



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Haigh

Respondent: Always Another Way, Cumbria Limited

Heard at: Manchester Employment Tribunals, sitting at Carlisle

On: 13, 14 and 15 March 2023 and 15 August 2023 and 16 August 2023
(In Chambers)

Before: Judge Miller-Varey, Ms Kim Fulton, Mr Andy Gill

Representation

For the Claimant: Represented herself

For the Respondent: Ms Helen Hogben of Counsel

JUDGMENT

1. The unanimous decision of the Tribunal is that:
 - a) The complaint of direct discrimination and of harassment by reference to allegation 13 is struck out under Tribunal Rule 37(1)(a) because it has no reasonable prospect of success.
 - b) There is no jurisdiction in respect of the complaints of direct discrimination, discrimination arising from disability and harassment arising out of the allegations at 1 to 8 as they were not brought within the time required and were not brought within such further period as the Tribunal found just and equitable. Had there been jurisdiction for these complaints, the Tribunal would have judged that they were not well founded and should be dismissed.
 - c) There is no jurisdiction in respect of the complaints of the failure to make reasonable adjustments (sign language and eye contact) as they were not brought within the time required and were not brought within such further period as the Tribunal found just and equitable. Had there been jurisdiction

for these complaints, the Tribunal would have judged that they were not well founded and should be dismissed.

- d) All of the remaining complaints (allegations 9 to 12) which are of direct discrimination and harassment are not well founded and are dismissed.

REASONS

1. This claim arises from the Claimant's employment with the Respondent which ended in December 2020 when her previously notified resignation took effect. The Claimant complains of acts of unlawful disability discrimination and harassment arising both before and after her employment terminated. The termination of her employment itself does not form part of the claim.

THE ISSUES

2. The issues for the Tribunal to determine were set out in the record of preliminary hearing of 23 February 2023. For ease they are reproduced at Annex A.

THE HEARING

3. The final hearing took place at the Carlisle Magistrates venue on 13,14,15 March and 15 August 2023. We spent time deliberating on 16 August 2023 having indicated that we would reserve our judgment and deliver it in writing.
4. The Claimant gave evidence and was cross-examined. She relied on the evidence of three further witnesses:
 - Gail Dobson-Burns;
 - Bridget Lorna Hurst (originally a volunteer and later a paid alternative and complimentary therapies support worker and sign language team leader); and
 - Anne-Louise Branch (originally a volunteer but later paid to undertake leadership of mental health drop in and office administration).

They were each cross-examined.

5. For the Respondent we heard evidence from:
 - Andrea Sales (organisational manager of the Respondent from 1 June 2020);
 - Angela Crawford (director from around early autumn 2020);
 - Sonny Smith (director since 2019); and
 - Janette Tear (volunteer and director since August 2018).

They were each cross-examined.

6. There was an agreed bundle of documents and numbers in square brackets in these reasons refer to that bundle. There was also a separate, unnumbered bundle of witness statements. We use the initials "WS" to refer to witness statements.

Adjustments

7. The Claimant has Ehlers Danlos syndrome. Medical evidence of the impact upon the Claimant was not before us because the question of disability (by reference to this condition and by reference to bipolar disorder) was admitted by the Respondent.
8. The Claimant's impact statement [p. 132-133] was before us.
9. The statement describes the nature of Ehlers Danlos syndrome as a defect in collagen which gives the Claimant additional movement in the joints, to the point they dislocate. It also gives her symptoms with feet, heart, eyesight, hearing, bowel, bladder arteries, easy bruising, dislocations and subluxing in the fingers, toes, shoulders, hips, knees, ankles, wrists and jaw. She has muscle spasms daily and the jaw dislocations cause migraines. The combined effect, the Claimant says, means that she struggles with basic tasks like trying to lift, trying to walk and even trying to open cans bottles et cetera [p.132].
10. The Claimant also describes that due to hypermobility of the inner ear bones, sound no longer vibrates through the Claimant's eardrum causing hearing loss, auditory processing disorder and tinnitus. She has basic sign language and spent 2 years with the Freeman Hospital learning to lipread, as well as learning techniques to manage her auditory processing disorder.
11. By way of other physical conditions, she diagnoses of fibromyalgia and chronic fatigue syndrome. This causes problems with energy levels leading to additional rest requirements, as well as difficulty with memory including word location and memory problems
12. The Claimant also has bipolar disorder. The Claimant describes this is giving her anxiety on a regular basis and occasionally paranoid thinking [p.132]
13. At the preliminary hearing for case management [pp.136-137], appropriate reasonable adjustments to ensure fair participation by the Claimant were discussed. These were identified as (a) the hearing taking place in the same court room and (b) (potentially) additional breaks. The Claimant indicated she was content to proceed without either a hearing loop or sign language interpreter.
14. In the event, HMCTS did arrange for sign language interpreters (Ms Karen Edmundson, in person and Ms Zoe Bevans, virtually) to attend. Ms Edmundson identified that having regard to the Claimant's relatively lower level of sign language (in contrast to her high level of English), it was unlikely to add meaningfully to the Claimant's understanding of the process for her to provide concurrent translation. There was also a risk that the interpreter could present an unhelpful distraction as it would involve the Claimant in a further simultaneous processing task to lip reading.

