EMPLOYMENT TRIBUNALS

Claimant: **Miss K Pearce**

Respondent: **Barking, Havering and Redbridge University Trust**

Heard at: **East London Hearing Centre**

On: **15, 16, 17, 18, 23, 24, 25 November 2022 and 1, 5 and 7 December in chambers**

Before: **Employment Judge C Lewis**

Members: **Mr P Quinn**
Ms A Berry

Representation
Claimant: In person
Respondent: Mr B Jones - Counsel

JUDGMENT

The unanimous decision of the Employment Tribunal is that:

1. **The Claimant's claim for constructive unfair dismissal succeeds.**

2. **The Claimant's claims for disability discrimination, failure to make reasonable adjustments under s 21 of the Equality Act 2010 in respect of not allowing support for informal meetings, succeeds;**

3. **The remaining complaints of failure to make reasonable adjustments fail and are dismissed.**

4. **A remedy hearing will be listed in due course.**

REASONS FOR RESERVED JUDGMENT

1 The issues the Tribunal had to decide were agreed at a preliminary hearing before Employment Judge Russell on the 12 July 2021.

2 By a claim form presented on the 31 December 2020, the Claimant brought complaints of constructive dismissal, disability discrimination and victimisation. The Claimant asserted that she was disabled by reason of dyspraxia and /or depression and anxiety. The Claimant's case was that during her employment as an antenatal education midwife, she was subjected to poor treatment from a number of managers from early January 2019. At the hearing before Employment Judge Russell, the Claimant's claim was described in the following way: that she was moved to a clinical role without consultation, training or allowances made for her disability, was not paid for bank shift in a timely manner and was unfairly criticised at a meeting on the 1 October 2020 about a care plan without being forewarned, accompanied, or provided with adequate details. The Claimant resigned by letter dated the 1 October 2020, relying on the meeting that day as the last straw.

3 The Respondent denies all the claims. Following the preliminary hearing before EJ Russell, the Respondent conceded both impairments relied on by the Claimant met the statutory definition of disability. It conceded knowledge of depression/anxiety from the 17 May 2019 and knowledge of dyspraxia from the 6 August 2019.

4 The Respondent and the Claimant each provided further particulars of their claim and response.

5 The list of issues was still unfinalized following the further particulars and a further preliminary hearing was held on the 2 December 2021 by CVP before Employment Judge A M S Green. The complaints of victimisation, indirect disability discrimination and harassment in connection with disability were withdrawn and were dismissed in a judgment dated the 22 February 2022 and sent to the parties on the 23 February 2022.

6 A deposit order was also made. This Tribunal explained to the parties at the outset of the final hearing that we would not look at the content of that deposit order before reaching our decision on liability.

7 A further preliminary hearing was held by CVP on 7 June 2022 before Employment Judge Russell to clarify the claim for constructive dismissal. The list of issues was finalised at that hearing and is set out in that case management summary which was at pages 190 - 198 of the final hearing bundle.

Agreed issues

Time limits

1 For any complaint about something that happened before 1 October 2020, were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2 If not, was there conduct extending over a period?

1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.4.1 Why were the complaints not made to the Tribunal in time?

1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Unfair dismissal

2 Was the Claimant dismissed? Did the Respondent do the following matters relied upon by the Claimant:

2.1 On 30th January 2019 the actions of Gill Perks/Roslynn Bullen-Bell/Sue Lovell in their lack of response to the statement written by the Claimant and the manner in which it was handled and discussed with Yousrah. [the Claimant's statement about the shift on 26 January 2019]

2.2 On 14th March 2019 Yousrah writing a statement in response to the Claimant's statement on 30th January 2019 and the subsequent actions of Gill Perks.

2.3 On 2nd April 2019 Anna Peacock informing the Claimant that she has been told that the Claimant had posted on her social media she was: "in bed with a man" whilst she was supposed to be working.

2.4 On 2nd April 2019 Anna Peacock questioning and requesting all hours to be written down by the Claimant in relation to hours worked at home which had been prior agreed with Gill Perks. Subsequently, Anna continuing to push this despite the Claimant explaining that she did not log the hours as it was agreed she could work when it was convenient and best for her which was generally late evenings and overnight.

2.5 On 17th May 2019 Gill Perks failure to complete work risk assessments as recommended in occupational health report. Subsequently a failure to complete these regularly as recommended by occupational health.

2.6 On 5th June 2019 Claimant's duties changed whilst off sick. Tours cancelled without discussion and Claimant not added to task and finish group as requested.

2.7 On 20th June 2019 lack of response from Gill Perks in regard to amendments to meeting notes and Claimant's request for extra time for written work to be completed in view of disability.

2.8 On 25th June 2019 Gill Perks expecting the Claimant to 'catch up' with work left from her sickness period- i.e. no medways had been completed and email responses to clients during the Claimant's sickness

2.9 On 10th September 2019 Gill Perks and Clarisse Oppiah-Ofosu conducting the sickness policy as per standard procedures even though they were aware of the impact that work related issues were having on the Claimant and the Claimant's sickness was related to those issues.

2.10 On 10 September 2019, Gill Perks and Clarisse Oppiah-Ofosu not addressing the Claimant's concerns regarding the January 2019 incident on labour ward with mediation and appropriate actions in line with Trust policies and Acas code of conduct and their own recommendations (paragraph 36 of Claimants FBPs)

2.11 On 24 September 2019, Ros Bullen-Bell removing the Claimant's access to e-roster (paragraph 25 of Claimant's FBPs)

2.12 On 25 September 2019, Sue Lovell insisting the Claimant had to undertake clinical shifts (paragraph 34 of Claimant's FBPs)

2.13 On 25th September 2019 Sue Lovell not acting on concerns raised since December 2017 regarding workload issues

2.14 On 26 September 2019, Sue Lovell placing the Claimant on a roster system as clinical (paragraph 33 of Claimant's FBPs)

2.15 Between 28th November & 3rd December 2019 Sue Lovell not acting on concerns raised in respect of seconded post and behaviours of Gill Perks.

2.16 On 29 November 2019, Gill Perks removing the Claimant from PIB teaching (paragraph 32 of Claimant's FBPs)

2.17 On 11 December 2019, Anna Peacock sending confidential information to Sue Lovell and Gill Perks regarding the Claimant's personal issue (paragraph 30 of Claimant's FBPs)

2.18 On 11th December 2019 Anna Peacock stating that: "It was always happening to you" and that the Claimant needed to: "Separate [her] life/work issues" when the Claimant was explaining her absence.

2.19 On 17th December 2019 Sue Lovell's lack of response or support or investigation into concerns raised by the Claimant about the bullying and behaviours of staff members.

2.20 On 19th December 2019 Anna Peacock informing the Claimant that there was 119 hours owed to the Trust on the system and subsequently how these hours arose on the system

2.21 On 19th December 2019 Sue Lovells failure to change the Claimant's line manager from Gill Perks despite over one month and numerous requests from the Claimant.

2.22 On 19th December 2020 Anna Peacock's failure to place the Claimant on the community telephone list despite requests from the Claimant

2.23 On 20th December 2019 Clarisse informing the Claimant that Gill Perks was leaving the Trust and not looking into the concerns raised by the Claimant thoroughly.

2.24 On 7th February 2020 Heather Gallagher's failure to plan/initiate a meeting as planned in her email to discuss concerns raised by the Claimant's concerns about the verbal comments of Anna Peacock referring to the Claimant as: "Pocahontas" and Denise Gray speaking rudely to the Claimant in respect of her hair.

2.25 On 7th February 2020 Heather Gallagher summoning the Claimant for a meeting as she had discussed the uniform policy with equality and diversity.

2.26 On 11th February 2020 Anna Peacock accusing the Claimant of failing a cardiotocograph (CTG) assessment about which the Claimant had never been informed.

2.27 On 11th February Anna Peacock and Alex Taylor emailing the Claimant to state that there had been six couples attending the birth centre for a session which had never been booked in.

2.28 [~~On 17th March 2020 Anna Peacock moving Claimant's role from antenatal education to full clinical duties with no discussion/risk assessment/support offered. Three days given to cancel all sessions~~. – **withdrawn on day 3 of the FH]**

2.29 On 17th March 2020 Anna Peacock discussing a query? perineal tear in same meeting as the one regarding the Claimant's role. Inappropriate accusations made that the tear was attributable to a 1.3 litre blood loss found in the uterus.

2.30 On 26th March 2020 Anna Peacock emailing the Claimant to state that she would be undertaking duties on the telephone triage without training/support/discussion/risk assessments.

2.31 On 19 June 2020, Laura Thomas paying the Claimant for work undertaken on a bank shift of 13 June 2020 late despite adequate time between shift worked and cut off for pay (paragraph 19 of Claimant's FBPs)

2.32 On 20th June 2020 the Claimant was omitted from email list to receive the documentation from the 'itchy feet' session held by Heather Gallagher.

2.33 On 4th July 2020 No response received from Anna Peacock in respect of the Claimant's query regarding position of antenatal education provision yet response from Anna was received almost immediately to Claire regarding the same matter.

2.34 On 14 August 2020, Laura Thomas not paying the Claimant for work undertaken on a bank shift of 5 August 2020 on time despite adequate time between shift worked and cut off for pay on the correct date (paragraph 15 of Claimant's FBPs)

2.35 On 6th September 2020 Tracy Beason not giving rationale or reason or clarification of the Claimant's current position regarding antenatal education despite request from the Claimant.

2.36 On 16th September 2020 Denise Gray failing to respond to the Claimant's email to raise an issue with the equipment (suturing stools) on the labour ward.

2.37 On 25 September 2020, Laura Thomas not paying the Claimant for work undertaken on a bank shift of 20 September 2020 on time despite having adequate time between shift worked and cut off for pay on the correct date (paragraph 13 of Claimant's FBPs)

2.38 On 1st October 2020 Tracy Beason's request to ask the Claimant for a meeting to discuss the "care plan of client "on the same date. The subsequent interrogation of the Claimant regarding 5 separate issues of concern, one which had occurred 6 months prior to this meeting date and been prior dealt with.

2.39 On 1st October 2020 Sue Lovell's response to the Claimant raising her concerns of the issues regarding the meeting and the comments: "she is just exercising her authority" and "I would seriously reconsider your resignation; you have mouths to feed".

3 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

3.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

3.2 Whether it had reasonable and proper cause for doing so.

4 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

5 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

6 If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?

7 Was it a potentially fair reason?

8 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

Remedy for unfair dismissal

9 Does the Claimant wish to be reinstated to their previous employment? If so, the Tribunal will consider whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

10 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment? If so, the Tribunal will consider whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

11 What should the terms of any re-engagement order be?

12 If there is a compensatory award, how much should it be? The Tribunal will decide:

12.1 What financial losses has the dismissal caused the Claimant?

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

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

12.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

12.5 If so, should the Claimant's compensation be reduced? By how much?

12.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

12.7 Did the Respondent or the Claimant unreasonably fail to comply with it?

12.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

12.9 If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?

12.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

12.11 Does the statutory cap of fifty-two weeks' pay or £86,444 apply?

13 What basic award is payable to the Claimant, if any?

14 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

15 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

16 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

16.1 Expectation that meetings to be in-person only and verbally and concerns be provided verbally/in person.

16.2 Expectation that staff will attend meetings without agenda or information given prior to meetings.

16.3 Not regularly updating rosters accurately.

16.4 Only dealing with grievances on paper.

16.5 Not allowing support for informal meetings.

16.6 Expectation that staff will Change roles/wards without notification.

16.7 Expectation for Bank staff to move wards if on shift and staff required.

16.8 Timings of sickness meetings not flexible.

16.9 Expectation that staff will be proficient clinically when employed in non-clinical roles.

16.10 Expectation that staff will learn paperwork whilst undertaking clinical duties.

16.11 Expectation for staff to move/change clients sometimes several times in a shift.

16.12 Expectation for staff to accept important tasks not being completed to meet their needs because of the pressures/lack of staff.

16.13 Expectation on the labour ward from January 2019 that the Claimant should take a further patient before the clinical paperwork for the previous patient is completed.

16.14 Expectation that sessions for PIB (partners in birth) would be verbatim.

16.15 Expectation the Claimant should achieve a 100% rate of consent for patient participation in the PIB research project.

16.16 As set out in the contents of emails between Ms Gill Perks and the Claimant in late March 2019/early April 2019 (shortly after her PIB secondment ended), requirement to complete paperwork for the PIB research project.

16.17 Expectations in relation to appraisals being completed and targets being met in 2019 and 2020.

17. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability?

18 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

19 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

19.1 Providing written documentation as requested to inform the Claimant of any concerns they had about her practice rather than verbal and providing a clearer example of the exact concerns that they are claiming.

19.2 Providing better staff awareness of dyspraxia and depression and looking at the impact the condition has and how it can affect staff members.

19.3 Listening to the Claimant's needs with regards to workload issues and assisting with these as agreed in 2017. Exploring whether workload needs adjusting in view of Claimant's disability or administration staff/support staff could be offered.

19.4 Not pressurising the Claimant to take on further duties (clinical) when already struggling with workload and had communicated this to the Respondent.

19.5 Preparing the Claimant fully by enabling some shadowing days prior to change of duties and having a discussion with the Claimant about suitability of the role/concerns/worries about the change.

19.6 Carrying out regular work risk assessments as recommended in occupational health report dated 17th May 2019

19.7 Carrying out mediation within a suitable timeframe with regards to the incident on 26/01/2019 and looking at supportive strategies and methods to assist the Claimant addressing the issues raised.

19.8 Providing clear role duties for the shift lead on QBC and providing the Claimant with the same training as band 6 core staff as a minimum and extra in view of the Claimant's disability.

19.9 Ensuring the Claimant was fully orientated to the ward areas prior to clinical duties and scheduling extra time than normally allocated to ensure that the Claimant is comfortable with the surroundings.

19.10 Providing separate allocated specific time to train on paperwork procedures/computer systems.

19.11 Not expecting the Claimant to attend wards that they have not been orientated to. Understanding the effect the Claimant's disabilities have on her and supporting the Claimant to enable her to practice safely and effectively without pressuring her into doing

things she is not comfortable in doing and putting in place a different pathway to ensure disabled workers are not disadvantaged by the system currently in place i.e., not moving wards randomly and having a structured approach.

19.12 Not pressurising the Claimant regarding sickness record and sickness management since this is related to factors associated with the Claimant's disability arising due to bullying and work factors.

19.13 Providing suitable notice for meetings, providing correct information for the meeting agenda, and enabling a friend to support the Claimant if concerns are to be raised.

19.14 Relaxing the uniform policy for non-clinical shifts and exploring suitable hairstyles for clinical shifts considering the clients disability.

19.15 Looking at the reasons for appraisal targets not being met (sickness and moving roles due to covid 19) and adjusting accordingly.

20 Was it reasonable for the Respondent to have to take those steps and when?

21 Did the Respondent fail to take those steps?

Remedy for discrimination

22 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

23 What financial losses has the discrimination caused the Claimant?

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

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

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

27 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

28 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

29 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

30 Did the Respondent or the Claimant unreasonably fail to comply with it?

31 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

32 By what proportion, up to 25%?

33 Should interest be awarded? How much?

The hearing arrangements

8 The Tribunal were provided with a PDF final hearing bundle, a witness statement bundle and a bundle containing the Claimant's additional hearing documents. Mr Jones, Counsel for the Respondent, provided a written opening note, cast list and chronology. The Claimant provided a version of the chronology with her comments. The hearing was listed to take place by CVP. At the outset of the hearing, the judge inquired as to whether the Claimant was comfortable with the CVP arrangement and offered the Claimant the use of a room at the Tribunal from which to join the CVP hearing with the assistance of a clerk if necessary. The Claimant confirmed that she was happy to proceed by CVP, she had in fact travelled up to Yorkshire to be with her sister where she had a computer and a back up and support from her sister. The Claimant was familiar with the CVP arrangements having taken part in a number of preliminary hearings all by CVP. The time allocation for the final hearing had originally been 10 days but had been reduced to 8 days. In the event, the evidence and submissions were concluded within 7 days and the Tribunal was able to find two additional days to sit in chambers, giving 3 days in total for its deliberation.

9 The timetable was discussed at the start of the hearing. It was agreed that the Tribunal would aim to take a break every hour and that additional breaks would be provided if the Claimant needed them. It was agreed that the Tribunal would be considering the issues as set out by Employment Judge Russell in her case management orders from 7 June 2020. The Tribunal spent the remainder of the first day reading the witness statements and documents referred to in the statements.

