tribunal from the claimant's own evidence that it had had that effect upon her. The claimant was clearly still significantly upset by the visit at the time of the Tribunal hearing, which was long after the visit took place.

162. As highlighted by Mr Hurd and as is addressed in the legal section above, the test in determining harassment has both subjective and objective elements. The objective element, and what needed to be considered, has been explained in the section on law above. The objective assessment which the Tribunal needed to undertake was to determine whether it was reasonable for the conduct to have the requisite effect on the claimant. The Tribunal had to consider all relevant circumstances, including the context of the conduct in question (**Dhaliwal**).

163. The Tribunal considered a number of factors as important when determining whether it was reasonable for the visit to the claimant's home and the conversations with the neighbours outside her house, to have had the requisite effect on the claimant. Two employees of the respondent had visited the claimant's home when she was absent from work on ill health grounds and she had made it clear that she needed time away from work. The claimant was in her own home, which she would have considered a safe space. She was not in the office. The claimant heard hammering on her door following a first call, something which would have had a particular effect upon someone with the claimant's impairment(s). Those who visited remained outside for some period of time, and did not immediately leave (as a caller or visitor normally would). They spoke to neighbours about the claimant; that is they spoke about her to others associated with her home environment (and she was aware that they were doing so). In that context and in all the circumstances of this case, the Tribunal found that it was reasonable for the conduct to have had the effect on the claimant of violating her dignity and/or of creating a hostile and/or humiliating environment for her.

164. The Tribunal is keen to emphasise that in reaching this decision on the facts of this case, it is not determining that any employer visiting an employee's home to ascertain whether there has been a suicide attempt and whether the individual might need assistance, will always amount to unlawful harassment. In many cases it will not. The decision in this case is all about the context and circumstances of the visit in this particular case. In this case, the email which the claimant had sent which had made reference to suicide, had been sent on 5 September, twelve days prior to the home visit. Whether or not a more urgent response might have been appropriate to the reference to suicide in that email, the need for urgency had long ceased (and

there had been contact with the claimant). Whilst there had been a number of attempts to contact the claimant that day (on 17 September), the escalation of concern appeared to be particularly based upon an incorrect expectation that an employee, absent on ill health grounds, should be rapidly responsive to emails and phone messages, something which is particularly inappropriate where the reason for absence relates to mental health. Whilst Ms Owen believed that she had an arrangement to speak to the claimant that day, the circumstances of the lack of response that day were not such as to mean in the view of the Tribunal that it was not reasonable for the visit to have the requisite effect on the claimant (as identified). In that context, the Tribunal found that it was reasonable for the conduct to have the effect on the claimant which she described. It was reasonable for other employees visiting the claimant's home, banging on her door, speaking to her neighbours, and remaining outside the premises for an extended period of time, to have the requisite effect on the claimant (with her impairment(s)). The Tribunal reached this decision on the facts and circumstances in this case. The Tribunal found that this allegation constituted unlawful harassment related to disability.

165. The Tribunal did note what was said in the Judgments in **Dhaliwal**, **Grant** and **Weeks** relied upon by Mr Hurd, to emphasise what is required for the statutory test to be met. It was clear from the claimant's evidence to the Tribunal that the effect of the visit was not a minor upset. The harassment found was not trivial, albeit as has already been addressed in determining its purpose the Tribunal accepted that its purpose was not as required to satisfy the test. The Tribunal did not find the words referred to above from the Judgment in **Grant** to reflect this particular case, which was not about a humorous remark or a brief interaction between work-colleagues in the workplace. For the reasons already explained the Tribunal found it was reasonable for the conduct relied upon to have had the requisite effect.

Harassment issue 16(d)

166. The fourth harassment allegation relied upon the conduct of the respondent in inviting the claimant to a meeting to discuss her absence in direct contradiction to the recommendations of an occupational health report dated 12 November 2021. The facts which related to this allegation have already been addressed when considering the duty to make reasonable adjustments.

167. The claimant was invited to attend a meeting to be held on 6 December 2021 to discuss her absence. The invite was dated 26 November 2021 and was sent from Mrs Speakman (577). That was obviously unwanted, as the claimant made clear in response. Contrary to Mr Hurd's submission, the conduct was also related to the claimant's disability, as that was one of the things which Mrs Speakman wished to talk to the claimant about.