15. The Claimant, entirely consistent with her position in the earlier hearing, agreed. She expressed that the acoustics in the hearing room were very good and that it was more beneficial to her that: (i) people kept their volume up when speaking to her, (ii) looked at her where possible when speaking and (iii) repeated anything when necessary.
16. We used the morning of the first day to test whether this was satisfactory. When the Claimant and the Tribunal were satisfied that it was, the interpreters were released.
17. In addition to hearing issues, the Claimant identified that regular breaks may be necessary. These were offered regularly, and some extra breaks were taken. When the part heard hearing resumed in August, we checked whether any further adjustments were required. None were. The Claimant indicated she had some further pain and that she may need breaks.
18. We explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the Claimant was not legally disadvantaged because she was a litigant in person. We regularly explained the process, visited the issues and explained the law when discussing the relevance of the evidence. During cross-examination the Tribunal Judge helped the Claimant to frame questions about points she wished to challenge. Some questioning by the Claimant was limited where it strayed away from the issues.

FINDINGS OF FACT

19. Having considered all the evidence, we find the following facts on a balance of probabilities, and such additional facts as are contained in the analysis and conclusions section below.
20. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to our determination of the issues.

Broad narrative findings

21. It is convenient for us to set out our overview of the key relevant events. We will then make specific findings relevant to what have been headed in the list of issues "causes of action". In reality they represent the factual underpinnings of the Claimant's complaints.
22. The Claimant and her husband started Always Another Way in 2016. It was a not-for-profit social enterprise based in Whitehaven.
23. Its purpose was to identify and address gaps in local services with a particular emphasis on helping those living with mental health conditions and those with disabilities in the Copeland and Allerdale area. Its activities were wide ranging and encompassed: peer support groups for mental health, sign language classes, baby loss support, LGBTQ plus young people group, support for family members and carers of those with eating

disorders, alternative and complimentary mental health sessions (for example, in crafts) and one to one individual support.

24. A feature of the organisation was that it provided opportunities for those with disabilities to volunteer.
25. It was successful and won awards. The Claimant was pivotal in achieving this. Volunteer numbers, provisions, events, training and service users grew year-on-year.
26. By March 2020 the organisation has approximately 30 volunteers [p.17]. Its directors then included: Janette Tear, Sam Benson (who was not a witness), Sonny Smith and the Claimant.
27. With the growth of the organisation the Claimant pursued funding for the appointment of a salaried manager. There was a collective recognition by the directors that this step was warranted. However, the Claimant would remain on the board in a voluntary role.
28. Andrea Sales was appointed as organisational manager on 1 June 2020.
29. The Claimant had been part of the recruitment and interview process. It is common ground that during her interview Ms Sales was asked to confirm the training in which she would be interested. She confirmed sign language was one area. It is also an agreed fact that Ms Sales was not given any indication either during her recruitment or shortly thereafter that sign language training or command of sign language would be required in order to facilitate communication with the Claimant (paragraph 19 of the Claimant's written closing submissions refer).
30. In around autumn 2020 the Claimant suffered a deterioration in her health. By 11 November 2020 she handed in her notice. Her reason was to go for major jaw surgery and focus on some family issues [p.8].
31. At no point before her resignation did the Claimant raise concerns regarding her treatment by the Respondent or in particular by Ms Sales. In an email of the 25 November 2020, the Claimant commended Ms Sales for the brilliant job she was doing [p.65].
32. The Claimant's resignation was as director as well as staff member and volunteer. The intended wind down of activities following the giving of her notice was just over a month. All parties intended that all work by the Claimant would finish in December 2020.
33. The nature of the Claimant's work in period following notice of her resignation was agreed to include finishing up 1-2-1 support meetings with clients and handing over the LGBTQ+ group to a colleague [pp.160-164]. New directors were to be recruited [p.164]
34. In the course of the wind down period, three discrete issues arose for discussion between the Claimant and Ms Sales which related to property and financial matters. They were instituted by Ms Sales and related to iPads, a funding bid that had previously been made by the Claimant (the FC Scott