10 The Claimant gave evidence on the second day, 16 November 2022, she had some assistance with technology from her sister, Nicki Alderman. The Claimant was cross-examined by Mr Jones on day 2 and 3, (16 and 17 November 2022). During the course of cross-examination on day 3, the Claimant withdrew the issue identified as issue 2.28 on the list of issues.

11 The Respondent called Sue Lovell to give evidence on the afternoon of day 3, the Tribunal then heard evidence from Ms Laura Thomas and Gillian Perks on day 4; Anna Peacock, Clarisse Oppiah-Ofosu and Yousrah Nurmahomed on day 5; Heather Gallagher, Roslyn Bullen-Bell, Denise Gray and Ms Beason on day 6. The Tribunal heard final submissions on day 7, Friday 25 November, the hearing started at 11.45 am to allow time for the Claimant to read Mr Jones' written submissions. Following the parties' submissions the Tribunal reserved its decision and spent the rest of 25 November and 1,5 and 7 December 2022 deliberating in chambers.

12 The Tribunal is grateful to Mr Jones for his careful written submissions, the Claimant did not (or was not in a position to) dispute his submissions as to the law, parts of which are reproduced below, and which the Tribunal are satisfied correctly state the law and the relevant authorities.

13 The Tribunal deliberated in chambers on 1,5 and 7 December 2022 and reached its conclusions on the issues as set out below. The Judge wishes to apologise to the parties for the length of time it has taken to provide them with the Reserved Judgment with Reasons, this has been due to a combination of judicial workload and lack of judicial resources.

Findings of fact

14 The Tribunal made the following findings of fact based on the evidence before it. We have set out below our findings of fact as far as they were necessary to determine the issue before us. We have firstly set out our findings in respect of disability and knowledge of disability and have then set out our findings as far as possible in the order in which they appear in the list of issues and for clarity have set out which issue our findings relate to in italics, albeit at times in summary form to avoid unnecessary duplication, given the number of issues and length of this decision. For the same reason we have only set out our findings on the contended for reasonable adjustments where we have found that there was a relevant PCP which placed the Claimant at a substantial disadvantage compared with someone without her disabilities.

Disability - date of knowledge
Depression and anxiety

15 We find that the Respondent had knowledge of the Claimant's depression and anxiety from the 13 May 2019. The Claimant was absent from work from 3 April 2019 until the 27 May 2019, the reason for her absence was depression and anxiety, her GP fit note dated 10 May 2019 cites depression as the reason for absence [774]. On 13 May 2019 Gill Perks sent a letter [page 776-777] confirming the outcome of the informal long-term review meeting. The Claimant had discussed with Gill Perks the reasons and circumstances around her absence. The Claimant explained her current depression and contributory events and that she had suffered an episode of depression in the past. We are satisfied that based on the information provided by the Claimant to Gill Perks the Respondent was on notice that the Claimant was suffering from depression and anxiety, which was something that she had suffered from in the past and was likely to be a recurring condition.

Dyspraxia

16 The Respondent admits knowledge of the Claimant's dyspraxia from the 6 August 2019. We are satisfied that they had knowledge prior to this date. We find that the summary of the meeting between the Claimant and Gill Perks on the 7 June 2019 specifically refers to the Claimant informing Ms Perks that she had dyspraxia: this was part of the Claimant's explanation for not having completed the body of work that Ms Perks was expecting from her [797]. We also find that Denise Gray, who joined the Respondent in 2017 as Labour Ward Matron, had worked with the Claimant at a previous Trust and knew the Claimant had dyspraxia from that time, [paragraph 4 of Ms Gray's statement] and that Roslyn Bullen-Bell, who started with the Respondent on the 19 March 2018 as Consulting Midwife managing the Education team and who reported to Sue Lovell, knew the Claimant had dyspraxia because the Claimant had shared this with her at their previous employer, [paragraph 6 of Roslyn Bullen-Bell witness statement]. Ms Bullen-Bell became the Birth Centre Consultant Midwife from March 2018. We are satisfied the Respondent had constructive knowledge from March 2018 that the Claimant had dyspraxia.

17 We do not infer any knowledge of these specific conditions from the Claimant ticking a box on her application form to confirm that she had disability. The Claimant refused permission for the report from her pre-employment occupational health discussion to be

disclosed to the Respondent in these proceedings and there is no evidence before us of the content of that pre-employment discussion.

The effects of the conditions.

18 The Claimant set out the effects of her dyspraxia in her disability impact statement [page 63 in the bundle]. We have accepted that is an accurate account of the effects of the condition on the Claimant. At paragraph 7, she describes the impact on her coordination, fine motor skills, perception, thought processes and organisational skills: she describes herself as being clumsy and having poor hand to eye coordination. Her dyspraxia affects things like packing, ordering tasks, handling equipment; she struggles to learn new tasks and requires lots of practice; she also needs to know the layout of a place in order to find things. It takes her longer to complete work and this involves more effort on her part [paragraph 8]. The dyspraxia affects the Claimant's organisational skills and makes it harder for her to plan everyday tasks, this is exacerbated by stress. The Claimant finds it difficult to concentrate and needs to take breaks regularly from tasks, this might include walking around and being away from the area where she is completing the tasks [paragraph 9]. The condition also affects her perception and understanding, it can take her time to think through what she has heard or been told so she can comprehend what has been said and she may seek clarification and in a written format to help process the information [paragraph 10]. The condition means that the Claimant finds new environments and equipment structures are extremely daunting and can trigger anxiety [paragraph 12]. We accept that tiredness and stress exacerbate the effects of the Claimant's dyspraxia.

19 We are satisfied that the Respondent was aware through conversations she had had with Ms Bullen-Bell that a result of her dyspraxia the Claimant may need longer to make notes, she would need orientation to a new area of work, i.e. to any new ward or new task and she would need to fully apprise herself of new tasks.

Depression and anxiety

20 The Respondents were aware of the Claimant taking medication for depression and anxiety in May 2019. Gill Perks made a referral to occupational health following their return to work meeting on the 13 May 2019, [778-784]. The occupational health recommendation on 17 May 2019, was that a workplace risk assessment be carried out by her manager [785]. The return to work form dated the 5 June 2019 mentioned stress, [789, 790 and 791] the form is not entirely readable, the drop down boxes are only readable in part but the visible part refers to work relationships contributing to stress, not the work itself. On the 7 June 2019, at a further return to work meeting with Gill Perks the Claimant declined a further OH referral, she referred to her dyspraxia as a reason for her difficulty in completing the research project. The Respondent accepts it had knowledge of both conditions from this meeting onwards.

The events of 26 January 2019.

21 On the 26 January 2019, the Claimant was working a late shift at the birth centre. A client that the Claimant was caring for needed to be transferred to the labour ward, an area she had not worked in previously and that she was not familiar with. The Claimant transferred the client, i.e. went with the client to the labour ward, and on arrival informed the labour ward coordinator, Yousrah Nurmahomed, that she was not happy to continue with the care as she was not familiar with the ward or the paperwork there. She was told that

there was nobody to take over and she continued to care for the client. The reason given for the patient's transfer was because there had been some foetal heart rate deceleration detected, with a slow return to baseline and some thin meconium visible. The Claimant gave an account of the events of that evening in a reflective statement sent her to Gill Perks on 30 January 2019 following a discussion she had with Gill Perks about what she had seen on the labour ward on the 26 January. The Claimant told us why she finds a new environment challenging but we find no evidence that she explained this to Ms Nurmahomed at the time. We accept that the Claimant told Ms Nurmahomed that she was not comfortable or happy to continue the patient's care but was told that there was nobody else to take over.

22 The Claimant was upset by what she observed of the treatment of the patient and set out why this was in her reflective statement [716-718]. Under the heading feelings at page 717, the Claimant set out that the events made her feel angry and upset. She went on to explain what she considered to be unnecessary interventions without providing an explanation or fully obtaining consent. The Claimant's reflective statement concluded with what she would change, stating that she should have been more assertive for the patient at the time in the room and she should have explained that she was fully capable of providing the clinical care to the woman and would have appreciated some support with the paperwork and initial settling in. She noted that she now felt more comfortable and confident with the paperwork which would hopefully help her in the future. She noted that she should have had a discussion with the labour ward coordinator following the shift as this would have been a positive reinforcement of teamwork with the midwives in the labour ward and then set out her actions/plans. First of which was to discuss her concerns with the labour ward coordinator in person. Secondly, discuss the concerns with the labour ward manager/ consultant midwife, and thirdly, plan some time on the labour ward on a supernumerary basis to enable her to feel more comfortable in this setting.

23 We find this reflective statement was an accurate account of the Claimant's recollection of what she perceived to have taken place. It was written up within a few days of the events of the 26 January. The account indicates that she did not discuss her feelings and observations with the labour coordinator immediately following the shift, hence her action plan and what she would do differently.

24 The 29 January shift had been at the weekend, the Claimant went to speak to Gill Perks to discuss the events on the shift on the Monday following. Ms Perks [paragraph 32 of her witness statement] says the Claimant described that there had been an altercation. We do not find that that is what the Claimant said. We find that the Claimant told Ms Perks that she was unhappy with what she saw in respect of the practice and treatment of the woman (patient). Ms Perks asked her to document her account and it was after this meeting that the Claimant wrote the reflective statement and sent it to Ms Perks.

25 Ms Bullen-Bell told the Tribunal that the Claimant also complained to her about the treatment of the woman by Ms Nurmahomed. We find that this is consistent with the Claimant's action plans in her reflective statement. We accept that this happened. Ms Bullen-Bell then spoke to Ms Nurmahomed to obtain her account. We are satisfied that the reason for Ms Bullen-Bell speaking to Ms Nurmahomed about the incident was because the Claimant had complained to her about Ms Nurmahomed.

26 Ms Nurmahomed told the Tribunal that she was informed by Ms Bullen-Bell that the Claimant was complaining about her and her alleged treatment of her on shift; Ms Bullen-

Bell verbally explained the Claimant's account of events to her. We accept that this is likely to have happened as a result of the Claimant's conversation with Ms Bullen-Bell.

27 On the 19 February 2019 there was a memorial service for a colleague which the Claimant and Ms Nurmahomed both attended. After the event, the Claimant spoke to Ms Nurmahomed. Ms Nurmahomed and the Claimant have different recollections of whether the Claimant sought out Ms Nurmahomed on the ward, or they spoke in a corridor and then went to speak in a room. Whatever the precise location, we are satisfied that a conversation took place in which the Claimant expressed her unhappiness about what she had witnessed on the 26 January. We find this is consistent with the Claimant's action plan set out in her reflective statement. Ms Nurmahomed recalls the Claimant approaching her and challenging the care that she provided to the patient as, "unnecessary". She asked the Claimant what part of the care she found unnecessary and the Claimant replied, "all of it". We find it likely that the Claimant did refer to the care of the patient as unnecessary. She had by this time already set out in her reflective statement the element of care that she had found unnecessary and therefore upsetting.

28 Ms Nurmahomed told us that she became concerned on hearing the Claimant express her view that she found all of the care provided to the patient unnecessary, as this indicated to her that the Claimant did not understand why foetal monitoring was particularly important and that the Claimant did not appreciate what was happening in the room at the time. Ms Nurmahomed tried to explain why the care was important but found that the Claimant was not willing to listen. Ms Nurmahomed found the Claimant to be confrontational and was uncomfortable with her attitude. Following that discussion, Ms Nurmahomed became concerned about the Claimant's clinical practice and what she perceived to be the Claimant's lack of understanding of what had happened with the care of the patient on that shift. Ms Nurmahomed therefore decided to send an email to Sue Lovell, Interim Director of Midwifery, outlining her concerns regarding the Claimant's clinical skills and situational awareness. Ms Nurmahomed had been concerned that there was a shoulder dystocia and that the Claimant had not appeared to have observed this, as well as not being concerned to ensure the foetal heartrate monitoring was conducted. The Claimant did not accept that she had missed a shoulder dystocia, she believed that was not true and that if this had happened it should have been documented at the time, which it was not. She left the interaction feeling upset and harassed.

29 We find that at the time of her conversation with the Claimant on the 19 February, Ms Nurmahomed had not seen the Claimant's reflective statement. Ms Perks did not send it to her, she considered it to be a private reflection of the Claimant's and the Claimant accepts that was its intended purpose. The Claimant shared it with Gill Perks but did not wish it to be forwarded on to Ms Nurmahomed. Ms Nurmahomed knew the Claimant was unhappy about what had happened on the shift on the 26 January because Ms Bullen-Bell had spoken to her. We accept that Ms Nurmahomed was genuinely concerned about what she perceived to be the Claimant's apparent lack of awareness of the clinical situation unfolding and that this was her primary reason for writing to Ms Lovell. We find that Ms Nurmahomed was also aware that the Claimant had made complaints about her care and having had a conversation with the Claimant in which the Claimant described the care that she had given to the patient in quite critical terms, we are satisfied that it is likely that she also had in mind that she needed to get in her explanation first. We accept that when Ms Nurmahomed spoke to Ms Bullen-Bell, she expressed the same concerns about the Claimant's clinical skills that she subsequently raised in her email to Sue Lovell. We accept that those concerns were genuinely held. For her part Ms Bullen-Bell thought that there was

a miscommunication between the two of them and thought that mediation would be an appropriate way to resolve the matter.

30 On the 27 February 2019, Ms Nurmahomed sent an email to Sue Lovell [720-721] setting out her concerns about the Claimant. She explained the delay as being a result of her being busy. We do not find that being busy entirely explains the delay which is also not consistent with the tone of the email. We find that the email was sent as a result of the meeting with the Claimant on the 19 February 2019.

31 Ms Nurmahomed had a meeting with Ms Perks towards the end of February or beginning of March, which she understood to be as a result of the Claimant's complaints to Ms Perks. We find that this was in fact as a result of Ms Lovell asking Ms Perks to look into the email Ms Nurmahomed had sent to Ms Lovell. Ms Perks also spoke to the Claimant in response to Ms Lovell asking her to address the concerns raised by Ms Nurmahomed. The Claimant sent a detailed email in response on the 14 March 2019 [725-726] in which she disputed Ms Nurmahomed's recollection of the events of the 26 January and disputed there had been any shoulder dystocia. She made reference to the notes of the birth and queried why, if a shoulder dystocia had occurred, none of the professionals included reference to it in the relevant documentation at the time, or completed a shoulder dystocia proforma. She pointed out that completing relevant documentation is a key element of professional practice, (a reference to midwives and other medical professionals) and that this should have been completed by Ms Nurmahomed if she felt that the Claimant had missed, or not seen, a should dystocia. The Claimant alleged that failing to complete the relevant records was not adequate practice and was an omission of the responsibility of a midwife. The Claimant's response was addressed to Ms Nurmahomed but sent to Ms Perks. Ms Perks emailed the Claimant on the 20 March thanking her for the response stating that she could understand the logic, reason and passion behind her argument but could not show the response to Ms Nurmahomed as the language was too confrontational. She told the Claimant that she would meet with Ms Nurmahomed and present the Claimant's perspective along with the original recollection and reflection written at the time. She had agreed that it would be a good idea for the two to have facilitated meeting which is what the Claimant had suggested. We find this was what prompted Ms Perks to then have a meeting with Ms Nurmahomed in March.

32 On 21 March 2019, the Claimant replied to Ms Pearce confirming that her response was not for Ms Nurmahomed to read but more comments and questions of the Claimant's own thoughts. She repeated that the bottom line was that 'if she feels that it was a shoulder dystocia, then she needs to go back and complete the documentation herself as that is not what I saw.'

Issues 2.1 and 2.2 of the list of issues:
2.1 On 30 January 2019 the actions of Gill Perks, Roslyn Bullen-Bell and Sue Lovell in their lack of response to the statement written by the Claimant about the incident on the shift on 26 January and the manner in which it was handled and discussed with Ms Nurmahomed; and
2.2 On 14 March 2019 Ms Nurmahomed writing a statement in response to the Claimant's statement and the subsequent action of Gill Perks.

33 We are satisfied that Ms Perks and Ms Bullen-Bell both followed up the statement written by the Claimant although Ms Bullen-Bell dealt with an oral complaint, Ms Perks had the written statement. We have found that Ms Perks only met with Ms Nurmahomed as a

result of Ms Nurmahomed writing to Sue Lovell, not in response to the Claimant's statement. Ms Perks deals with this incident and its aftermath in her witness statement, [paragraph 32-38]. She describes the Claimant providing her with a reflective statement and then shortly after receiving an email from the Director of Midwifery. We find that there was a gap of almost 4 weeks between the Claimant's reflective statement and the email to Ms Lovell in which Ms Perks did not take any active steps to resolve the issue and it was only in response to Sue Lovell's intervention that she then became proactive.