168. The Tribunal did not find that the purpose of the invitation was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. The reasons for the invitation to the meeting were set out in the invitation. The reasons why it was sent despite the occupational health advice, were addressed in the advice provided to Mrs Speakman by Steven the HR caseworker on 15 November and spelt out in the record of his advice (566), which Mrs Speakman adopted. The purpose was about engaging and communicating with a worker who was absent on a long-term basis.

169. The Tribunal also did not find that the invitation sent and the subsequent email confirming that the meeting would go ahead, had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. What was said in the invitation and the email were entirely reasonable. The points were all about endeavouring to enable the claimant's return to work and to access other things such as therapy. What was said was not addressing action being taking arising from absence, adverse consequences of ill-health, or dismissal. The Tribunal did not find that, based upon the evidence heard, the invitation had the requisite effect on the claimant. Even if it did in fact have the requisite effect on the claimant subjectively, objectively the Tribunal did not find that it would have been reasonable for what was said in the one letter inviting the claimant to a meeting and in a second email explaining the meeting would go ahead, to have had the requisite effect (for the same reasons as have been explained).

Victimisation – protected acts issue 22

170. For the claim of victimisation, the claimant relied upon two alleged protected acts. The second of those was the claimant's email to Mr Hardy sent on 1 November 2021 and the respondent accepted that was a protected act. The first alleged protected act was the email of 5 September 2021 sent by the claimant to Mr Holt. The Tribunal was entirely satisfied that what the claimant said in that email was sufficient to amount to a protected act. The email expressly stated that the claimant was protected under the Equality Act and clearly linked that protection to her health conditions. It was clear from reading the email and what was said in it, that the claimant was making an allegation of disability discrimination. Whilst she did not use those particular words in the email, the email clearly referred to the Act itself. The Tribunal did not find the words used to have been too vague. What the claimant said was sufficient to be clear that she was making an allegation that another person had contravened the Equality Act 2010, not least by expressly referring to the Act and effectively saying so.

Victimisation – detriment issue 24(a)

171. The first detriment which the claimant asserted she suffered because of a protected act, was the substantial delay in progressing the occupational health referral. When addressing the other allegations about the delay, the Tribunal has already provided its findings of fact, including looking at the reasons for the various stages of the delay. For the reasons given and when the delay is looked at stage by stage, the Tribunal did not find that there was a substantial delay in progressing the occupational health referral. The detriment alleged was not found, when the detailed reasons for each part of the delay were considered (as already addressed).

172. The Tribunal also found that any delays which did occur in progressing the occupational health referral were not because of, or in any way related to, the protected act made by the claimant in her email of 5 September 2021. Mr Holt was the recipient of the email. He did not forward the email on to Ms Owen and she was unaware of it. The other delays were for the reasons already explained. The delays were not because of the first protected act.

173. The second protected act only occurred on 1 November. The gap from the re-referral to occupational health on 2 November to the second appointment on 12

November, was not an unreasonable delay. The Tribunal accordingly found that the claimant was not subjected to a detriment in relation to the progression of arranging an occupational health appointment because of the second protected act.

Victimisation – detriment issue 24(b)

174. The second alleged detriment was the respondent consistently seeking to contact the claimant despite express requests that they refrain from doing so. The facts about this broad allegation have already been addressed in relation to other allegations. In relation to the broad allegation, the Tribunal did not find that the claimant was subjected to the detriment alleged. Those seeking to contact the claimant were primarily Ms Owen initially and later Mrs Speakman. Neither of those individuals were aware of the first protected act. Mr Holt did endeavour to contact the claimant on the afternoon of 17 September at the request of Ms Owen, but the reasons why he did so, as evidenced by the respondent, were accepted by the Tribunal and were not the first protected act. The Tribunal did not find that either the first or second protected act were the reasons why anybody at the respondent endeavoured to contact the claimant. It also did not find that the respondent consistently sought to contact the claimant as alleged.

Victimisation – detriment issue 24(c)

175. The third alleged detriment was the conduct of Ms Owen and Ms Millington in attending at the claimant's home and having discussions with neighbours on 17 September. For the reasons already explained when addressing the same incident in relation to other allegations, the Tribunal did find that the visit and speaking to neighbours was a detriment. However, the Tribunal found that the reason why Ms Owen made the visit with Ms Millington was for the reasons Ms Owen evidenced. The reason was not the protected act.