bid) and the production of a mental health video by HaighTech, of which the Claimant's husband was a proprietor.

35. Broadly the Claimant contends that Ms Sales improperly implied dishonesty and incompetence by her in respect of the former two matters. In respect of the third, the Claimant felt the pausing of the projects was needless, it contradicted approval that had already been in place and there was no realistic concern of financial prejudice to the Respondent because the work was being done cheaply.
36. The Claimant became upset, frustrated and irritated by these matters, and resolved to quit. She informed Ms Sales in a message that demonstrated she was seriously unhappy, and which caused Ms Sales to worry for her welfare. She arranged for a call to be made by Ms Benson. From 9 December 2020 there was no face-to-face verbal communication between the Claimant and Ms Sales
37. At the time the Claimant had ongoing personal stresses, including family and financial matters. She identified much of this, including her concerns about Ms Sales' actions, directly to Ms Tear and also to Ms Benson in various text exchanges that took place on 9th and 11th of December 2020.
38. The Claimant handed over to Ms Sales all the video images and audio that she had and sought to rearrange her remaining commitments for one to ones and LGBTQ training [p.175].
39. Thereafter the Claimant began to complain to the directors about being sidelined in the execution of her remaining 1-2-1s and what she regarded as a lack of tidiness and standards in the premises, including in respect of confidential documentation.
40. On or around 16 December 2021 the Claimant, who was still intending to participate in the Cleator Caring Moor (CCM) Christmas event, learned from their staff that the Respondent would not be assisting with the process of collecting the surplus food, bagging it or delivering it. The Claimant was greatly incensed about this and blamed Ms Sales. She considered the organisation was deteriorating in standards and scope.
41. The Claimant had removed her name as company director.
42. Moving into 2021 the process of disentangling the Claimant's association with the affairs of the Respondent proved protracted and was a source of irritation to the Claimant.
43. The Claimant had no physical contact with the Respondent's premises, until the Claimant made arrangements with Ms Hurst to attend the mental health drop-in group session on 19 February 2021. The purpose was to meet with her 2 former colleagues (Ms Hurst and Ms Branch) primarily. However, it was clearly contemplated by her that she could show those attending the sessions how to make jewellery. That much is evident from her text. It is common ground that the Claimant did go to the session and did make jewellery with those present.

44. The Respondent identified, partly in response to issues thrown up by the Claimant's attendance, that it would be appropriate to implement a conflict of loyalties policy. This recognised the vulnerability of service users as well as risks to staff. Its purpose therefore was to help staff and volunteers maintain a professional relationship with the people they work with. It stated that staff members and volunteers should not be directly involved in the assessment or provision of services towards people they already know.
45. It is a lengthy document, part of which said this:

Ex members of Staff/volunteers becoming service users

Because of the close-knit nature of communities in which we work and how common mental health struggles are for a high percentage of people locally as well as nationally (and globally) it isn't an impossibility that ex-members of staff/volunteers may require support with their mental health, particularly unpaid staff who for example may have become involved in volunteering to help manage their own mental health and may require support with their mental health at some point after they have left the organisation.

Where there is pre-existing friendship and/or other personal relationship between an ex-member of staff/volunteer and existing staff/volunteer we must first try to signpost the individual to other relevant support services or allocate the individual to a member of staff/volunteer who has no pre-existing personal relationship with them.