34 Ms Perks told the tribunal [paragraph 36 of her statement], that her recollection was that the Claimant was not willing to engage and was convinced that Ms Nurmahomed was lying about her and out to get her and that whenever Ms Perks would bring it up, the Claimant would shout, cry and swear. We find this evidence to be indicative of a dismissive approach to the Claimant's concerns. We do not find it is accurate to describe the Claimant's behaviour throughout, as shouting, crying and swearing whenever the issue was brought up. We find that might more accurately describe the Claimant's response at the end of her employment after the protracted delays in resolving the matter, but at the time of raising the incident we find the Claimant was willing to engage professionally. We find that the Claimant prepared statements in the first place at Ms Perks' request and in response to Ms Nurmahomed's account and was making positive and proactive suggestions of ways to avoid such a problem in the future; including having a red, amber and green alert system of transfer, meeting and discussing with Ms Nurmahomed, spending more time shadowing on the labour ward and other suggestions which were not pursued or taken up, and that she was throughout willing and expressing willingness to engage in mediation. We are satisfied that the cause of the Claimant's upset is reflected in their subsequent one to one meetings and record of meetings with Ms Perks, that is she believed that she was not being listened to and that Ms Nurmahomed account was taken at face value even though it was not reflected in the clinical note; she repeated the point that if it was an accurate account, further notes ought to have been made at the time, or written up shortly thereafter by Ms Nurmahomed or any of the other clinical professionals involved, including the doctors, and a report of the shoulder dystocia should have been included in the note at the insistence of Ms Nurmahomed and the doctor dealing with the patient. The failure to do so, was a failure in their professional. obligations The Claimant made this point clearly [see page 725-726] and was upset that nothing was done to follow this up or to resolve this issue.

35 On the 12 March 2019 the Claimant applied for the Band 7 role as manager of the Birth Centre. This is a clinical role. On the 31 March 2019, the Claimant's secondment to Band 8a ended when the research project came to an end, and she returned to her substantive role as a Band 7 Antenatal Midwife.

Issue 2.3 On 2 April 2019 Anna Peacock informing the Claimant about alleged social media post

36 On 2 April 2019 on the Claimant's return to her substantive role there was a one to one meeting between the Claimant and Ms Peacock; Ms Peacock conducted the meeting in Ms Perks' absence while Ms Perks was on sick leave. At this meeting, Ms Peacock raised of an allegation that the Claimant had posted on social media "working from home" while stating that she was in fact in bed with a man, [729]. Ms Peacock told the tribunal that she felt that she had dealt with this sensitively, however the Claimant was concerned and upset that this allegation had been raised with her without any form of formal or informal verification and was simply untrue. The Claimant showed Ms Peacock her social media posts on Facebook and Instagram to establish that she had not made any such post. We

accept that Ms Peacock had received a report from another member of staff. She accepted the Claimant's explanation and after the conversation nothing further was done about it.

Issue 2.4 on the 2 April, Anna Peacock questioning and requesting all hours to be written down by the Claimant.

37 During the meeting Ms Peacock asked the Claimant about the hours she had worked on the research project, not all of which had been recorded on the system. The Claimant alleged that Ms Peacock required her to 'make up', that is, invent, her hours. She told Ms Peacock that had not recorded them as Ms Perks had agreed that she simply needed to complete the work and would not need to record the hours. Ms Peacock responded by asking the Claimant to provide her with a note of the hours the following day. The Claimant says this indicates that she was expecting the Claimant to make up a record of those hours when one did not exist. We find that Ms Peacock actually asked the Claimant to check her diary, look at her notes and other records that she had, to give an indication of when she had completed the work and the amount of hours involved. We do not find that she was expecting the Claimant to invent or make up those hours and that is not what she said to the Claimant.

38 Following their conversation, Ms Peacock checked the position with Ms Perks who informed her that as long as the Claimant had done the research project, she would have completed sufficient hours. We are satisfied that there is no evidence that Ms Perks had asked the Claimant to record her hours and we find that Ms Perks was indeed happy to accept the Claimant working her hours from home if she had done the work on the project. Following this meeting the Claimant felt pressured and overwhelmed and went off sick. The Claimant at this point felt that she had put work on completing the project as a priority over taking time off to deal with her own personal circumstances, particularly following a very distressing incident in November, when she really ought to have taken time off but was concerned that the project funding was due to run out. She knew she was being funded at a Band 8a and she needed to carry on with the work otherwise the project would be jeopardised and the funding wasted; she felt that now in April she was being unfairly criticised for having done that.

39 We do not find that the Claimant was being asked to invent hours or that she was being criticised for having prioritised the work over her personal circumstances. We find that it was not unreasonable for Ms Peacock to ask the Claimant to go away and come back over the following days with the hours she could recall or put together as a result of looking at her notes and diary.

Issue 2.5 that Gill Perks failed to complete a work risk assessment as recommended.

40 From the 3 April 2019, the Claimant was off with anxiety, stress and depression (page 789). An occupational health meeting took place on the 17 April 2019 and recommended a stress risk assessment. On the 13 May 2019, the Claimant met with Gill Perks for a long-term absence review meeting in respect of her absence from the 3 April to the 27 May. The Respondent knew by this time the Claimant was suffering from depression and anxiety, she indicated that she intended to return to work on the 27 May, which she did [page 776].

41 Ms Perks held a return to work meeting on the 7 June 2019. The Claimant had been informed that the meeting would take place early in the morning and she came in early to attend the meeting only to be told that Ms Perks was busy; the Claimant then had to wait

around. The occupational health report dated 17 May 2019 [785] confirmed that the Claimant had been off work with depression and anxiety, and recommended that a workplace risk assessment to be carried out and support provided by regular 1 to 1s. The OH recommendation referred to the Staff Mental Wellbeing and Resilience Policy where guidance could be found on workplace stress risk assessments. We find that no workplace risk assessment was carried out. Ms Perks gave evidence that she considered that her discussion with the Claimant about the cause of her workplace stress, [see paragraph 55a of her witness statement] meant that in her view this was implemented. We do not find that this was an adequate substitute for a workplace risk assessment. The Claimant informed Ms Perks that the cause of her stress at work was the January 2019 incident. It was suggested by the Respondent that steps were taken to arrange a mediation to resolve this issue, however, we have found that no real steps were taken to arrange a mediation.

42 The Respondent's witnesses told the Tribunal that as far as they remembered, the mediation did not happen because the Claimant objected to the person who had been identified to carry out the mediation, that is, Denise Gray. We are satisfied this is not an accurate reflection of the position. The Claimant did not object to the person identified nor to a mediation. She repeatedly confirmed that she was happy to pursue mediation, [see for instance p.839 minutes of meeting on 18.6.19, and p887 10.9.19 meeting outcome letter from Gill Perks], that she had no objection to Denise Gray and did not raise any objection to Denise Gray mediating [890, Gill Perks account of meeting on 10.9.19 in her email to Sue Lovell]. We have found that it was Gill Perks who suggested that Denise Gray was not suitable, because she was Ms Nurmahomed's line manager [890], Ms Perks suggested two alternative managers who had no involvement with either party. Following this email to Sue Lovell nothing else was done to follow up with a mediation or to find anybody else who might be suitable.

43 Ms Perks acknowledges [paragraph 43 of her witness statement] that she received the occupational health report with the recommendation of a workplace stress risk assessment but could not recall why this had not taken place. She pointed out that the Claimant did not raise that she wanted a stress risk assessment and confirmed that she did not want further OH referral. We do not find this to be a satisfactory explanation, a workplace risk assessment is a different process to an occupational health assessment. We do not find it reasonable for the Claimant to be made responsible for ensuring that this took place, it was the role of the manager to ensure that it took place and not the Claimant.

44 The minute of the discussions between the Claimant and Ms Perks do not indicate that any form of risk assessment was carried out, and Ms Perks accepts that she did not conduct a formal risk assessment although she did discuss what was causing the Claimant to be upset. We find that those conversations would not serve the same purpose as a workplace risk assessment nor were they an adequate substitute for one being carried out.

Issue 2.6: the Claimant's duties changed whilst off sick.

45 While the Claimant was off sick, a decision was taken to discontinue the tours of maternity wards for expectant parents. Ms Denise Gray gave evidence as to the rationale for this decision and as to its timing; her evidence was largely unchallenged. Ms Gray explained that the tours involved groups of 10 expectant mothers and fathers being taken around and shown the labour ward, the units however were extremely busy and the impact of a large group of visitors was not a positive one for the mothers who were on the ward. The groups of visitors would potentially be in the way where a situation arose which needed

to be dealt with in an emergency, which could happen frequently on the labour ward. The responsibility for the safety of tours was Ms Gray's as the Labour Ward Matron. Ms Gray told us that the patients on the ward were her priority and that they felt the tours were intrusive and disruptive; they could be particularly so when there were parents on the ward who may have had a tragic outcome from their pregnancy and labour; she had decided that it was not appropriate to continue with those tours. We accept that this was the genuine reason for the discontinuance for those tours. The Claimant complains that she was not informed or consulted.

46 We accept that Ms Gray was not aware that the Claimant was on sickness absence when she sent the email informing relevant people of the decision. She included the Claimant in her email. She did receive some responses indicating that the online tour which was meant to be offered as an alternative was out of date and needed updating. Ms Perks responded confirming that she would be interested in setting up a working group to update the virtual tour. Ms Gray was not responsible for setting up that work group, although she did volunteer to be part of it, [page 1356-1358]. We accept that Ms Gray believed that the Claimant was copied into the relevant emails about the tour and the working group. However, due to the departure of Gill Perks and then the onset of the COVID-19 pandemic, those ideas were not progressed. [792-793] Gill Perks was retiring and she was busy at the time with her handover and planning for retirement

47 On the 4 June the Claimant emailed Ms Gray to express her frustration that the tours had been cancelled and she had not been involved in the decision, [page 795]. Ms Lovell directed Ms Gray to invite the Claimant to the working group. We accept that the group did not progress and there was therefore nothing to take forward. We accept that this is why the Claimant was not added to the task and finish group as requested.

Issue 2.7. on 20 June 2019 lack of response from Gill Perks in regard to amendments to meeting notes and the Claimant's request for extra time for written work to be completed in view of disability.

48 Gill Perks met with the Claimant on the 7 June 2019, [796-799, 843 and 845] following her return to her substantive post. At this meeting, Ms Perks went through the outstanding the research project and the Claimant agreed to handover the completed work by the 18 June. Ms Perks also provided the Claimant with a copy of Ms Nurmahomed's statement of events from the 26 January 2019, [705-714] and informed her that Ms Nurmahomed had written to Sue Lovell recommending that she should complete a period on the labour ward as a result, to update her practice. The Claimant become very upset and tearful, saying that she felt no one was listening and this had not been investigated thoroughly. The Claimant said she would not be completing her time on the labour ward because of the situation. The Claimant spoke about contacting the NMC and CQC if required, due to the lack of proper documentation. The Claimant complained that the action of Gill Perks in taking Ms Nurmahomed's account in preference to hers, was not in line with the Trust's disciplinary policy or with the ACAS code. She felt that she was being bullied into taking punishment for the events and she refused to do so. The minutes record that the Claimant became very upset and was sobbing. Ms Perks went through the options available to the Claimant in response to Ms Nurmohamed's statement and pledged her support to the Claimant whatever response she chose. Ms Perks recalls that she told the Claimant that if she wanted to challenge Ms Nurmahomed's statement, she would need advice from Human Resources. Denise Cohen came into the room where the meeting was being held, she could

see that the Claimant was upset and inquired after her wellbeing; the Claimant expressed the desire to resign. Ms Cohen and Ms Perks both advised the Claimant to reflect over the weekend before making any decisions whilst she was upset. Ms Perks urged the Claimant not to make a decision in haste and to consider the cost and achievement for her in becoming a midwife.

49 The three options provided by Ms Perks were: 1) accept that the conflicting recollections may never be resolved; 2) accept a period of clinical placement on the Labour Ward to update her skills, the Claimant expressed anxiety and said she could not do this because she felt people were getting at her; and 3) challenge the content of Ms Nurmahomed's statement which would involve further investigation, by obtaining statements from any witnesses in the room, to which the Claimant is recorded as responding that she believed they would all stick together and say the same thing even if it was not the truth just to get at her. We find that the Claimant clearly expressed that she felt unsupported and compromised if required to go back to the labour ward and that Ms Perks was aware of this.

50 The Claimant met with Gill Perks again on the 18 June to handover the work from the Partners in Birth research project. The Claimant's account of the meeting was that Gill Perks queried the amount of work that she had produced and said, " Is this all the work for one month's work at home, do you think this is enough?", whilst waving the document around. The Claimant responded that she had to complete the literary review of over 300 papers and this had taken up the bulk of her time, plus she had been in meetings and teaching sessions in the office on some of the time, not just working from home. She felt belittled by Gill Perks. Ms Perks was, for her part, surprised at how little the Claimant had achieved. She considered that she had already completed the bulk of the literary review some 3 years previously. The Claimant agreed to complete the references for the paper in her own time. The Claimant expressed her frustration with the study as a whole and said that she did not want to take part in the facilitation sessions. She alleges that Ms Perks' response was that she would be expected to teach it word for word. The Claimant was left feeling that she was being unfairly treated, bullied and, in her words, gaslighted by her interaction with Ms Perks. She took some leave again from the 18 June 2019.

51 Ms Nurmahomed's statement was also discussed with the Claimant saying she was still thinking about referring matters to the NMC. Ms Perks recalls that she suggested the Claimant speak with HR and the Claimant said she would seek support from Re-Employ services. Ms Perks discussed the value of a mediated conversation, between the Claimant and Ms Nurmahomed and the Claimant appeared positive about this. Ms Perks offered to refer the matter to HR, however the Claimant said she was happy to do this herself. She set out her unhappiness that Ms Bullen-Bell and Ms Perks discussed the issues with Ms Nurmahomed without her: Ms Perks explained that she had done so in response to the email to the Director of Midwifery

52 We note from the minutes of the meeting that a large number of topics were discussed, [839-840]. Ms Perks agreed to ask Sue Lovell for some admin support to help the Claimant with a backlog of 167 emails from parents wishing to book antenatal education classes which had arisen during her absence. There was a discussion about outstanding mandatory training and a number of other matters in respect of the rota and the Claimant's interactions with Ms Peacock.

53 There was a discussion about the shifts and sharing clinical shifts between them and the Claimant was reassured that there would be some schedule to supernumerary shifts prior to her being rostered, it was noted that the Claimant was happy with this. We accept that this is reference to the Claimant's need to become familiar with new wards before being left to work on them. We were told that it was up to the Claimant to arrange her supernumerary shifts between herself and the education department depending on her availability. We find this was a reasonable response.

54 The minutes of this meeting were sent to the Claimant, she was not happy with the content and responded with her comments and amendments on the 20 June 2019, [843-845]. The Claimant wanted the minutes to reflect that she had explained that she had already worked through her annual leave from the 10 to 16 June, and there was no time left in which to complete the research project The Claimant's complaint is that Ms Perks did not respond to this email in which she requested amendments to the note and also asked for further time to complete the outstanding written work due to her disability. The Claimant complained subsequently that none of her existing work was taken away from her to allow her to complete the project work and she was expected to complete it at the same time as carrying on her normal clinical role.

55 Gill Perks witness statement does not address the failure to respond to the Claimant's email of the 20th June. On the 24 June an occupational health referral was made (a follow up action from the minutes of the meeting).

56 We find that Ms Perks was clearly surprised at the lack of progress made by the Claimant and was not happy that the Claimant had not raised with her any difficulties in respect of her dyspraxia and completing the work until after the deadline had been passed. It is not disputed that the Claimant was working on the 'Partners in Birth' project during the relevant time frame, however there was no clear allocation of a time point by which any aspect of the research was to be completed, either agreed or enforced by Ms Perks.

57 The Claimant was off sick from the 25 June to the 24 July 2019. On the 2 July, Ms Perks emailed Clarisse Oppiah-Ofosu of the Respondent's HR department to ask whether it would be appropriate to ask someone else to take over management of the Claimant's sickness absence. Ms Perks was concerned that the Claimant had alleged that she was bullying her, she also raised this concern with Sue Lovell. Sue Lovell's response is dated the 15 July 2019 [849]. Her email indicates that she had held off from replying due to Gill Perks' absence and had waited until her return. Sue Lovell confirmed that she and Ms Oppiah-Ofosu agreed that Gill Perks should maintain her managerial responsibilities supporting the Claimant in her sickness absence. Sue Lovell stated that she had met with the Claimant on a couple of occasions recently in regard to the research and that the Claimant had not alluded to being bullied.