176. There was an overlap between awareness of some of the content of 5 September email and the reasons for the home visit, because the suicidal ideation in the email was part of the reason why the visit was made (Ms Owen having been made aware of that part of the email via Ms McLaughlin). As a result, part of the email was part of the background to why the visit occurred. However, the Tribunal found that the fact that the claimant had made a protected act within the same email, was not the reason, or part of the reason, for the visit.

177. The second protected act had not been made at the time of the visit and therefore was not the reason for it.

Victimisation – detriment issue 24(d)

178. The fourth alleged detriment, was the conduct of the respondent in inviting the claimant to a meeting to discuss her absence in contradiction to the recommendations of the occupational health report dated 12 November 2021. This issue has already been addressed in relation to both the breach of the duty to make reasonable adjustments and alleged harassment above. Ms Speakman invited the claimant to the meeting to be held on 6 December 2021. The invite was sent on 26 November 2021 (577).

179. The Tribunal has already made findings in relation to the breach of the duty to make reasonable adjustments.

180. Ms Speakman did not know that the claimant had done a protected act. The Tribunal accordingly found that the invitation sent by her was not done because of either protected act.

181. The invitation letter was sent by Mrs Speakman to Mr Hardy for approval. There was no evidence that Mr Hardy changed the letter. The Tribunal accepted the evidence of Mrs Speakman and Mr Hardy that they adhered to the advice from the HR advisors (with the exception of the one issue about re-referral to occupational health already addressed). Mr Hardy was aware of the protected acts. However, there was no evidence that the decision made was because of the protected acts based upon Mr Hardy's knowledge. The Tribunal did not find that the conduct alleged, of inviting the claimant to the meeting, was because of either of the protected acts.

Issue 32 – unreasonable failure to comply with the ACAS code

182. It was agreed at the start of the hearing that issue 32 would be addressed alongside the liability issues (even though it is technically a remedy issue). That related to the alleged failure to comply with the ACAS code of practice on disciplinary and grievance procedures.

183. The claimant stated clearly in her email of 5 September to Mr Holt that it was not the grievance. She asked for the grievance process forms so that she could complete them and commence the process. As the claimant had stated that the email was not of itself a grievance, the Tribunal found that it was not a formal grievance and the respondent was right not to treat it as a grievance. In his submissions Dr Ahmed recognised that the claimant never submitted a formal grievance. As a result, the respondent did not fail to comply with the requirements of the ACAS code. The Tribunal certainly did not find there was any unreasonable failure by the respondent to comply with the code, as it appears was submitted, in circumstances where a formal grievance was never raised.

184. The claimant did let the employer know of the nature of her complaints on a number of occasions. She did so in her 5 September email. She did so about the events of 17 September in her email to Mr Hardy and Mr Haworth of 18 September (424). To an extent she did so in reply to the request that she met with Mrs Speakman, in the email which she sent to Mrs Speakman and Mr Hardy on 28 November (579). She did not however raise the issues formally and as part of the respondent's process prior to her resignation. Accordingly, the Tribunal found that the claimant did not comply with the requirements of the ACAS code of practice on disciplinary and grievance procedures as she did not raise such a grievance formally as required.

185. For the uplift to apply, the Tribunal is required to find that the claimant unreasonably failed to comply with the requirements of the code. In this case, the Tribunal did not find that the claimant's non-compliance was unreasonable, where the reason why she did not do so was related to her mental health issues and was in part because the claimant found that contact with the respondent was triggering. She

did raise the matters and the respondent was aware that she had done so. The fact that she had not raised them as a formal grievance was not unreasonable. In any event, even had the Tribunal found that the failure to raise a grievance about either of the matters found had been unreasonable, in all the circumstances of this case and in the light of the claimant's mental health and the impact which contact with the respondent had upon her, the Tribunal would not have found it to be just and equitable to have reduced any award made to her.

Additional finding

186. None of the allegations arose from the termination of the claimant's employment and therefore the Tribunal did not hear submissions about the termination itself. However, the Tribunal did consider it appropriate to make one finding of fact which it considered to be important. The Tribunal did find that the claimant left the respondent's employment because she had found a new job.

Jurisdiction – issues 1-3

187. Having determined the issues explained, the Tribunal then considered the jurisdiction issues set out as issues 1-3 in the list of issues. The Tribunal considered those issues in relation to the two things found only, being that:

a. On 17 September 2021 the respondent had unlawfully harassed the claimant related to disability in the home visit and the conduct of it; and

b. In November 2021 the respondent had failed to comply with its duty to make reasonable adjustments by not temporarily postponing meetings or discussions with the claimant pending the completion of therapy.