46. This had clear application to the Claimant.
47. The Claimant was greatly unhappy. It prompted her to lodge a formal written complaint. It alleged discrimination, abuse of power and misconduct by Ms Sales. Despite that description, the chief complaint was the restriction of access to services, the marginalisation of volunteers and the exclusion of the Claimant from the website after many years' service. Within that letter the Claimant described the behaviour as discriminatory towards all the volunteers offering their time and experience [p.116]. She required her name and address to be removed from Companies House and from the bank.
48. The changes made to the website included the use of a photograph in which the Claimant's child (then under 18) appeared. It had been taken previously for fundraising purposes and was now used in reference to a different project.
49. The Claimant made a further complaint about this aspect on 15 March 2021 [p.117]. She sought the photograph's removal. Her complaint was that permission had not been given for the photograph to be used out of context or to advertise mental health services. She also said that permission had only been given by the adults. She cited this as further discrimination and targeted malice towards herself.

50. In the event the photograph was removed from the website within 48 hours of the Claimant's complaint. A future referral to the ICO would be partly upheld.
51. In respect of the collection by the Claimant and her belongings from the Respondent's premises, this was discussed in a text exchange with Ms Tear on 14 March 2021 [p.192].
52. On 18 March 2021 Ms Sales found that she had been deleted as the administrator of the Respondent's Facebook groups and discovered that she had no ability to control the page. The directors caused warning messages to be issued to service users about this.
53. On 26 March 2021 the Claimant again wrote to the Respondent raising outstanding concerns in respect of which she wanted urgent action. Again, these related to O2 and NatWest.
54. The Respondent replied to the Claimant's complaints on 29 March 2021 in a detailed letter signed by Angela Crawford, Sonny Smith and Janette Tear.
55. This did not address the allegations of discrimination by Ms Sales against the Claimant. The response attached a copy of the conflict of loyalties policy and also a letter addressed personally to the Claimant [p.207] indicating that she would no longer be able to attend a support group she had previously attended because of her pre-existing close relationships with paid and unpaid staff across this area of the organisation. She was signposted to 3 other alternative services if she felt in need of them.
56. Subsequently on 1 April 2021 [p.229] the Respondent through its directors wrote again to the Claimant in reference to her letter of 14 March 2021. It stated that the complaints procedure could not be used for dealing with complaints that make allegations against staff as there are other statutory employment procedures that apply. Correspondingly, the Respondent would be using a separate procedure confidential to both the employer and the employee, the outcome of which would not be passed to the Claimant.
57. There was ongoing communication between the parties in reference to the various logistical matters. The Claimant was determined to have complete severance from the organisation, which of itself was not unreasonable considering it was not months since she had left, and her personal name continued to have associations she did not want.
58. The Claimant provided an inventory of items to collect, and it was mutually arranged for her to attend on 13 April 3:30 PM
59. The collection of possessions duly took place and was a tense affair. We have been provided with video evidence of this and our specific relevant findings are set out below.
60. The Claimant on 17 April wrote to the directors about outstanding property items and complained of having been made to sit on the cold gym floor to sort through her boxes and being refused entry to the office.

61. The Claimant made a complaint to the information Commissioner about the Respondent's use of her email outside of the Board of Directors and secondly that her right to erasure had not been enacted. Her daughter also raised concerns about the processing of her image. The first point only of the Claimant's concerns was upheld. The complaint of her daughter was upheld, in essence because verbal consent (the highest the Respondent could point to) is implied consent and this was insufficient [pp.274-276].