58 On 17 July 2019 Sue Lovell wrote to the Claimant [851] in regard to the discussion they had on the 17 June 2019, she informed the Claimant that she had raised her concerns with Clarisse Oppiah-Ofosu, and that they would like to arrange a meeting on 25 July to take forward the Claimant's concerns.

59 We find that Gill Perks did not respond to the Claimant's email of the 20 June, in part because she understood the Claimant to have alleged that she was bullying her and she did not want to antagonise her or makes things worse; she was then herself absent from work for a period.

Issue 2.8 on the 25 June, Gill Perks expected the Claimant to catch up with work left from her sickness period. No Medways had been completed and no email responses to clients during the Claimant's sickness**.**

60 We have found that the backlog of work was discussed in the meetings on 7 and 18 June. Ms Perks agreed to ask Ms Lovell for some admin support for the Claimant to clear the backlog of responses to prospective parents' emails. In the event only one day of support was provided. We are satisfied that this was outside Ms Perks' control. The Claimant was chased by Sharon Evans from the admin team on the 25 June in respect of outstanding work in that some of the outcomes had not been completed and placed onto the record system (Medways); these were from sessions which had taken place when the Claimant was off sick. The Claimant asked Sharon Evans to send the form on to Gill Perks as the Claimant was not aware who was facilitating the sessions during her absence. The Claimant felt it was unfair to ask her to complete these. She did not know who had attended the session as nobody had given her that information. We are satisfied that Sharon Evans was unaware that the Claimant had been off sick at the point that she sent her the email. The Claimant did not hear anything further after she had advised Sharon Evans to refer the queries to Gill Perks. We do not find that it was Gill Perks' expectation that the Claimant complete the information in respect of sessions when she had not been present.

Issues 2.9 and 2.10 10 September 2019 Gill Perks and Clarisse Oppiah-Ofosu [and see paragraph 36 of the FBPs]

61 On the 2 July 2019 Gill Perks sent an email to Ms Oppiah-Ofosu expressing concerns about the Claimant's mental health and asking whether it was appropriate for her to be managing the Claimant's long term sickness absence [854]. On 15 July 2019 Ms Perks sent an email to Clarisse Oppiah-Ofosu, [856] seeking confirmation that a formal meeting was the appropriate next step under the policy. There had already been an informal long term review meeting on the 13 May 2019. Ms Perks emailed Ms Oppiah-Ofosu again on 16 July 2019 [852] seeking HR advice that the meeting was appropriate. Ms Perks understood that it was appropriate to continue with the meeting although the Claimant had returned to work, because the Claimant had a "failed attempt" to return to work, that is, she had a repeated long-term absence within 6 months of returning to work from a long term absence. In advance of the meeting Ms Oppiah-Ofosu sent Ms Perks a template for an invite to a formal long term review meeting and a First Formal Long Term Sickness Meeting was held on 31 July at which the Claimant again discussed with Gill Perks her diagnosis of depression and anxiety, which she said was caused by factors related to work and in her personal life.

62 The Claimant was re-referred to occupational health. The report, written on the 6 August 2019 and addressed to Gill Perks [878], set out that the Claimant was currently off sick with stress which she attributed to work-related factors, that she perceives a variety of departmental relationship issues at work and that occupational health had discussed with her how to move forward with these through which the Claimant would reflect on over the coming weeks. The report made reference to both stress and dyspraxia as well as depression and that the Claimant had commenced medication, was awaiting psychological input following her doctor's referral and had accessed help from Re-employ. The occupational therapist expressed the opinion that any future sickness absences incurred due to work-related stress would be influenced by the Claimant's perception of how successfully her mangers addressed issued identified on her return to work.

63 There was a further report from an appointment with Dr Torrance, Consultant Occupational Health Physician, dated the 3 September 2019, which was also addressed to Ms Perks, [882 to 884]. Dr Torrance formed the impression that there was a significant ongoing difficulty in the working relationship between the Claimant and her managers and that it would be important that this was addressed as part of the process of returning to work. He also expressed his opinion that the most important consideration for the Claimant's return to work was that "the difficult issues between her and her mangers were explored and as far as possible resolved" and that, "While these remain unresolved they were likely to present a significant load to her coping mechanisms and in turn this is more likely to result in a recurrence of her previous depressive illness".

64 Gill Perks subsequently invited the Claimant to a long term sickness absence review meeting on 10 September 2019. The Claimant returned to work on 26 August 2019. The meeting was also attended by Clarisse Oppiah-Ofosu, Divisional Employee Relations Advisor However, Ms Oppiah-Ofosu's evidence to the Tribunal was that when she attended the meeting on the 10 September, she had not been aware that the Claimant had by then returned work. Once this became apparent during the course of the meeting, Ms Oppiah-Ofosu considered that the meeting should no longer be treated as a long-term sickness absence review meeting and she indicated that she would leave the meeting unless the Claimant was happy for her to remain. The meeting proceeded on the basis that it was a return to work meeting.

65 The Claimant referred to having engaged with Remploy services and being assigned a support worker and gave some information about the treatment she was receiving for her depression. In light of the reference to Re-employ in the follow-up letter from Ms Perks after the meeting on 31 July 2019, [876-877] and Remploy in the letter following the meeting on 10 September 2019 [887 to 888] the Tribunal found it hard to understand Ms Perks' evidence that she had no knowledge of what Re-employ stood for or what it did. The Claimant's phased return to work schedule was confirmed.

66 At the 10 September meeting the Claimant made clear that the main issue causing her anxiety at work was the incident on Labour Ward which resulted in Ms Nurmahomed making a complaint to the Director of Midwifery and how the issue was subsequently handled [887]. Ms Perks suggested that given the, by then, significant amount of time which had passed it might be appropriate, subject to the Director of Midwifery's approval, to draw a line under the incident Ms Perks strongly recommended that the Claimant and Ms Nurmahomed concerned had a mediated conversation which would be facilitated by Denise Gray. The Claimant had already agreed this course of action and was happy for the arrangements to be made accordingly. However, the Claimant reiterated that she remained unhappy about the unresolved conflicting versions of events.

67 We are satisfied that Gill Perks and Clarisse Oppiah-Ofosu commenced the sickness absence meeting on the 10 September in accordance with the standard procedure, the meeting was then converted to a return to work meeting. Gill Perks and Clarisse Oppiah-Ofosu were aware of the impact of work-related issues on the Claimant and that the Claimant's sickness was related to those issues. We are satisfied that Ms Perks made Sue Lovell aware that from her discussion with the Claimant her unresolved feelings in respect of how the aftermath of the incident in January 2019 was handled was a significant cause of stress and anxiety [889-890]. Ms Perks, in evidence, described the Claimant as becoming upset every time the incident was raised. This was also reiterated in the occupational health reports.

68 *The Claimant complains that the incident on Labour Ward was not dealt with in line with Trust policies or the ACAS code of conduct. The Claimant also complains that her concerns about the January incident were not addressed with mediation in line with the Respondent's own recommendations*.

69 In her evidence the Claimant [paragraph 78 of her statement] alleges that Gill Perk's action on 7 June was not in line with the Trust disciplinary policy or Acas code of conduct for disciplinary and grievance procedures. We find that this is a reference to the Claimant alleging that she was bullied into "taking punishment for the events [on the labour ward]". We have understood the Claimant to be making the same complaint in respect of the meeting on 10 September 2019, in that she considered the requirement that she complete a period of time on the labour ward to update her practice as amounting to a punishment; that she considered that there should have been an investigation and she had not been given the benefit of a disciplinary process, with a hearing at which she could present her case, before any sanction was imposed.

70 We do not find that Ms Perks considered that she or Sue Lovell was disciplining or 'punishing' the Claimant or that the disciplinary procedure was relevant or 'in play'. Following her meeting with the Claimant on 10 September 2109 Gill Perks emailed Sue Lovell and proposed "drawing a line under the incident with no further action other than a facilitated mediated meeting ...". Ms Perks sent an email to the Claimant on 11 September [891] confirming the contents of their discussion, as follows:

> "The issue on LW with Yousrah with agreement that no further action will be taken except a mediated conversation with Yousrah. I have requested that one of the matrons organizes this for you and the mediator will not be Deise Gray as she is Yousrah's line manager."

We find that Ms Perks was trying to find a pragmatic way forward and do not find that this is consistent with the Claimant's perception of being disciplined in some way.

71 It is not disputed that the mediated conversation was not arranged. We find that Gill Perks suggested to Sue Lovell that Denise Gray might not be the most appropriate person to hold the mediated conversation because she was Ms Nurmahomed's line manager [889-890] and suggested two possible alternatives. There is no evidence before us that the Respondent took any further steps to arrange for that conversation to take place.

Issue 2.11. On 24 September 2019, Ms Bullen-Bell removed the Claimant's access to e-roster

72 We have accepted Ms Bullen-Bell's evidence that staff were not meant to have access to their own e-rostering. Her understanding of the procedure that should have been followed for staff who were working shifts was that the manager had to record the shifts and have oversight to ensure the shifts were actually worked as claimed, the shifts should not be entered on to the system by the staff member. Ms Bullen-Bell had not been aware that the Claimant had been given access to the e-roster to enter her own shifts, when she realised that this had happened she removed the Claimant's access as she understood it should not have been given to her. We find that this was the explanation for removing her access to the e-roster, this practice applied to all staff not just the Claimant. We have found

that the Respondent had a reasonable and proper cause for this action, namely to ensure managers had oversight and that shifts entered were actually worked.

Issue 2.12 on the 25 September 2019, Sue Lovell insisting the Claimant had to undertake clinical shifts.

73 The Claimant did not dispute that she was required to remain clinically proficient in order to maintain her registration as a midwife; she also accepted that her job description refers to the need to maintain clinical competence. We accept Ms Lovell's undisputed evidence that all midwives, including specialist midwives, were required to do clinical shifts. We find that Sue Lovell discussed undertaking clinical shifts with the Claimant at their meeting on the 25 September 2019 and it was agreed that the Claimant would work 2 days in one month and a weekend and, one to two clinical shifts per month. It was agreed that the Claimant would require orientation to the clinical areas such as labour ward and theatre, (see Gill Perks email 10 September 2019, 889-890) and it was agreed that the Claimant would arrange this with the educational team. We are satisfied that this was agreed with the Claimant at the time; the Claimant did not dispute that she had undertaken the responsibility for arranging orientation shifts herself.

Issue 2.13 allegation that on the 25 September 2019, Sue Lovell did not act on the concerns raised since December 2017 regarding workload issues.

74 There was no evidence before the that the Claimant had raised with Sue Lovell on the 25 September 2019 that she had been raising workload issues since December 2017 and that these concerns had not been acted on. There was no mention of those concerns being raised in the email following that meeting summarising the discussion, in the handwritten notes on that email [898], or in the Claimant's email on 26 September [899-900]. We are satisfied that if the Claimant considered that there were significant omissions from Ms Lovell's summary that she would have brought those to Ms Lovell's attention in her email. The Claimant's evidence in relation to this meeting is set out at paragraph 101 to 112 of her witness statement. There is no reference in her evidence to there being a discussion about historical concerns about her workload dating back to December 2017.

Issue 2.14 on 26 September 2019, Sue Lovell placing the Claimant on a roster system as clinical.

75 The Claimant checked her e-roster on the 25 September 2019 and found that she had been placed on clinical shifts on the 4, 17 and 19 October. She emailed Sue Lovell and Anna Peacock to object, stating that she had not been given reasonable notice, had not completed her phased return to work and had not arranged with the education team for orientation at this point. She also stated that it was "not acceptable to be pushing and rushing this situation". The Claimant told us that this made her feel pressured to agree to work clinically when she was not ready, that she had only agreed to work with support and with a plan in pace for orientation. The Claimant felt that as she already discussed this with Sue Lovell, this was being done to frustrate her. Sue Lovell and Anna Peacock each emailed the Claimant stating that it was mistake on the 26 September and 27 September respectively. Ms Lovell emailed the Claimant on the 26 September [899] confirming that the shifts had been put on the roster by Ros Bullen-Bell and would be removed as per their discussion the previous day. We find that there was a genuine error made, Ms Bullen-Bell was not aware of the content of the Claimant's discussion with Sue Lovell at the time that

she placed the Claimant on the shifts. When Ms Bullen-Bell was informed she removed the Claimant from those shifts.

Issue 2.15 Between 28 November and the 3 December 2019, Sue Lovell not acting on concerns raised in respect of seconded post and behaviour of Gill Perks. [see also issue 2.19 below]

76 Gill Perks held a one-to-one meeting with the Claimant on 28 November 2019. Following this meeting the Claimant emailed Sue Lovell on the 28 November 2019 at 23:34 asking her to telephone her [935]. She then sent an email to Gill Perks on the 29 November 2019 at 00:04 [936] about their meeting on 28 November and their discussion about the Partners in Birth project and copied in Sue Lovell. The email was addressed to Gill Perks and did not ask Sue Lovell to take any action. The meeting had become heated with the Claimant and MS Perks each accusing the other of becoming aggressive; the Claimant had stopped the meeting and asked for a third party to be present and Marilyn Smith joined them, Ms Smith suggested that HR be present if they needed to meet again.

77 The Claimant had a discussion with Sue Lovell on the 29 November 2019. We find that the Claimant told Ms Lovell that she was upset about what had happened at the meeting with Gill Perks the day before. Sue Lovell spoke to Ms Peacock and agreed that the Claimant did not have to teach the Partners in Birth classes on the sessions on 17 and 22 December 2019 and 5 January 2020, and that from the 11 January 2020 she would be facilitating the normal parent education sessions as per her flexible working agreement. This was confirmed to the Claimant in an email from Ms Peacock copying in Ms Lovell and Gill Perks, [938].

78 On the 9 December 2019, Gill Perks responded to the Claimant's email of the 29 November following up from their meeting [952-953]. She explained that the communication had gone to her junk folder and she had only seen it the first time that day. Ms Perks set out her brief account of the meeting, the purpose of which had been a PPR/objective meeting.

Issue 2.16 that on the 29 November 2019, Gill Perks removed the Claimant from the Partners in Birth teaching.

79 The Claimant alleged Gill Perks removed her from teaching Partners in Birth because she was not getting 100% consents from the parents to participate in the research project. The Claimant confirmed in her evidence [witness statement, paragraph 127] that she had not wanted to teach the sessions for a while.

80 We find that the Claimant was removed from teaching the Partners in Birth sessions because of her comments to Gill Perks in their one-to-one meeting expressing her dissatisfaction with the research project and the way in which she expressed her views on the project; this led Gill Perks to conclude that the Claimant was 'sabotaging' the project and confirmed her suspicion that the number of consents obtained by the Claimant had plummeted as a result of something the Claimant was saying to parents in her classes. Ms Perks told us that in light of the Claimant's remarks, having expressed the view that she fundamentally disagreed with the study, she gave the Claimant the option of no longer teaching the classes. We find that as a result of this, together with the Claimant's complaint to Sue Lovell, saying how unhappy she was with what she was being asked to do, it was agreed, with Sue Lovell's approval, that she would not have to carry on teaching the class. We find that ultimately it was Anna Peacock and Sue Lovell who removed the Claimant from

the Partners in Birth teaching, in response to the Claimant's objections to being required to continue teaching the sessions in the way that Ms Perks had instructed.

Issue 2.17 on the 11 December 2019, Anna Peacock sending confidential information to Sue Lovell and Gill Perks regarding the Claimant's personal issue.

81 Ms Peacock had expected the Claimant to be at work on the 11 December 2019, when she did not turn up Ms Peacock became concerned and phoned the Claimant on her mobile. She eventually got through and, during the call, the Claimant explained why she was not in work. The Claimant did not have any annual leave left, so Ms Peacock granted her authorised unpaid leave for that day and the following three days; she then sent an email to Sue Lovell as her line manager and also to Gill Perks as the Claimant's line manager to update them about what she had done [945-947]. In her email she described the incidents at the Claimant's home which had been the cause of her absence. The Claimant alleged that this was a breach of confidence. Ms Peacock told the tribunal that she accepted that she provided more information than was necessary and apologised to the Claimant. Ms Peacock explained she was concerned about the Claimant, and had in mind the colleague who had died in tragic circumstances [for whom a memorial had been held in February 2019] and did not wish to have a repeat of the incident. She considered that there might be a safeguarding issue in relation to the Claimant, although there was no mention of contacting safeguarding in her email.

Issue 2.18 on the 11 December 2019, Anna Peacock stating to the Claimant that it was always happening to her and that she needed to separate her life work issues and discussing her absence.