188. The breach of the duty to make reasonable adjustments found, was a failure which was ongoing as at the date when the claimant resigned. When ACAS Early Conciliation was taken into account, the claim was entered within the time required for the termination (or at least it was not argued otherwise).

189. The Tribunal did consider whether the two things found were part of a continuing act with each other. The harassment found was by Ms Owen and Ms Millington, and occurred because of a decision Ms Owen made with Ms McLaughlin. The breach of the duty to make reasonable adjustments was a decision of Mrs Speakman, having spoken to Mr Hardy and the HR advisors. The two things found were very different types of discrimination. The facts were distinct and unrelated. The Tribunal did not find that the two things found were together conduct extending over a period.

190. As a result, the claim for the harassment found was presented outside the primary time limit. The harassment found occurred on 17 September 2021. A claim should have been entered, or ACAS Early Conciliation commenced, by 16 December 2021. ACAS Early Conciliation was commenced on 26 November 2021 so that had the effect of stopping the clock. ACAS Early Conciliation concluded on 7 January 2022. With the one month extension which ACAS EC always provides as a minimum, the claim should have been entered at the Tribunal by 7 February 2022. It

was not and therefore was entered out of time. As it was entered on 7 April 2022, it was entered two months late.

191. The Tribunal needed to determine whether the proceedings were brought in such other period as the Tribunal thought just and equitable. Dr Ahmed submitted that it would be just and equitable for the Tribunal to extend time as the claimant resigned, with immediate effect, on 30 November 2021, in relation to and flowing from the 5 September 2021 date referred to in the list of issues. The Tribunal considered the factors and case law set out above. The key relevant factors were:

a. The length of the delay was two months;

b. No evidence was given about any specific reasons for the delay;

c. As at the date of the claimant's resignation, the claimant's evidence was that her mental health was in tatters;

d. The respondent had been able to call evidence about the events of 17 September 2021 and the reasons for it and had defended the claim;

e. There was no specific prejudice identified by the respondent arising from the delay;

f. The delay will have had some impact upon the recollection of witnesses, however that impact will have been lessened by the fact that the claimant raised the issue with the respondent the following day (albeit not formally) and the respondent has known that the events of 17 September 2021 were an issue since 18 September 2021. The two month delay might have had some impact on the cogency of evidence, but Ms Owen's evidence was clear and largely based upon (almost) contemporaneous notes which she made; and

g. If time is not extended, the claimant will be denied a finding and (probably) a remedy for something which the Tribunal has found amounted to discrimination.

192. Applying the above factors (and, in particular, balancing the elements of prejudice), the Tribunal found that it was just and equitable to extend time to determine the claim found for harassment related to disability arising from the events of 17 September 2021.

Summary

193. For the reasons explained above, the Tribunal found that:

a. On 17 September 2021 the respondent had unlawfully harassed the claimant related to disability in the home visit and the conduct of it; and

b. In November 2021 the respondent had failed to comply with its duty to make reasonable adjustments by failing to/not temporarily postponing meetings or discussions with the claimant pending the completion of therapy.

194. The Tribunal did not find for the claimant in her other claims.

195. A remedy hearing will be arranged with a time estimate of one day. The parties have seven days from the date that this Judgment is sent to the parties, to provide unavailable dates to the Tribunal for the period of nine months from that date. The parties must not simply provide copies of counsels' diaries, they must identify the dates when they are not available, being mindful of their duty to the Tribunal and the fact that part-heard cases take precedence over hearings which are not part-heard. If restricted availability is to be provided, the parties should liaise with each other and provide the Tribunal with a number of mutually available dates. Listing the remedy hearing will need to also take account of the panel's availability.

196. Prior to writing to the Tribunal, the parties should also liaise with each other and agree the steps which will be undertaken to prepare for the remedy hearing. They should confirm those steps to the Tribunal. If steps are not agreed and confirmed, the Tribunal will make appropriate case management orders.

Employment Judge Phil Allen

31 May 2023

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
12 June 2023

FOR THE TRIBUNAL OFFICE

ANNEX
AGREED LIST OF ISSUES

Jurisdiction

1. Was the claim submitted within three months starting with the date of the act to which the claim relates and as extended by the application of the ACAS early conciliation process?