Specific factual findings in reference to the allegations

(1&2) Alleged refusal to learn sign/ refusing eye contact with the Claimant

62. It is convenient to take these two factual allegations together.
63. The Claimant is able to use sign language. The Claimant does not have a BSL qualification higher than level 1. Her ability in sign language would not allow her to conduct a sophisticated conversation using sign. When the Claimant is lip reading, facing the Claimant is enough (p.6, para 19 of the Claimant's submissions refers)
64. Sign language training leading to BSL qualification was provided by Hazel Eglin to service users face to face and was paused in the summer of 2020 as a result of the restrictions arising from the pandemic. Some students were at that time part way through their courses.
65. At the time of her recruitment in June 2020 Ms Sales expressed interest in undertaking sign language training. This was not then or ever subsequently required of her by the board.
66. We have not been provided with clear evidence of any class or classes being run which she was asked to attend and did not so attend. We exclude that ever happened. The Claimant asserted that Ms Sales was offered the opportunity of learning privately, but this was not documented or otherwise mentioned. It was also denied by Ms Sales. We accept Ms Sales is correct.
67. As manager, Ms Sales was involved in discussions about the restoration of classes with various volunteers as well as with the Claimant. There were around three such discussions prior to the Claimant's departure.
68. In the course of such discussions, we are satisfied Ms Sales indicated that she was willing to learn sign language, as and when possible.
69. The evidence of Ms Branch was that in February 2021 [WS para 6] she and Ms Hurst repeatedly raised with Ms Sales restarting sign language classes. Ms Branch says this was "dismissed" by Ms Sales as they were not a provision which Ms Sales wanted to run. The evidence of Ms Sales in cross-examination was that they were positive meetings and the attendees tried to come up with a plan of when the Respondent could come up with assessments for those part way through the course.

70. This case throws up a number of other conflicts of evidence to which Ms Branch's and, to a lesser degree, Ms Hurst's evidence is of importance. It is helpful to record here findings which cause us to approach their evidence (where not otherwise corroborated) with some caution; it seemed to us to be significantly at risk of bias:
71. There is clear common cause between the Claimant and Ms Hurst and Ms Branch in reference to the Respondent, and specifically Ms Sales. This extends beyond perceived discrimination to the Claimant which we are convinced they all believe has happened. They both clearly dislike the direction the organisation has taken since summer 2020 and connect this to Ms Sales' agenda of which they do not approve.
72. They felt rebuked in their work by the Respondent as a result of a session in February 2021 to which we will come.
73. Their overall feeling was so strong that it caused them each to resign in effect, on principle.
74. Ms Branch gave her evidence in quite a belligerent style and it seemed to us had a determination to put the Claimant's case for her, wherever possible.
75. On balance, we are not persuaded that Ms Sales was somehow intrinsically against sign language classes (and by extension therefore, intent on frustrating her own learning). We reflect that in summer and autumn of 2020, there were many competing considerations for all organisations as a result of the pandemic. As Ms Tear put it " the focus of the business shifted to ascertaining how best to work at a distance". The Respondent was taking stock of how best to deliver training. It was necessary to get to grips with social distancing. Further, the making of decision not to restart at that stage was one of board's. The fact that other training may have been restarted is not a marker of anything significant to this case. The board was entitled to prioritise as they deemed appropriate.

“Refusal” to make eye contact

76. Ms Sales' oral evidence was that she was aware the Claimant had health conditions that impact upon hearing, and which sometimes meant she had a level of hearing loss.
77. We find that was the full extent of knowledge Ms Sales had about the Claimant's hearing.
78. Ms Sales had direct first-hand experience of the Claimant being able to hear across the large training room, a conversation that was taking place in a separate room. Other than to suggest (which Ms Sales accepted) this was in a room in which noise travelled very well, this was not challenged by the Claimant.
79. Ms Sales agreed with the Claimant that if the Claimant ever struggled to hear then she would let Ms Sales know.

80. Correspondingly the expectation would be that, subject to any contrary indication from the Claimant, Ms Sales should approach communication with the Claimant as she would any other person without disabling hearing loss.
81. Ms Sales was never instructed by the Claimant to ensure specific or enhanced eye contact for the purposes of lip reading. The Claimant has suggested that this became an agreed reasonable adjustment when it became apparent that Ms Sales was not going to learn sign language [p.54]. Neither the Claimant nor any other witness gave any cogent evidence to support this. We do not find it proved.
82. Against that backdrop, when considering a “refusal”, we are really concerned from a factual point of view with whether Ms Sales deliberately refrained from making eye contact at the levels usual to interactions with non-hearing-impaired staff i.e., it is an allegation of deliberate withholding. The Claimant describes in her witness statement that Andrea “turned away whilst speaking”
83. We have weighed the Claimant’s evidence against that of Ms Sales as to whether she refused eye contact. We also had regard to the evidence of other witnesses.
84. The Respondent’s witnesses did not comment specifically upon this.
85. The Claimant’s did through Ms Hurst. She asserted a pattern of discrimination but primarily by drawing upon treatment she claimed to have witnessed of Ms Elgin
86. Ms Hurst was the team leader for BSL sessions. She described a meeting at which she was present with Ms Elgin and Ms Sales in which she witnessed Ms Sales repeatedly interrupt the conversation showing little consideration for Ms Elgin and showing unprofessional behaviour (WS paragraph 3). In oral evidence Ms Hurst sought to add to this evidence saying that Ms Sales covered her mouth when speaking.
87. Ms Sales said that she might have scratched her face. She denied covering her mouth.
88. We preferred the evidence of Ms Sales over the evidence of Ms Hurst about this point.
89. In doing so we did take into account that Ms Hurst obtained assistance from her husband in preparing her witness statement as a result of particular needs which it is not necessary to set out in these Reasons. The Tribunal had regard to the Equal Treatment Bench Book about those needs and the factors that should be borne in mind when evaluating the evidence of a person in that situation (which we likewise do not set out as this could lead indirectly to identification of Ms Hurst’s needs in a published decision).
90. However, as overarching points we noted the following:

- The allegation of Ms Sales covering her mouth – not merely interrupting, but of preventing her own words being understood by attendees who she knew to be dependent on lip reading - was an important piece of evidence on any view.
 - When it was put very clearly and fairly to Ms Hurst whether she was suggesting this action was deliberate, she did not deny this.
 - Her witness statement however was silent about mouth covering.
 - The explanation for excluding what we consider to be a memorable fact is that it was included in the description in the witness statement of Ms Sales as “unprofessional”. We did not find this persuasive
 - All of what Ms Hurst suggests is inconsistent with a previous highly inclusive and noted approach of Ms Sales at the earlier meeting with Ms Elgin. The Claimant herself agrees this was a meeting at which Ms Sales performed well and on which she directly complimented Ms Sales at the time. Whilst Ms Hurst told us this very fact was what caused her later experience to be so shocking, there is no evidence she took forward concerns to the board.
 - The Claimant has been in close contact with her witnesses from the time she and they left the Respondent and has discussed their experiences with them. This is evident from the reliance she placed on information she gained from them in March and April 2021 and information she furnished during the pleading stage.
 - We find it telling that when the Claimant purported to give a detailed hearsay account of what Ms Hurst witnessed; it too omitted any reference to mouth covering [p.54].
 - Ms Crawford’s evidence was that Ms Sales was approachable and sympathetic as a person. This is not consistent with such an unkind, deliberate act.
91. We therefore reject Ms Hurst’s account of Ms Sales’ action towards Ms Elgin. We further discount that there was a deliberate withholding of eye contact by Ms Sales to the Claimant.

(3) Claimant not allocated a place to work or meet clients

92. The Claimant alleges that there were *multiple* occasions between November 2020 and December 2020 where she would arrive at the building to meet a 1-2-1 client and would have nowhere to work. She says that Ms Branch witnessed this. She says that one such instance resulted in her and her client being forced to use a side room which was too small for Covid safety procedures and created an uneasy atmosphere. On a second occasion the Claimant refused to use the side room and Ms Sales moved those helping with admin reluctantly into the office. The Claimant says that after the second incident she felt Ms Sales was “purposefully allowing no place to work”.

93. The oral evidence of Ms Sales was that as the team grew, they moved into the main training room to work together to do admin as this was better than in the offices which were smaller, where backs were turned. She recalled at least one instance of the Claimant turning up to do a session when the training room was being used in this way. She could not remember what had happened precisely but said that she “did not deny” that she had suggested the Claimant use the office or another room.
94. She also gave evidence that a lone working policy had been implemented despite being brought into existence originally as part of the process for getting CIO status. Ms Sales expressed that this had been discussed with staff in connection with booking 1-2-1 sessions.
95. She said she had no recollection that the Claimant had to breach the Lone Working Policy on a regular basis (to obtain a suitable working space) although she did remember that it had been raised in an email.
96. Ms Sales identified four separate areas that could be used comprising the small office, the main office, the training room and the gym area. Her evidence contrary to the Claimant was that the main office was in principle available for use, despite confidential information being stored in there.
97. She identified that her priority was keeping clients and staff safe.
98. The Tribunal noted the documentary evidence provided some contemporaneous support for the Claimant’s 1-2-1 having been, in her opinion, pushed aside and sidelined on 11 December [p.176]. However, on 18 December she gave “mess” as the reason why the only usable space for the Claimant was the training room [p.185].
99. In her oral evidence the Claimant accepted that double bookings also happened for Ms Tear and Ms Branch.
100. Balancing all of the evidence, we find it did happen and the reason was that the Lone Working Policy at page 291 meant that someone else needed to be in the building for 1-2-1s. This meant activities were focused in the day time creating more pressure for space when meeting clients. We accept that Ms Sales had a genuine and honest working for bringing the team into a larger space.