82 Ms Peacock accepted that she said something to the effect, "it is always happening to you", to the Claimant and made some reference to separating work and life issues. Prior to her officially becoming the Claimant's line manager in December, the Claimant had often been in and out of Ms Peacock's office discussing matters that happened at home and in her life. The Claimant had sent her texts and messages which gave Ms Peacock the impression that her home life was quite complicated. Ms Peacock recalls the comment being along the lines of, "Kerry you poor thing, it always happens to you, I am so sorry." And told us that it was meant as an expression of sympathy. Ms Peacock also told the Tribunal that the comment about separating home and work life was a general attempt to give some support and advice in terms of when the Claimant returned to work, trying to compartmentalise work and home and focus on work when she was there and be fully present at home when she was at home. Ms Peacock told us that this approach helped her manage to cope with issues with her own child when she had to return to work and her son was very young. We accept that Ms Peacock had intended this as a supportive suggestion rather than a criticism, although this was not how the Claimant perceived it.

83 We found that Ms Peacock was a straightforward witness who admitted when she had got things wrong and openly apologised to the Claimant. She previously considered that she had a good relationship with the Claimant and gave what she thought was advice and support in that context. We accept that Ms Peacock's remarks were not meant in any derogatory way and were an attempt at showing sympathy with her position. We find that Ms Peacock acted with good intentions and has apologised, whilst we find that her actions together with her words contributed to a break down in trust from the Claimant's perception, we find that she had reasonable and proper cause for her actions.

Issue 2.19: 17 December 2019 Sue Lovells lack of response or support or investigation into concerns raised by the Claimant about the bullying behaviours of the staff members on the 29 November 2019

84 As a result of the Claimant's complaints Ms Lovell had contacted Anna Peacock to confirm that the Claimant would not be teaching on the Partners in Birth sessions [Anna Peacock's email 29.11.19 938]. She also arranged for Ms Peacock to speak to the Claimant. On 2 December she contacted the Claimant to say that she hoped the matter was resolved [939]. On 3 December 2019 replied to Sue Lovell to let her know that as far as she was concerned the matter [her complaint about Gill Perks] was not resolved.

85 On the 17 December 2019 the Claimant replied to an email from Gill Perks informing her that she was not feeling able to communicate with her as a line manager, "due to the present bullying and intimidating behaviour", that she felt had been ongoing for some time. The Claimant also stated that she would discuss further with HR and they could arrange a meeting to discuss this further once she had sought further advice and clarification. The Claimant followed this up by emailing Clarisse Oppiah-Ofosu asking for a meeting. On 17 December 2019 Sue Lovell informed the Claimant that Gill Perks had declined mediation [956]. On 17 December 2019, Ms Lovell emailed the Claimant to inform her that she had arranged for Ms Peacock to take over as the Claimant's line manager [955] mentioning that she had not been able to meet with the Claimant the previous week because the Claimant was not at work.

86 On 18 December 2019 Ms Perks emailed the Claimant to inform her that she had discussed the situation with HR as she found the Claimant's behaviour towards her to be unacceptable, she confirmed that it was agreed that line management would revert to Anna Peacock [957]. Gill Perks sent an email to Anna Peacock the same day [958] to bring to Ms Peacock's attention some of her concerns about the Claimant's behaviour that she believed require management action, she attached a statement which was her recollection on the meeting on the 29 November 2019 [959-961] and suggested they have a meeting to provide a handover. In Gill Perks's account of the meeting she describes the Claimant as failing to carry out a reasonable management request, seeking to bypass her to go to Anna Peacock for her line management, being aggressive towards her and bullying in her accusation, which left Ms Perks feeling upset and intimidated meaning that she did not feel safe to be present in the same room as her without safeguarding from HR, which is why she declined a mediation meeting. She complained that she felt that the Claimant's behaviour did not uphold the Trust's values and needed to be addressed.

87 It is apparent to the Tribunal that by this time the relationship between the Claimant and Ms Perks had broken down. Each were accusing the other of bullying and unacceptable behaviour.

88 We do not find that Sue Lovell failed to do anything about the Claimant's complaints. We are satisfied that she made an attempt to arrange a mediation which Ms Perks declined to attend. Ms Lovell also changed the Claimant's line management to Anna Peacock. Ms Lovell was aware that Ms Perks was making serious counter-allegations against the Claimant, which if they were taken further would lead to investigations in respect of her conduct. She was also aware that any investigation into either the Claimant's or Gill Perks' account would lead to an escalation of the situation, she had in mind the context that Gill

Perks due to retire. We are satisfied that Sue Lovell took steps to try to resolve the matter informally without further escalating the issues.

Issue 2.20 that on the 19 December 2019, Anna Peacock informed the Claimant, there were 119 hours owed to the Trust on the system and subsequently how those hours arose on the system.

89 The Claimant accepted that when Ms Peacock met with her on 19 December she spoke to her kindly. Ms Peacock explained that there hours were outstanding on the system and they had a discussion about them: the outcome was that Anna Peacock sent a request to E-roster to wipe the outstanding hours from the system. The Claimant acknowledged that the electronic record was displaying that hours were owed and having spoken to the Claimant, Ms Peacock arranged for those hours to be wiped, [965-966]; the Claimant did not suggest to Ms Peacock that she had done anything wrong or should have done anything differently. We do not find there to be any valid criticism of Ms Peacock in this regard nor do we find this to amount to conduct likely to cause or contribute to a breach of trust and confidence.

Issue 2.21 the 19 December 2019, Sue Lovell's failure to change the Claimant's line manager from Gill Perks despite over one month and numerous requests from the Claimant.

90 We do not find this allegation to be factually accurate. The Claimant's line management was changed to Anna Peacock, Sue Lovell explained the delay in informing the Claimant and responding to her was partly due to the Claimant's absence.

Issue 2.22: On the 19 December 2019, Anna Peacock's failure to place the Claimant on the community telephone list despite requests from the Claimant.

91 The community midwife department consists of 14 teams, the Community telephone list is a list of all of the team members and their contact telephone numbers. It was an internal document used by midwives working in the community, i.e. those who were not based in the hospital, so that they have each other's numbers. Ms Peacock explained that the Claimant did not appear on the list initially because she was not technically a community midwife although her role did overlap, and she worked closely with community midwives who also provided antenatal education. The Claimant asked to be added to the telephone list and Ms Peacock directed her PA, Sandra, who was responsible for maintaining and updating the list, to include her. Ms Peacock had no further involvement in ensuring that she was added to the list. The Claimant emailed Sandra to ask to be added to the list, she did not receive a response, [998]. Ms Peacock told us that Sandra was on sick leave for a very long time between the 29 July 2019 until February 2020; she believed that the Claimant's request may have been missed due to her absence. Ms Peacock pointed out that there was no need for the Claimant to be on the list, she was not on the community roster, and she was not a community midwife - she was based at the QBC. Ms Peacock believed everyone knew where the Claimant's office was, what her number was and how to contact her: she was contactable by all of the community midwives should they need to do so. The Claimant was always invited to and regularly attended community midwives meetings and would have been able to provide her telephone number every time she met with them so that it appeared in the minutes of the meetings. To the best of Ms Peacock's knowledge, there was no deliberate intention to exclude the Claimant from the list and no deliberate delay in adding her to it; it was not done to make her feel out of place, or not

included as part of the team. Ms Peacock's evidence in this regard was not challenged by the Claimant.

92 We have not found this objectively to be conduct calculated or likely to damage or destroy trust and confidence.

Issue 2.23 on the 20 December 2019, Clarisse Oppiah-Ofosu informing the Claimant that Gill Perks was leaving the Trust and not looking into the concerns raised by the Claimant thoroughly.

93 The Claimant does not address this allegation in her witness statement. Ms Oppiah-Ofosu dealt with this allegation at paragraph 39 of her witness statement [page 113 of the witness statement bundle]. Ms Oppiah-Ofosu had no recollection of this interaction and does not believe that it took place. She has not been able to locate any correspondence on this date between herself and the Claimant. Ms Oppiah-Ofosu referred to Claimant's further particulars which were at page 77 of the bundle. The further particulars provided by the Claimant state that she discussed raising a grievance against Ms Perks with Ms Oppiah-Ofosu, but decided not to pursue it as Gill Perks was leaving. Ms Oppiah-Ofosu did not therefore understand this to be an allegation that she had failed to do anything; she told us that she did not discourage the Claimant from raising the grievance and the fact that a member of staff who was being grieved against was leaving did not prevent the Trust from investigating a grievance had the Claimant decided to pursue it.

94 We do not find that this allegation is supported by the evidence.

Issue 2.24 on the 7 February 2020, Heather Gallagher's failure to plan/initiate a meeting to discuss concerns raised by the Claimant about comments made by Ms Anna Peacock referring to the Claimant as "Pocahontas" and Denise Gray speaking rudely to the Claimant in respect of her hair.

95 Ms Peacock did not dispute that she spoke to the Claimant about her hair and that she described her hair as "Pocahontas" style. The Claimant hair was in two plaits down either side of her head. She believed that "Pocahontas" style was a legitimate description applied to this style of braiding and had not intended as a derogatory statement. Ms Peacock remembers telling the Claimant that the braids were fine, but due to their length, she needed to twirl them up and pin them so that they were above her collar. Ms Peacock felt that they had a good enough relationship at the time for her to be able to say this in an informal fashion. The Claimant's hair was very long at this time and the braids fell past her collar and reached her belt which was not compliant with the uniform policy for clinical staff. Ms Peacock acknowledged that there was flexibility when the Claimant was teaching parent education classes, as that was not providing direct clinical care. However, when she was working clinically in the QBC or labour ward then having her hair reaching down past her collar was not acceptable.

96 We were referred to the Trust's uniform policy which was in the bundle, the section dealing with hair is at page 344. The hair policy for clinical staff states at 4.4.1:

> "Hair must be clean, worn off the collar and if long, must be secured in a discreet and safe manner at all times, regardless of clinical intervention… Ponytails must be secure and if likely to pull forward, secured off the collar."

97 The Claimant had provided a supplementary bundle of additional documents which included at page 1391 a screenshot of a video which had been published online by the Trust. The video was about the antenatal provision and the services of the hospital. The midwife in the video had plaits down to her shoulders. Ms Peacock recognised the individual but told us that she had never seen the video and that if she had, she would have asked for it to be removed. She also told us that if she had seen the midwife with those plaits as shown in the screenshot, she would also have raised with her the fact that they were reaching down below her collar and would need to be pinned up. We accept Ms Peacock's evidence in this regard.

98 We are satisfied that the Respondent had reasonable and proper cause to raise with the Claimant, concerns about her hair style being in breach of the policy.

99 The Claimant complains that on 7 February 2020 Ms Gallagher failed to arrange a meeting to discuss her concern about the way she had been spoken to by Ms Peacock and Ms Gray. Ms Gallagher was the Head of Midwifery and managed all the midwifery matrons who were at Band 8b, she reported directly to Sue Lovell. This overlaps with issue 2.25 which is also in respect of Ms Gallgaher's actions on 7 February 2020 and we set out our findings below.

Issue 2.25 On 7 February 2020 Heather Gallagher summoning the Claimant for a meeting as she had discussed the uniform policy with equality and diversity

100 In early January 2020 a managers' meeting took place with all midwifery managers in the women's maternity services at which the uniform policy was discussed. It was made clear at that meeting that as managers they should be raising when members of staff were not complying with the policy and asking them to address for infection control purposes. After the meeting, Ms Galllagher overheard the Claimant saying to one of the managers something along the lines of 'don't those managers have anything better to do with their time', in what Ms Gallagher considered to be patronising and rude manner. Ms Gallagher thought that this was delivered in an inappropriate tone in front of more junior staff and asked the Claimant to meet her to talk about this. At the meeting, Ms Gallagher challenged the Claimant on her behaviour. The Claimant became upset and told Ms Gallagher she felt that people were picking on her. She told Ms Gallagher that she had dyspraxia, which Ms Gallagher said she understood but that did not mean that she could behave inappropriately. The Claimant told Ms Gallagher that matrons had asked her secure her hair up a number of times previously but that she did not agree with them or the policy. Ms Gallagher had understood from the matrons that they felt that the Claimant was reluctant to accept reasonable management requests. They discussed the Claimant's belief that the matrons [Ms Gray and Ms Peacock] were being unfair and also whether she felt Ms Gallagher was being unfair in challenging her behaviour. The Claimant did not ask for any further formal action to be taken against either Ms Gray or Ms Peacock in respect of the comments.

101 The Claimant referred to her dyspraxia in the context of feeling she could not always communicate with the matrons, but she did not suggest that the uniform policy itself needed to be adjusted in any way due to her dyspraxia as far as Ms Gallagher could recall. Ms Gallagher was clear that if the Claimant had asked her to take any further formal action, she would have done so by liaising with HR and the individuals involved. She believed that what the Claimant was seeking a more informal outcome bearing in mind that what she was raising with Ms Gallagher was the communication difficulties. Ms Gallagher did not arrange a meeting formally with either Ms Peacock or Ms Gray.

102 Ms Gallagher had been made aware of an email the Claimant sent to Claire O'Toole, then Head of Inclusion, about the uniform policy on the 21 January 2020, copying in Sue Lovell and Anna Peacock, in which she raised that she had been asked to tie up her hair off her uniform despite it being plaited neatly. The Claimant raised a number of criticisms of the policy asking to know the rationale behind it, describing it as outdated and suggested that it was not being followed consistently, and there were many non-compliances including by the Chief Nurse herself and suggesting there should be another look at the uniform policy. Ms Gallagher considered that the tone of the email was rude.

103 At this meeting Ms Gallagher also discussed the Claimant's email to Claire O'Toole which negatively referenced the Chief Nurse and senior midwives and in which the Claimant challenged the policy directives and its respective compliance. Ms Gallagher considered that the email was written in an inappropriately accusatory style and openly criticised certain individuals who were then not copied into the email and therefore not able to respond. She discussed with the Claimant the right way in which to challenge the uniform policy and that her email was not the way to do it. Ms Gallagher told the Claimant that if she felt strongly about the policy and wanted to challenge it, then Ms Gallagher would help her do that in an appropriate way. They also went on to discuss an appropriate way in which to respond if she disagrees with a matron or senior management request. Ms Gallagher intention was to try to de-escalate the situation by discussing with the Claimant a better way of handling such situations. She believed that the meeting ended positively and had been productive, she was of the view that the inappropriate behaviour of the Claimant had been challenged compassionately but she had also indicated that she supported the Claimant to raise her concern in the appropriate and correct manner.

104 We accept Ms Gallagher's evidence that she did not understand the Claimant to be raising a formal complaint, which needed to be taken further, against either Ms Peacock or Ms Gray. We note that in the Claimant's email following that meeting, [1027] dated 7 February 2020, she thanks Ms Gallagher for meeting with her and making time to discuss the email she had sent to equality and diversity. She states that she appreciates Ms Gallagher's time and constructive feedback and would like to arrange a meeting with Anna [Peacock], Denise [Gray] and Ms Gallagher if possible, in order to discuss some of the issues that were raised. She also asked Ms Gallagher to look over a draft of the email to Kathryn [identified as the person with overall responsibility for the uniform policy] about whether it was necessary for the Claimant to wear a uniform during her education role. We find this to be consistent with Ms Gallagher's evidence about the discussion she had with the Claimant and her offer to assist the Claimant in raising her concerns about the uniform policy in a more appropriate manner.

105 The Claimant received a response from Claire O'Toole on the 22 January 2020, copying in Anna Peacock and Sue Lovell, thanking her for taking the time to write her email and share her experience and views and offering to meet her to discuss this further and share some more ideas that the email has generated. She invited the Claimant to contact her. Ms Peacock followed this up on the 19 February 2020 asking the Claimant if she had met with Claire at all and if so, what the outcome was, [1847].

106 We do not find that Ms Gallagher failed to arrange a meeting to discuss the Claimant's concern about the way she had been spoken to by Ms Peacock and Ms Gray. We are satisfied that the Claimant's concerns were discussed with Ms Gallagher at their

meeting on 7 February and that the Claimant did not ask for a formal meeting to be arranged with either Ms Peacock or Ms Gray. We are satisfied that Ms Gallagher understood that the Claimant's request for a meeting was in respect of the uniform policy itself and not in respect of her complaint about the way she had been spoken to and that she considered that the matter was best addressed by the email to Kathryn and any response from Claire O'Toole. We are satisfied that it was reasonable for her to take this view in light of the discussion she had with the Claimant on 7 February.

107 We do not find that Ms Gallagher summoned the Claimant to a meeting as a result of her email to Claire O'Toole. We find that Ms Gallagher overheard the Claimant's comments after the managers' meeting and that was what prompted her to ask the Claimant to meet with her. The email was brought up in the meeting as being an example of what Ms Gallagher considered to be an inappropriate communication style. We find that the Claimant's subsequent email indicates that at the time she accepted that the feedback was intended to be supportive.