2. If the claim in relation to any act of discrimination was not submitted within three months, did such act amount to conduct extending over a period, and was the claim brought within three months of the end of that period?

3. If not, would it be just and equitable to allow such claims to proceed?

Disability

4. This issue did not need to be determined, disability having been accepted.

5. This issue did not need to be determined, disability having been accepted.

6. This issue did not need to be determined, disability having been accepted.

7. This issue did not need to be determined, disability having been accepted.

8. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was disabled as at the date of the act or failure to act?

Failure to make reasonable adjustments

9. Was the Respondent under a duty to make reasonable adjustments?

10. Did the Respondent apply any of the following alleged provisions, criterions or practices ("PCPs") to the Claimant for the purposes of s.20(3) EqA?
    a. the Respondent's absence management process, including referral to Occupational Health;
    b. undertaking meetings as part of the absence management process; and
    c. attending employees' home addresses when they are unable to make contact via telephone and email.

11. Did the Claimant suffer a substantial disadvantage as a result?

12. The Claimant contends that she suffered substantial damage to her mental health as a result of the Respondent's conduct which required her to seek additional medical input.

13. Did the Respondent know or could it reasonably have been expected to know of the substantial disadvantage which the Claimant claims to have suffered and if so, did it take such steps as were reasonable to avoid the alleged disadvantage?

14. The reasonable adjustments the Claimant asserts the Respondent should have made for her are as follows:
    a. progressing the Occupational Health request on a short timescale;
    b. temporary postponement of meetings or discussions pending the completion of therapy;
    c. contacting the Claimant in writing;
    d. contacting the Claimant's next of kin.

15. Did the Claimant request such adjustments and were such adjustments reasonable?

Harassment related to disability

16. On which alleged acts or incidents of disability harassment does the Claimant rely? The Claimant relies on the following:
    a. the substantial delay in progressing the Occupational Health referral;
    b. the Respondent consistently seeking to contact the Claimant despite express request that they refrain from doing so;
    c. the conduct of Christine Owen and Carly Millington in attending the Claimant's home on 17 September 2021 and attempting to enter the premises including having discussions with the Claimant's neighbours in enquiring about the Claimant's current location;
    d. The conduct of the Respondent in inviting the Claimant to a meeting to discuss her absence in direct contradiction to the recommendations of an OH report dated 12 November 2021.

17. Did the conduct occur in the manner alleged?

18. If so, was the conduct related to the Claimant's disability?

19. Was the conduct unwanted?

20. Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them?

21. If the Claimant considered that it did have that effect, was it reasonable for the Claimant to have considered that the conduct had that effect with regard to the perception of the Claimant and the other circumstances of the case?

Victimisation

22. What are the protected acts relied on by the Claimant? The Claimant relies upon:
    a. an email to William Holt on 5 September 2021;

b. an email to Mark Hardy on 1 November 2021.

23. Do the acts relied upon constitute protected acts within the meaning of section 27(2) of the Equality Act 201? (The Respondent does not accept that the Claimant did a protected act by reason of her email to William Holt on 5 September 2021. The Respondent accepts that the Claimant did a protected act by reason of her email to Mark Hardy on 1 November 2021.)

24. What are the incidents of victimisation relied on by the Claimant?
The Claimant relies on:
    a. the substantial delay in progressing the Occupational Health referral;
    b. the Respondent consistently seeking to contact the Claimant despite express requests that they refrain from doing so;
    c. the conduct of Christine Owen and Carly Millington in attending the Claimant's home on 17 September 2021 and attempting to enter the premises including having discussions with the Claimant's neighbours in enquiring about the Claimant's current location; and
    d. the conduct of the Respondent in inviting the Claimant to a meeting to discuss her absence in direct contradiction to the recommendations of the OH report dated 12 November 2021.

25. Did the conduct occur in the manner alleged?

26. Do any of the acts/omissions amount to a detriment suffered by the Claimant?

27. If so, was the Claimant subjected to this treatment because of the protected act(s) or for another reason unconnected to the protected acts?

Remedy

28. What financial losses has the alleged discrimination caused the Claimant?

29. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

30. If not, for what period of loss should the Claimant be compensated?

31. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

32. Did the Claimant or the Respondent unreasonably fail to comply with a relevant part of the ACAS Code of Practice and if so, would it be just and equitable in all the circumstances to decrease or increase any compensatory part of the award by up to a maximum of 25%?