Issue 2.26 on the 11 February 2020, Anna Peacock accusing the Claimant of failing a cardio tachograph (CTG) assessment which the Claimant had never been informed about.

108 On the 10 February 2020, Anna Peacock received an email from Naima Yusuf [page 1035 of the bundle]. We find that the contents of the email to be self-explanatory, Ms Yusuf introduces herself and informs Ms Peacock that she had inherited the database for midwives who did not pass their CTG assessment and were referred to the CGT midwife for teaching and re-sit. She provided Ms Peacock with a list of those midwives who were from QBC or Community stating,

> "Unfortunately, some of these are outstanding since June. All of these midwives have had emails telling them to make an appointment but have not responded."

She asked Ms Peacock to coordinate some days where the midwives could come in to see her. The purpose was to ensure that the midwives resat their assessment. Ms Peacock contacted the Claimant on 11 February 2020 (copying in Ms Yusuf) to relay the information she had been given by Ms Yusuf, including that she understood that the Claimant had had emails telling her to make an appointment but had not responded.

109 We do not find that Ms Peacock 'accused' the Claimant of failing her CGT assessment. We accept that Ms Yousuf informed Ms Peacock that the Claimant had failed the assessment. Had the Claimant contacted Ms Reeves in response to her email in May, she would have been informed that she had failed the assessment. We do not find that Ms Peacock's email is objectively capable of contributing to a breach of or undermining trust and confidence.

Issue 2.27: On the 11 February, Anna Peacock and Alex Taylor emailing the Claimant to state that there had been 6 couples booked to 10 in the birth centre for a session which had never been booked in.

110 On 5 February 2020 Alex Taylor, from Birth Centre management, sent an email to both the Claimant and Ms Peacock, to inform them that 5 to 6 couples had turned up for antenatal classes but there was no one there to teach them, [1023] She stated that the couples were apologised to and said she was unsure what happened because looking at the rota, the Claimant was not meant to be on shift. Ms Peacock emailed the Claimant on

11 February 2020 asking her to check with Medway to see what went wrong and to check with Sharon Evans, administrator, [1030]. The Claimant responded also on the 11 February her response was at page 1029 to 1030. Sharon had confirmed that there were no sessions on the system for that date and the Claimant noted that the only possible way of finding out who booked them or how they came to think that there was a session on that day was looking them up via their hospital numbers, names and maybe one of them would contact them later, that there was no way of knowing how they turned up to the ward. Ms Peacock was satisfied with the explanation and took no further action. We find that the request by Ms Peacock for the Claimant to try to find out what had happened was a reasonable one, the sessions were within her remit, she was the antenatal education midwife with primary responsibility for parent education classes on the QBC at the time.

Issue 2.28 was withdrawn by the Claimant on day three of the hearing.

Issue 2.29 On the 17 March 2020 Anna Peacock discussing a perineal tear in the same meeting as the one regarding the Claimant's role, inappropriate accusations were made about the tear and blood loss in the uterus.

111 Ms Peacock had a meeting with the Claimant on the 17 March 2020 which was shortly after the decision had been taken to cease non-essential patient facing services. The meeting was primarily to discuss the impact of COVID on the Trust services, but Ms Peacock accepted that it was also to discuss concerns that had been raised about the Claimant's clinical care on the 8 March 2020 (the second degree tear).

112 The Claimant addresses this complaint at paragraph 155 of her witness statement, there is no criticism of Anna Peacock's actions in that evidence. During cross-examination the Claimant told the Tribunal that she was accused of missing a second degree tear and was asked to provide a statement about it. The Claimant accepted that it was appropriate to discuss this matter with her and made no criticisms of Ms Peacock's actions.

113 At the meeting, Ms Peacock explained that due to Government guidance parent education was ceasing at the Trust for the foreseeable future. Ms Peacock remembers the Claimant was alarmed but responded by saying she was willing to help in any area as long as she was trained. Ms Peacock thought this was a very helpful attitude and, as a manager, found it encouraging to hear. She told the Tribunal she was basically very grateful for this positive and helpful response from the Claimant. Ms Peacock explained to the Claimant that they would be redeploying staff to different roles and asked if she would be comfortable working clinically in the Birth Centre. Ms Peacock recalled that the Claimant confirmed that she was but would not want to be in charge and that she did not want to go to the Labour Ward with women as far as possible. As a result of the Claimant's expressed reluctance to go to the labour ward regularly Ms Peacock had a discussion with Laura Thomas, the Birth Centre manager and Ms Thomas arranged for her not to go with women to the Labour Ward as far as practicable and offered to give the Claimant some form of orientation on the Birth Centre if she wanted to arrange it. Ms Peacock also liaised with Denise Gray, the Labour Ward matron, to see if the Claimant could do some additional shifts on the Labour Ward and have some orientation, Ms Gray agreed to this.

Issue 2.30 on the 26 March 2020, Anna Peacock emailing the Claimant to state she would be undertaking duties on telephone triage without first providing training, support, discussion or risk-assessments.

114 26 March 2020 was the day before the country went into a national lockdown due to the COVID-19 pandemic. Ms Peacock's told us that during the meeting on the 17 March, the Claimant also agreed to take on shifts on the telephone triage line. They discussed the different shifts available and the Claimant said she would prefer to do night shifts and weekends as this worked best for her. This was agreed and Ms Peacock drew up a rota together with the Claimant for her to do telephone triage helpline shifts, to the best of Ms Peacock's recollection, the Claimant's flexible working arrangement were factored into that rota. Ms Peacock told us that working on the telephone advice line is consistent with working on the Birth Centre clinically and should have been something that the Claimant was able to do as a Band 7 midwife; she would have expected the Claimant to have sufficient midwifery knowledge to advise women over the telephone, particularly given her role as antenatal education midwife which meant that she had to advise women in her classes. Ms Peacock sent the Claimant, and the other midwives who would be working on the telephone helpline, some guidance and information on how to set up the telephones to work on the helpline and also the up-to-date information about the pandemic and the community surgery, [1076 to 1082].

115 The Claimant told the Tribunal that the being told on 26 March 2019 that she had been placed on the telephone rota made her feel that she was not being listened to: she had to keep repeating that she would need support on moving to a new area. In her evidence to the Tribunal, the Claimant's only complaint was that she would need time to familiarise herself with the telephone system. She did not say that she had asked for such time and had been refused nor did she allege that she had not received the written information from Ms Peacock in advance of being required to do the sessions and had not time to read it through and familiarise herself. The Claimant made no complaint about being asked to do the telephone triage at the time. We find that this was consistent with her having agreed with Ms Peacock on the 17 March that she would do it. We do not find therefore that the Claimant was 'instructed to undertake duties without any discussion or even risk-assessment or support'. The Claimant did not ask for training on the phone systems, and we are satisfied that the Respondent was not aware that she needed any more training in addition to the written guidance provided by Ms Peacock. We find that this was not something that she raised in her discussion with Ms Peacock or afterwards.

Issue 2.31, 2.34 and 2.37 all relate to payments for work on bank shifts.

116 The Claimant does not dispute that she was paid for her work on each of the relevant bank shifts, her complaint is that she was not paid promptly enough. We heard evidence that the Claimant was paid in the second weekly payroll date after each shift and not the first payroll date after each shift. The Claimant did not put before the Tribunal any evidence to establish that she was entitled to be paid in the first weekly pay roll date after each shift. We were told that the payment would need to be verified by the shift manager on each occasion before payroll was authorised to pay: this meant that it was not always paid on the first payroll date after each shift. We find that there was no contractual entitlement to be paid in the first weekly payroll date after each shift. We find the Respondent's explanation for payments being made when they were is reasonable.

Issue 2.32 on the 20 June 2020, the Claimant was omitted from the email list to receive documentation for the itchy feet session held by Heather Gallagher.

117 Heather Gallagher gave evidence that "itchy feet" sessions were sessions that were run regularly for staff to attend a discussion about career development. The dates were sent

out in the maternity newsletter, they were circulated amongst staff, and posters were put up around the department with information about the sessions. Staff then booked onto sessions themselves and attended as they chose. There was no follow-up documentation sent to participants unless they specifically requested further information about the topic. Usually any follow-up was in the form of signposting to further resources or other opportunities. Ms Gallagher believes that following a session held in June 2020, she sent a number of Band 7 and 8 development packages to staff who had attended the meeting. The Claimant emailed her on the 26 June at 20:48 asking for a copy of the booklets. The email is at page 1359 of the bundle and reads as follows:

> *'Hi Heather*
> *Just a quick reminder, could you please send me the band 7 and 8 booklet please 😊. Thank you for the itchy feet session.*
> *Kind regards*
> *Kerry'*

Ms Gallagher replied at 20:52 the same evening attaching the documentation saying,

> *'Sorry Kerry, I must have missed you by mistake. My apologies.*
> *Kind regards*
> *Heather'*

The Claimant replied the following day, Saturday 27 June at 21:34,

> *'No worries, thank you for sending that 😊*
> *Kind regards*
> *Kerry'*

The email exchanges are at page 1360.

118 We find no evidence that Ms Gallagher deliberately omitted the Claimant from the original email sending the information. The Claimant sent her email on Friday evening and Ms Gallagher responded within 4 minutes by sending her the information and apologising from omitting her from the original email. We were told that in fact Ms Gallagher was on holiday on this date. We find that she responded promptly despite being on holiday; we find no basis for inferring that this was anything other than a genuine oversight, or that she had meant any ill will.

Issue 2.23 4 July 2020, no response received from Anna Peacock in respect of the Claimant's query regarding position of antenatal education provision, yet a response from Anna was received almost immediately to Claire regarding the same matter.

119 This is a reference to the Claimant's query about antenatal provision during the period of lockdown. In May 2020 the Claimant was off sick from a number of weeks due to a dog bite and on the 29 May 2020 [1102]. Ms Peacock emailed the Claimant asking about her plan to provide antenatal education taking into account Government advice in light of the Pandemic approaching the end of the curve, requesting a meeting on 12 June to discuss the Claimant's ideas. Notes of the meeting are at [1112]. This was also discussed at their meetings on 18 June 2020 [1114] and 30 June 2020 [1128-1129].

120 On 3 July 2020 Claire Mason, a Community Midwife Team leader, emailed the Claimant at 09:47, in response to a number of queries form women asking whether there were any plans for provision of virtual antenatal education. Claire Mason copied in Ms

Peacock to her email [1130]. Ms Peacock replied to Ms Mason at 09:47 to inform her that she would be discussing this with Heather [Gallagher] that afternoon. Ms Peacock included the Claimant in the address line of her email to Claire Mason and the response was sent to both of them at the same time. We are satisfied that the Claimant is the "+1 other" found in the email's address line. On the 4 July 2020, the Claimant sent an email to Ms Peacock asking how her meeting with Ms Gallagher about antenatal education went [1132] and followed this up on the 15 July 2020 [1133].

121 We do not find that the Claimant was left out of the loop by Anna Peacock as she alleged. We find that the Claimant received the same response as Claire Mason at the same time.

Issue 2.35 6 September 2020, Tracy Beason not giving a rationale or reason or clarification of the Claimant's current position regarding antenatal education despite request from the Claimant.

122 Ms Beason addresses this issue at paragraph 27 of her witness statement. She acknowledged that the Claimant did ask in around September 2020 when antenatal education would be returning to the Trust. Ms Beason's response was that due to the situation with COVID-19 it could not return immediately. She set out the reasons for this in paragraphs a and b of paragraph 27. The Claimant did not this dispute in cross-examination and she accepted Ms Beason's rationale was genuine. She simply did not accept that she was given the explanation at the time.

123 We find on the balance of probabilities that it is more likely than not that Ms Beason did discuss her rationale for the lack of return of antenatal education with the Claimant at the return to work meeting, particularly in circumstances where the Claimant had raised it with her beforehand in an email and she had responded by stating they could discuss it at that meeting [1141].

Issue 2.36 on the 16 September 2020, Denise Gray failing to respond to the Claimant's email to raise an issue with the equipment (suturing tools) on the labour ward.

124 Denise Gray told the Tribunal, and we accept, that she had ordered the equipment as soon as she received the email request from the Claimant. She did not, however, respond to the Claimant to inform her that she had done so. Ms Gray told us that this was not her usual practice, otherwise she would be constantly replying to emails telling people that she had ordered their equipment. We accept that Ms Gray's practice was to order equipment as and when it was requested. She told us that she would usually see the person (who had sent a request) around the ward and she would inform them that she had ordered the equipment if she saw them. She did not see the Claimant as the Claimant was not normally on the labour ward.

125 We find that Ms Gray sent an email requesting the suturing stools on the same day as receiving the email from the Claimant on the 16 September 2020 and received a quote in response on 17 September 2020 [1143-1144]. When the Claimant followed up her email on the 7 October, chasing information on the stools, Ms Gray responded the next day confirming that they had been ordered on the 17 September, [1193].

126 We accept Ms Gray's evidence, which is consistent with the emails in the bundle. We find that there was no reason to expect Ms Gray to depart from her usual practice and that once the Claimant had chased the order, she responded straight away.

Issue 2.37 dealt with above (the bank shifts).

Issue 2.38 on the 1 October 2020, Tracy Beason request to ask the Claimant for a meeting to discuss the care plan of a client on the same date. The subsequent interrogation of the Claimant regarding five separate issues of concern, one of which had occurred 6 months prior to this meeting date and had been prior dealt with.

127 A note of this meeting is at page 1148-1149. The Claimant's about the meeting and its immediate aftermath is contained in paragraphs 193 and 204 of her witness statement. Ms Beason's account is at paragraphs 19-22 and 29 of her witness statement, and she set out her perspective of the background to that meeting at paragraphs 13 to 18. It was not disputed that a band 7 midwife, was present throughout the meeting taking notes. Ms Beason confirmed that this was by her arrangement: she had decided that she wanted somebody present to note the meeting.

128 According to the Claimant Ms Beason initially discussed the patient's care plan and then stated that she had five different complaints about the Claimant. The Claimant asked her what they were, and Ms Beason she said that one was from a midwife that had two clients in one day, the Claimant gave her response but she felt Ms Beason was not listening and she was being interrupted. Ms Beason continued by saying that another complaint was the Claimant not diagnosing a tear. As far as the Claimant was aware, the only tear was the one she had discussed with Ms Peacock some months previously and had not been raised as an issue as such. Ms Beason did not provide her with any further information about the previous incident where there was a tear.

129 Ms Beason then started to discuss an action plan which the Claimant understood to be a formal measure which should not have been discussed in the informal meeting. The Claimant became extremely upset. It was not disputed that she was crying and very distressed during the meeting. The Claimant states that at no point was there any concern for her well-being and mental health and she was not offered any support or a representative or someone to be present with her. She did not feel listened to, she felt that Ms Beason had already made her mind up about the situation without hearing from her, and felt it was very unfair and one-sided.

130 The Claimant also felt that this treatment was a result of the incident she had raised back in January 2019. She thought it was very odd that these things were being thrown at her in the meeting that was meant to be informal: this was not compliant with the Trust's procedures. She described feeling overwhelmed, upset, angry, bullied and not listened to and said that she was resigning. She did not see any other option as she was not listened to.

131 After the meeting, the Claimant went to see Sue Lovell. She told Ms Lovell what had happened, she was still extremely upset. The Claimant's evidence was that after she had explained the situation, Ms Lovell said to her something about Ms Beason along the lines of, "she is new, she is exercising her authority". The Claimant told Ms Lovell that she wanted to resign and felt she had no other option. Ms Lovell said something to the Claimant about

having mouths to feed which the Claimant thought was completely unreasonable and inappropriate.

132 The Claimant went back upstairs and wrote her resignation, printed it and left it on Ms Beason's desk. The Claimant told us that she felt she had no other option, she did not receive any support from the Director of Midwifery, Ms Lovell, and felt that Ms Lovell was saying that it was okay for her to be treated that way.

133 Ms Beason told the Tribunal that on joining the Trust earlier in the summer of 2020, she reviewed the records for the department and noted that there were five HSIBs that had been undertaken into the department. An HSIB is a Healthcare Safety Investigation Branch report, or audit, which can then result in an action plan being put in place. These included instances where there had been delay in transfer from birth centre to the labour ward or inappropriate care and failure to triage. It was in this context that she had the discussion with the Claimant on the 1 October 2020. There was a concern that through these incidents happening on a number of occasions, there was likelihood of poor outcomes for patients and babies.

134 On the 1 October 2020, Laura Thomas approached Ms Beason with a concern about the care of a particular mother and Ms Beason arranged for a transfer to labour ward. It was one to two hours later, when the transfer had been arranged and when Ms Beason was able to return to her duties on the birth centre, that she asked for a meeting with the Claimant. Ms Beason told the Tribunal that the meeting was intended to be informal but that she had a band 7 colleague present to take notes. Ms Beason accepted that the notes did not catch everything that was said and there was a lot omitted from the account, she also acknowledged that she speaks very quickly. The Tribunal noted that it had to ask her to slow down on a number of occasions during her evidence.

135 Ms Beason told us that she had explained to the Claimant her concerns about the care of the patient and that she had missed clinical concerns. The Claimant responded with her views about what had happened. Ms Beason told the Claimant that she wanted a statement from her and from LT, the other colleague who attend the woman, and , "will have an action plan", (see page 1148). Ms Beason told us the action plan was a reference to a HSIB action plan and that she then spoke about the five incidents about which she was aware, where there had been HSIB action plans that year. The notes record [1149] reference to Ms Beason "Giving [the Claimant] context on action plan taken place". Ms Beason told us that was a reference to action plans re the HSIB investigations. She also told us that was the context of the note at page 1148 that Ms Beason would request statements and would have an action plan.

136 Ms Beason accepted the discussion moved on to the Claimant's clinical practice. Ms Beason told us that it was the Claimant who initially brought up her clinical practice by saying words to the effect, "there is nothing wrong with my clinical practice", and Ms Beason's response was that some concerns had been raised. The Claimant asked what they were so Ms Beason responded with the concern about the suture and concern about unwillingness to taking on a woman from triage.

137 Ms Beason denies that she at any point referred to 5 separate issues of concern. She considered that it was entirely appropriate for her to an initial discussion with the Claimant in circumstances where she had serious clinical concerns about a patient. The

purpose of that discussion was to ascertain her rationale and clinical thinking in relation to the patient.

138 The Claimant understood the reference to an action plan to be a reference to an action plan for herself whereas Ms Beason's evidence was that this was not referring to an action plan for the Claimant, which she accepts would require a formal meeting at which the Claimant would be entitled to be accompanied, but rather to a reference to a HSIB investigation.

139 We accept the reference to five incidents, must be to the HSIB incidents; at that point Ms Beason did not have five complaints about the Claimant. The Claimant however was upset, she had understood that it was her practice that was going to be addressed in the action plan. When she queried this the response she received from Ms Beason was to raise other areas of concerns about her practice.

140 We find that the notes of the meeting [1148-1149] are more consistent with the Claimant's account. The relevant sections reads as follows:

> " TB – Requires statement from LT + KP.
> Will have an action plan
> KP – Argues current practice has been latent phase can last for days.
> TB – Issues with not suturing 2 [degree] tears
> Not taking a woman from triage
> KP – Close to handing in resignation
> Did not take a woman because KP was in charge, helping another midwife do E3 and answering the phone.
> Another MW asked to care for a client walk in and expresses she did not want to care for another client
> TB – Giving KP context on action plan taken place.
> …"

We find that in response to the initial concern being raised with her the Claimant spoke about current practice, to which Ms Beason's' response was to raise two further criticisms of the Claimant's actions.

141 The Claimant understood the meeting to have been called as an informal one, however, there was a note taker present, who was at the same grade as she was, and then other concerns were being brought up about her practice and an action plan was being discussed. We are satisfied that it was reasonable for the Claimant to consider that the meeting was taking place in a way that breached the Trust's policies.

142 We are satisfied that Ms Beason ought not to have gone into those other concerns at the 1 October meeting. Ms Beason accepted as much in evidence. It is clear that the Claimant was already upset and it was not appropriate for Ms Beason to raise the other concerns with her at that meeting, it was an error of judgment to do so. We are satisfied that, even if this is not what she intended, she left the Claimant with the understanding that the reference to an action plan was in fact in relation to her practice and that having told the Claimant the meeting was an informal one to discuss the incident of that day, the meeting turned into one at which a number of criticisms of the Claimant were raised without any prior warning that they would be discussed, and in front of a colleague who was of the same grade as the Claimant. We are satisfied that although this conduct was not calculated to

destroy or damage the Claimant's trust and confidence in the Respondent, it was likely to, and did, seriously damage it.

143 The Claimant also points to Ms Beason's email of 2 October 2020, [1154] to support her contention that the comments or concerns raised in the 1 October meeting went beyond an informal discussion and that her practice was being formally criticised. In her email of 2 October 2020 Ms Beason informs the Claimant that she considered that it was not appropriate for the Claimant to be shift leader at present, she referred to the issues raised in the meeting on 1 October and also in relation to the HSIB investigation from July.

144 Ms Beason told us that she did not at any point suggest that there would be a disciplinary investigation and that she subsequently asked the Claimant to give serious thought as to whether she wanted to reconsider her resignation [2 October 2020 email 1154] however as noted above the email also states:.

> *'Due to issues with care that I raised with you yesterday whilst you were undertaking a care review and also in relation to the HSIB investigation from the case in July this year, I feel that it is not appropriate for you to be the shift leader on QBC at present. If you decide to withdraw your resignation, then we would meet to discuss identified going forward with an agreed plan of how we can resolve these.'*

145 We find that this is consistent with the Claimant's understanding of Ms Beason's use of the words action plan to address concerns about the Claimant's practice and not simply as a reference to the HSIB investigation.

146 On 4 October 2020 the Claimant emailed Ms Beason in response to the 2 October email [1159-1160]. We are satisfied that the Claimant's email sets out a true reflection of what was in her mind at the time of her resignation and shortly afterwards.

147 The Claimant set out 6 bullet points as to why she felt the conduct of the 1 October meeting was unacceptable and undermined her position. In the second bullet point, she refers to Ms Beason's actions in 'reprimanding me by removing me as QBC leader is a form of disciplinary procedure which requires you to follow policies and explain to me in full your rationale.', although this took place on 2 October we have found that it confirmed to the Claimant that her perception of the accusatory nature of the meeting on 1 October was correct. Similarly, the sixth bullet point also refers to the content of the 2 October email, 'I have been given no prior knowledge of any concerns with my practice regarding the HSIB investigation in July, in fact, you had praised me for my quick transfer of the client at the time.' While we are satisfied that the content of this last bullet point was not in the Claimant's mind at the time she resigned, we find however that it is consistent with her feeling that on 1 October 2020 she was being faced with numerous criticisms about her practice with no prior warning.

148 We find the Claimant's account of the meeting in her further particulars [page 72 of the bundle at item 11] to be consistent with her evidence before the Tribunal in respect of what was in her mind at the time she resigned, it is also consistent with her email on the 4 October. We are satisfied that she was concerned that she had been confronted with a number of concerns without any warning. We accept that this also led her to believe that her practice was being criticised when she and her explanations had not been listened to or given weight, in the same way that they had been not listened to in January 2019 and her account had not been given the same weight as that of another midwife on that occasion.

149 We are satisfied that Ms Beason allowed the discussion to move on to other complaints about the Claimant practice as well as the July incident which is the HSIB about which the Claimant had previously not been aware and this had all taken place in front of a colleague of the same level as her. She had not been given any warning and was meant to be an informal meeting, issues the Claimant thought had been resolved had been brought up. We find that the follow-up email from Ms Beason removing the Claimant from being shift leader on the birth centre is consistent with the Claimant's case and that it was not simply an informal discussion but a discussion with further likely consequences and follow-up in respect of the concerns being raised about the Claimant's practice.

150 We are satisfied that there was no link in Ms Beason's mind to the January 2019 incident and that she had not been aware of that incident, or the subsequent failure to resolve the different views between the Claimant and Ms Nurmahomed resulting from that.

151 We find that the Claimant left the meeting with Ms Beason feeling that she was being undermined and not being listened to. She went to see Sue Lovell in a very distressed state. Ms Lovell told us that the Claimant was upset and crying. We find that he Ms Lovell said to words to the effect that the Claimant should reconsider her resignation, and "you have mouths to feed" . Ms Lovell's file note, written contemporaneously, is at page 1151 of the bundle. Ms Lovell told us that she said to the Claimant, "Do not hand in your notice when angry, think about this as you have a family" , she did not dispute making reference to the Claimant's family responsibilities. We are satisfied that she did say words to the effect that Ms Beason was exercising her authority to explain Ms Beason's conduct.

152 We accept that Ms Pearce found Ms Lovell's comment about her having mouths to feed to be insulting. We find that she had already made the decision to resign and following her conversation with Ms Lovell she felt unsupported and saw no reason to change her mind. The Claimant typed her resignation letter and left it on Ms Beason's desk immediately after speaking to Ms Lovell.

153 We find that at the 1 October meeting the Claimant had in her mind her upset as to how she felt she had been treated following the incident in January 2019 but that she resigned as a result of the manner in which the meeting was conducted by Ms Beason, including being faced with numerous criticism of her practice without any prior warning, how she was spoken to which made her feel belittled and disrespected, and that this took place in front of a colleague of the same grade which undermined the Claimant.

154 We do not find that Ms Beason had reasonable and proper cause for acting in this way. Ms Beason accepted that her wider concerns could have been addressed in an appropriate way through the Trust's policies and procedures and the discussion could and should have been confined to an informal discussion about the events of that day.

155 The Respondent has accepted [Respondent's written submissions at paragraph 32 b] that if the conduct of the meeting on 1 October 20220 was a repudiatory breach it was not affirmed by the Claimant. We find that is an appropriate submission. We find that the breach was not waived by the Claimant, she resigned almost immediately after the meeting on 1 October 2020 and continued to protest about the conduct of that meeting throughout her notice period.

Relevant law - Constructive dismissal

156 Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

157 All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.

158 In Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.

159 In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:

- that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach); (note that the final act must add something to the breach even if relatively insignificant: Omilaju v Waltham Forest LBC [2005] IRLR 35 CA). Whether there is breach of contract, having regard to the impact of the employer's behaviour on the employee (rather than what the employer intended) must be viewed objectively: Nottinghamshire CC v Meikle [2005] ICR 1.

- that the breach caused the employee to resign – or the last in a series of events which was the last straw; (an employee may have multiple reasons which play a part in the decision to resign from their position. The fact they do so will not prevent them from being able to plead constructive unfair dismissal, as long as it can be shown that they at least partially resigned in response to conduct which was a material breach of contract; see Logan v Celyyn House UKEAT/2012/0069. Indeed, once a repudiatory breach is established if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon; see: Wright v North Ayrshire Council EATS/0017/13/BI); .and

- that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

160 In Harpreet Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 the Court of appeal gave the following guidance:

> In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:
> (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has he or she affirmed the contract since that act?
(3) If not, was that act (or omission) by itself a repudiatory breach of contract?
(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at thr end of para.45 above.)
(5) Did the employee resign in response (or partly in response) to that breach?
None of these questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.

161 It is open for an employer to argue that, despite a constructive dismissal being established by the employee, that the dismissal was nevertheless fair. The employer will have to show a potentially fair reason for the dismissal and that will be the reason why the employer breached the employee's contract of employment; see Berriman v Delabole Slate Ltd 1985 ICR 546 CA. The employer will also have to show that it acted reasonably. If an employer does not attempt to show a potentially fair reason in a constructive dismissal case, a Tribunal is under no obligation to investigate the reason for the dismissal or its reasonableness; see Derby City Council v Marshall 1979 ICR 731 EAT.

Disability discrimination claim – failure to make reasonable adjustments
Relevant law

162 Section 6 of the Equality Act 2010 provides that a person has a disability if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out day-to-day activities. Section 212 provides that substantial means more than minor or trivial. Schedule 1 of the Act provides that the effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to correct it and but for that it would be likely to have that effect.

163 When considering whether a Claimant is disabled within the meaning of the Equality Act 2010, the Tribunal must take into account the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) issued by the Secretary of State which appears to it to be relevant.

164 Sections 20, 21 and 39(5) read with Schedule 8 of the Equality Act 2010 provide, amongst other things, that when an employer applies a provision, criterion or practice ("PCP") which puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. Paragraph 20 of Schedule 8 provides that an employer is not expected to make reasonable adjustments if he does not know, and could not reasonably be expected to know, that the employee has a disability and is likely to be placed at the disadvantage.

165 In the case of the Environment Agency v Rowan [2008] IRLR 20, the Employment Appeal Tribunal held that in a claim of failure to make reasonable adjustments the Tribunal must identify:-

- the provision, criterion or practice applied by the employer;
- the identity of non-disabled comparators where appropriate; and
- the nature and extent of the substantial disadvantage suffered by the Claimant.

166 The duty to make adjustments normally arises as soon as the employer can reasonably take steps to avoid the relevant substantial disadvantage Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] ICR 1194,CA.

167 Section 136 of the Equality Act 2010 sets out the burden of proof that applies in discrimination cases. Subsection (2) provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) has contravened the provisions concerned, the Tribunal must hold that the contravention occurred. However, subsection (2) does not apply if A shows that A did not contravene the provision.

168 Where it is alleged that an employer has failed to make reasonable adjustments, the burden of proof only shifts to the employer once the claimant has established not only that the duty to make reasonable adjustments has arisen but also that there are facts from which it could be reasonably inferred – absent an explanation – that the duty has been breached Project Management Institute v Latif [2007] IRLR 579, EAT.

169 Where an employee is off sick the duty is not 'triggered' unless or until the employee either (a) expressly indicates that they intend or wish to return to work (NHS Scotland v McHugh EATS 0010/06 -obiter- as approved in Doran v Department for Work and Pensions EAT 0017/14) or (b) in cases of work stress related absence, where adjustments could realistically create a path to return to work London Underground Ltd v Vuoto EAT 0123/09. Where an employee is set against a return the duty is not engaged.

170 Relevant criteria by which to assess whether an adjustment is reasonable will in almost every case include cost and likelihood of effectiveness, amongst other relevant considerations. There must be some prosect that the step might remove the substantial disadvantage caused by the PCP; Griffiths v Secretary of State for Work and Pensions [2017] ICR 160, per Elias LJ at 65.

171 A claim must be determined by reference to the PCPs as pleaded, it is an error of law for the Tribunal to recast the terms of any PCP at final hearing: Lamb v The Business Academy Bexley, [2016] UKEAT/0226/15, per Simler P.

172 At para 26 of *Lamb* Simler P also said the following in respect of PCPs:

> "The phrase "PCP" is not defined in the legislation, but is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer disadvantage from a disability. It includes formal and informal practices, policies and arrangements and may in certain cases include one-off decisions. In Nottingham City Transport Ltd v Harvey UKEAT/0032/12 Langstaff J said it had:
>
> **"***18. … something of the element of repetition about it. It is, if it relates to a procedure, something that is applicable to others than the person suffering the disability. Indeed, if that were not the case, it would be difficult to see where the disadvantage comes in, because disadvantage has to be by reference to a comparator, and the comparator must be someone to whom either in reality or in theory the alleged practice would*

> *also apply. These points are to be emphasised by the wording of the 1995 Act itself in its original form, where certain steps had been identified as falling within the scope to make reasonable adjustments, all of which, so far as practice might be concerned, would relate to matters of more general application than simply to the individual person concerned."*

173 We reminded ourselves that we first had consider whether it is appropriate to classify the PCPs contended for as a PCP. In *Ishola v Transport for* London [2020] EWCA Civ 112, the CA made clear that whilst the words 'provision, criterion or practice' should not be narrowly confined, it was significant that Parliament had chosen to define claims by reference to these specific words, and had not used the words "act" or "decision" either instead of, or in addition to what was included. The CA concluded that *"all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again."* Thus, a one-off decision might be a practice, if it was carried out with the intention that it would be followed in future, similar cases. However, a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future would not be sufficient to amount to a practice.

Conclusions

Constructive dismissal

174 We have set out our factual findings above. In summary we have found that the Respondent's conduct in respect of the meeting of 1 October 2019, that is, the manner in which the meeting was conducted by Ms Beason, which included the Claimant being faced with numerous criticisms of her practice without any prior warning; the manner in which she was spoken to, which made her feel belittled and disrespected; and that this took place in front of a colleague of the same grade all of which undermined the Claimant was likely to and did damage the necessary trust and confidence between the Claimant and the Respondent. We have not found that there was reasonable and proper cause for this conduct. Ms Beason herself accepted that she ought not to have gone into other concerns at that meeting. We do not find that there was reasonable and proper cause for undermining the Claimant by criticising her in front of her colleague of the same grade nor for speaking to her in an accusatory manner and in a way that made the Claimant feel disrespected.

175 We find the Claimant resigned in response to that repudiatory breach on 1 October 2020. We have not found that the Claimant waived that breach or affirmed the contract following her resignation. We therefore find that the Claimant was constructively dismissed.

176 The Respondent has not put forward any potentially fair reason for this conduct towards the Claimant. We find that this was an unfair constructive dismissal.

Disability discrimination

177 The Claimant relies on dyspraxia and her mental health conditions of anxiety/depression as disabilities. We have set out our findings as to disability and the Respondent's knowledge of those conditions above.

178 We have carefully considered the PCPs contended for by the Claimant and the reasonable adjustments which she says ought to have been made to those PCPs. We have also carefully considered the Respondent's submissions. We have concluded that in respect of the majority of the PCPs and reasonable adjustments contended for we are bound to accept the Respondent's submissions that the Claimant has failed to identify that the matters relied on amount to a PCP, the effects of the alleged PCPs on her, or to establish that she was placed at a substantial disadvantage compared to someone who does not have her disability as a result of the contended for PCPs. We have also found that the majority of the reasonable adjustments contended for do not relate to the PCPs as identified, or any alleged substantial disadvantage.

179 We have found for the Claimant in respect of one PCP : that identified at issue 16.5 "*Not allowing support for informal meetings"* with the reasonable adjustment contended for at 19.13, namely " *enabling a friend to support the Claimant if concerns are to be raised".* We are satisfied that for the remaining PCPs the Claimant has not established that a duty to make reasonable adjustment has arisen and therefore nor has she established that any such duty has been breached.

180 We deal with each individual PCP contended for below:

16.1 Expectation that meetings be in person only and verbally and concerns to be provided verbally/in person.

181 We do not find that this was a PCP that was applied to the Claimant or generally. We find that the Respondent arrangement meetings in person but also remotely by phone and on occasions by video call (e.g. meeting about patient complaint in November 2020) Having heard the Claimant's evidence we accept the Respondent's submission that this is in fact a complaint about the non-provision of a written summary of clinical concerns about the Claimant post-resignation. This was a decision taken during the Claimant's notice period at the time when the Claimant was absent from work due to stress. We are satisfied that this was a one-off decision in an individual case, there is nothing to indicate that the decision would apply in future, we do not find this to be sufficient to amount to a practice.

182 We find that given the Claimant's level of upset and distrust by the relevant point in time there no real prospect that the adjustment contended would have facilitated the Claimant's return to work in any event.

16.2 Expectation that staff will attend meetings without agenda or information given prior to the meetings.

183 Whilst she may have had other meetings in her mind the Claimant has not identified any specific meeting where she might be disadvantaged without an agenda other than the meeting on the 1 October 2020. We have found that at its outset this was intended to be an informal meeting about the incident earlier that day and that this is what the Claimant had understood the meeting would be about but that the topics covered moved beyond what was originally indicated to the Claimant would be the subject of discussion.

184 We accept that anyone who is faced with attending a meeting believing it to be about one thing and finding out that it was about other concerns that either had not been raised with them previously or which they believed had been dealt with months ago might consider themselves to be placed at a disadvantage in being able to respond.

185 We first have to consider whether the raising of unexpected matters at informal meetings was a practice or a one-off. Ms Beason accepted that she had been wrong to raise other matters of concern at the meeting on 1 October and that she ought not to have done so. We find that this was not the Respondent's usual practice and it was not something that it was likely would be repeated in the future. We are satisfied on the evidence before us that this complaint is more properly characterised as a one-off rather than a practice.

16.3 Not regularly updating rosters accurately

186 The Claimant clarified in her evidence this allegation related only to the failure to update the roster with her sickness absence during the period after her resignation. We accept that this was an oversight, it does not amount to a PCP, there was not policy or practice of not updating rosters accurately.

187 We find that this took place during the post-resignation period when the Claimant was off sick that any adjustments contended for are not aimed at allowing the Claimant to return to work.

16.4 Only dealing with grievances on paper

188 Having heard from the Claimant we are satisfied that this refers to criticisms of Clarisse Oppiah-Ofosu in the period after the Claimant had handed in her resignation.

189 We are satisfied that the Respondent considered it best practice to ask for grievances to be put in writing, but we find that they would take them verbally if requested and it was considered appropriate to do so.

190 We do not find that Ms Oppiah-Ofosu refused to deal with the grievance raised orally, however, she did explain to the Claimant she was finding it difficult to follow what her grievance was over the telephone and that it would be better to put it in writing. We find that this is consistent with the Respondent taking a case-by-case approach and that this was a one-off decision in respect of the Claimant's individual case. We do not find anything to indicate that the decision would apply in future. We therefore find that it is not sufficient to amount to a PCP.

16.5 Not allowing support for informal meetings.

191 The Respondent submits that the Claimant accepted that she was permitted to be accompanied by a friend, colleague or union representative to the informal meeting about her concerns in October 2020, [1222] and this was not a PCP applied to her.

192 We find that this complaint was also clearly aimed at the meeting on 1 October 2020. It was not the Respondent's practice to allow support from a colleague or friend at informal discussions which were held about incidents on the ward or matters of clinical practice. In relation to the 1 October meeting we are satisfied that the Claimant felt at a disadvantage by being faced with numerous criticisms or complaints about her practice without prior warning and with another band 7 there as a notetaker but without anyone for support.

193 We considered whether the Claimant has provided any evidence of any substantial disadvantage as a result of her disability, as opposed to a general disadvantage that someone without her disabilities would also face. We consider that the Claimant's mental health (disability) meant that she was particularly vulnerable to this type of criticism and the impact on her was likely to be greater, i.e. more detrimental than it would have been to someone who was not experiencing the same level of mental health difficulties. The Respondent's descriptions of her being upset and angry, swearing and shouting are consistent with the Claimant's reactions being beyond the usual reaction that might be expected. We are satisfied that her mental health condition is likely to have contributed to this behaviour.

194 We find that the Respondent was aware through the occupational health reports that the Claimant's depression and anxiety was linked to the incident on labour ward in January 2019, the complaint that had been made questioning her clinical competence and how the incident was subsequently handled [OH report date 3/9/19/ at 882-884 and letter from Gill Perks 10 September 2019, 887]. The OH report stated, "I could see that Miss Pearce would be concerned in the situation that somebody had alleged that she was unsafe working clinically," The Claimant made reference in the meeting on the 1 October to it being a repeat of what had happened following the January 2019 incident.

195 We find that the reasonable adjustments contended for in relation to this PCP are at 19.15 of the list of issues: providing suitable notice of meeting, providing correct information for the meeting agenda and *enabling a friend to support the Claimant if concerns are to be raised* . We are satisfied that 'friend' refers to a work colleague with whom the Claimant was on friendly terms as opposed to anyone from outside the organisation.
196 We find that the Respondent ought to have been aware that allowing a friend to support the Claimant is likely to have lessened her feelings of anxiety at that meeting we are satisfied that it would have been a reasonable adjustment for the Respondent to have made.
197 We uphold the Claimant's complaint in respect of this PCP and find that the Respondent failed to make a reasonable adjustment.

16.6 Expectation that staff would change roles / *wards without notification?*

198 We find that this complaint relates to 17 March 2020 when the Claimant was informed by Anna Peacock that all ante natal classes were being cancelled due to the Covid 19 pandemic and she would be expected to switch to be full time at the Birth Centre in a clinical role [C's Further particulars paragraph 22, at p75]. The Claimant's own account was that she was given three days' notice of the change in role.

199 We find that this was a one-off decision in that it was an urgent response to the development of the Covid 19 pandemic, rather than being a practice that was followed by the Respondent or likely to be repeated.

200 In so far as the reasonable adjustments argued for by the Claimant are set out at 19.5 "*Preparing the Claimant fully by enabling some shadowing days prior to change of duties and having a discussion about suitability of role/concern/worries about the change*" we find that this was in fact what the Respondent did. The Claimant was based in the birth centre and had already been invited to arrange own shadowing days on the labour ward in 2019. We find that in March 2020 Anna Peacock discussed the changes with the Claimant

who indicated that she was happy to do whatever she could. We do not find that the Claimant expressed any worries about the change or raised any complaint at the time.
201 This complaint relates to events which took place more than three months before the Claimant commenced early conciliation and are out of time the Claimant has not put forward any basis for a an extension of time. We do not find it just and equitable to extend time in relation to this matter, it was only clarified that this was relied on as a failure to make a reasonable adjustment in the Claimant's further particulars on 3 June 2021.

16.7 Expectation for Bank staff to move wards if on shift and required

202 The Respondent accepted that this was a PCP.
203 The Respondent's case is that prior to January 2019 it did not know, nor was there any reason for it to have known that this would cause the Claimant any disadvantage. The Claimant put herself forward for bank shifts in January, February, April and August 2018 without indicating there was any issue.

204 The Claimant accepted that there would be a need to move wards with a patient in order to provide continuity of care and that applied to all midwives, not just bank staff. This complaint relates to the shift in January 2019. The disadvantage to the Claimant was because of her dyspraxia she found it difficult to orientate herself when not familiar with equipment and the processes on the labour ward. She did explain that to the other staff present and we accept that they were made aware of that.

205 We have found that once the Claimant raised her need for familiarisation in January 2019, the Respondent was accepting of this and accommodated her request as far as it could in the circumstances of a busy ward and the needs of the patient. The Respondent agreed that the Claimant could attend the ward as supernumerary and t was left to the Claimant to arrange this. We find that this was a reasonable adjustment, It was reasonable to expect the Claimant to know when she would be working and to arrange with her colleagues when she could be spared to attend a supernumerary shift on the labour ward.

206 We have also found that after January 2019 the Respondent took steps to minimise the moves expected of the Claimant so that she would be the last member of staff to move. We accept the Respondent's evidence, [at 1335], that the Claimant continued to volunteer for and work bank shifts, working 14 bank shifts after January 2019: the Claimant has not referred to any disadvantage or difficulties as a result of being transferred to labour ward on any other occasions, only in respect of the shift on 26 January 2019.

207 We do not find there was a failure to make reasonable adjustments. We find the complaint in relation to the shift on 26 January 2019 is out of time in any event.

16.8 Timing of sickness meetings not flexible

208 The Claimant made no submissions in support of this, or indeed any of the other PCPs. We note there were numerous incidents of meetings being moved and rearranged between the Respondent and the Claimant during her sickness absence. This complaint is not made out on the evidence We do not find this to be a PCP that was applied to the Claimant.

16.9 Expectation that staff would be proficient clinically when employed in non-clinical roles.

209 The Claimant accepted that it was a requirement of the NMC that all midwifes be proficient clinically whatever role they were employed in. The Claimant also accepted in evidence that her role was not a non-clinical role; her job description made it clear that she was expected to carry out clinical work where required. The Claimant's own evidence was that she is and has always been clinically proficient.

210 We do not find that there is any evidence of any substantial disadvantage, or of knowledge by the Respondent of a substantial disadvantage. We are satisfied that it was reasonable for the Claimant to be expected to be clinically proficient whilst she was employed as a midwife.

211 We accept the Respondent's written submissions at paragraphs 93 to 97 and do not find there was a failure to make reasonable adjustments.

16.10 Expectation that staff will learn paperwork whilst undertaking clinical duties

212 The Claimant accepted that knowing how to keep clear and accurate notes is a professional requirement of a midwife. Having heard from the Claimant we find that this PCP is in reference to the Claimant's experience on the labour ward on the 26 January 2019 and her lack of familiarity with the systems used on that ward for keeping patient notes. The Claimant told the Tribunal that she was slow with her note taking that night and struggled with the electronic system (because of her dyspraxia) which contributed to her feeling at a disadvantage.

213 The reasonable adjustment contended for is at 19.10 of the List of Issues "*Providing separate allocated specific time to train on paperwork procedures/computer systems."*

214 We find that on 26 January 2019 Ms Nurmohamed took over when the Claimant appeared to be struggling with the electronic note system and that the Claimant was provided with support from another midwife in writing up the notes on the night. After 26 January 2019 the Claimant was offered the opportunity to work supernumerary on the ward to familiarise herself with the ward and the paperwork. The Respondent also provided training sessions on completing mandatory paperwork the Claimant did not ask to go on the training that was available and there was no evidence that if she requested an opportunity to go on training this would have been refused.

215 We do not find that there was a failure to make reasonable adjustments, ad hoc adjustments were made on the night and we are satisfied that reasonable adjustments were put in place from 26 January 2019. Any complaint in respect of the shift on 26 January 2019 is out of time in any event.

16.11 Expectation from staff to move/ change clients sometimes several times in a shift

216 It is accepted that this PCP was applied.

217 We find that the once the Respondent was made aware that the Claimant found this difficult because of her dyspraxia it was agreed that she would be the last person to be asked to move or change clients, so that this would be avoided as far as was possible given the needs of the patients and the staff available. We are satisfied this was a reasonable adjustment for the Respondent to make in the circumstances.

16.12 Expectation for staff to accept important tasks not being completed to meet their needs because of the pressures / lack of staff.

218 The Respondent disputed that they applied this PCP. The Trust's expectation was the contrary, i.e. that important tasks would be completed even if there was a lack of staff and pressures on the system. There is no evidence to suggest that important tasks were not completed or that there was an expectation that it would not be. The Claimant has given no clear evidence as to what this refers to, or any instances where it occurred.
219 This complaint is not made out on the facts.

16.13 Expectation on the labour ward from January 2019 that the Claimant should take a further patient before the clinical paperwork for the previous patient is completed?

220 On 26 January 2019 the Claimant was asked to take a patient and declined as she had not finished writing up her notes. We do not find that this amounts to a PCP, nor is there any evidence before us of a substantial disadvantage: the Claimant simply declined to take the patient.

221 This complaint relates to 26 January 2019 and is out of time in any event.

16.14 Expectation that sessions for PIB (partners in birth) would be verbatim

222 The Respondent's case is that it was not expected that the sessions would be delivered verbatim but that they would be faithful to the core content of the research project materials. We do not find that the Claimant was told that she should be teaching the content verbatim as it had been provided by Ms Perks but we find that she was told that she should not deviate from the content of the materials. After the Claimant raised her concern with Ms Perks on 29 November 2019 she was not required to teach the session after that date. We have found however that the Claimant's objection was in reality about her disagreement with the content of the material and not as a reuslt of any disadvantage caused by her disabilities.

223 We accept that it was reasonable for the Respondent to expect the content of the material to be delivered consistently in view of the fact that it was part of a research project.

224 We have not found there was a failure to make reasonable adjustments.

16.15 Expectation the Claimant should achieve 100% rate of consent for patient participation in the PIB research project.

225 We accept the Respondent's submission that this does not amount to a PCP. We do not find that the Claimant was expected to achieve 100% consents for participation in the project, but nor do we find that there is any evidence of any link between her failure to do so and her disabilities. We are satisfied that the Claimant had been able to obtain a high rate of consent up until the point that she felt that she no longer agreed with the contents of the project and the significant drop in her rate of consents to take part in the project was as a result of her disagreement with the content of the course and not anything to do with any of her disabilities.

16.16 As set out in the contents of the emails between Ms Gill Perks and the Claimant in late March 2019/ earl April 2019 (shortly after her PIB secondment ended), requirement to complete paperwork for the PIB research project.

226 We find that the requirement to complete the paperwork for the PIB project arose from a one-off overrun in a one-off project. We are also satisfied that the requirement was only applied to the Claimant and not applied to anybody else. Although Ms Perks required that the work outstanding be completed, we find that the Claimant was able to make suggestions as to the appropriate time frame and to agree the time frame that she felt was achievable with Ms Perks.

16.17 Expectations in relation to appraisals being completed and targets being met in 2019 and 2020.

227 We accept Ms Peacock's evidence that the targets for 2019 were in fact rolled over to 2020 and as such the Claimant had not been expected to meet them. Nor was she expected to meet them in 2020; we accept Sue Lovell's evidence [in her statement at paragraph 21] that the Respondent stopped using the PPR system in 2020, moving away from objective setting. We find that there was no evidence the Claimant was in fact required to meet the targets in 2019 or 2020. The only evidence that the Claimant was in any way disadvantaged because of her disabilities in meeting her targets was by reason of her disability related absence. We are satisfied that the Claimant's absence was the reason why the targets were rolled over from 2019 into 2020; the Claimant was not required to meet them in 2019 and was not put at a disadvantage as a result. We are satisfied that there was no failure to make reasonable adjustments.

Summary of conclusions

228 The claim for constructive dismissal succeeds.

229 The claims for failure to make reasonable adjustments, disability discrimination under sections 20 and 21 of the Equality Act 2010, in respect of the PCP set out at paragraph 16.6 of the List of issues "Not allowing support at informal meetings" and the reasonable adjustment identified at paragraph 19.13 of the List of Issues succeeds.

230 The remaining allegations of failure to make reasonable adjustments fail and are dismissed.

231 A remedy hearing will be listed in due course

Employment Judge C Lewis
Date: 12 July 2023