(4) Accusation by Ms Sales of stealing iPads

101. The Respondent received National Lottery community funding of £30,000. Items covered in the grant bid included iPads for male service users. Minutes of a meeting of 11 November 2020 at which Ms Sales and the Claimant were present with Ms Branch record that three of the iPads have gone to clients already and two were to remain in-house to be used by service users.

102. The Claimant's oral evidence is that Ms Sales telephoned her to ask where the iPads were and had she taken them home with her. She says this felt like a direct accusation of theft.
103. Ms Sales gave convincing, detailed oral evidence that after the worst of the pandemic she was concerned to know what assets the Respondent owned. Despite the November 2020 meeting which referred to 5 iPads she mistakenly believed 6 had been acquired of which she had only seen three. She had a number of concerns. Thousands of pounds had been spent and one particular receipt for the iPads was missing. She was nervous about reporting back to the National Lottery in circumstances where she did not know where the iPads were stored, where the receipts were and was keen to ensure that if they were on loan, that they were signed for. Her understanding was that the iPads ought not to have been given away by the Respondent but that she would not have opposed this course, if a decision was made and it was noted. We found this highly credible.
104. The Claimant put to her in cross examination that she phrased the reference to iPads more as a joke. Ms Sales said that she would not make such a joke because it was such a serious allegation. Had she had such thoughts, then she would have been speaking to the directors about it.
105. The Claimant says emphatically that the request made of her was not in reference to iPads which were distributed to service users. She says that during the proceedings, the Respondent has changed its case to suggest that Ms sales was asking about these iPads.
106. A key part of her case as to why the enquiry was discriminatory, unfavourable treatment is that Ms Sales asked this question of her despite having been told repeatedly by Ms Branch (the Claimant believes) where the retained iPads were stored.
107. She also relies in her submissions on what she says is contained in the witness evidence of Ms Branch (para 3) that Ms Sales told staff that the Claimant "*must have taken the iPads home*" (para 29 of the Claimant's submissions refers). In fact, paragraph 3 of Ms Branch's statement does not say this.
108. Ms Branch claimed that Ms Sales asked her on several occasions in November 2020 if she knew the location of the spare iPads in the office. She said that on each occasion she gave her the location as well as the list of service users who were provided with iPads. She also said that the iPads were stored on a shelf in the manager's office. However, after multiple conversations to this effect, Ms Sales nevertheless "*continued to accuse Jo, asking Jo...*". Ms Branch went on to quote what in fact the Claimant says she was asked in the telephone call by Ms Sales. She did not say in clear terms that she had even been privy to that conversation. Nowhere does the statement allege that, to Ms Branch herself, Ms Sales asserted the Claimant had stolen the iPads.

109. The position in Ms Branch's oral evidence was even more acute. She said it was the way that there was "*constant questioning*" that implied theft.
110. Against this backdrop, our clear finding is that Ms Sales was only questioning the Claimant about the whereabouts of distributed iPads and doing so because she was concerned to obtain clarity about that in order to support the Respondent's position with the funder. It was a genuine enquiry. It was not an allegation of theft.

(5) Ms Sales' accusation of an inaccurate funding bid

111. Prior to Ms Sales' engagement the Respondent had submitted a funding bid known as the FC Scott funding bid. The bid included a projection that through the continued works of the Respondent it would be possible to help 500 young people per year.
112. The Respondent had an external fundraising consultant, Julieanne Kelly. The Claimant contends that during a meeting she was asked to attend with Ms Kelly and Ms Sales, Ms Sales stated the Claimant had placed an inaccurate bid and that 500 young people as a yearly target for mental health sessions was unreachable. Within her witness statement (paragraph 6) the Claimant describes this as an allegation that she would purposefully put in an inaccurate funding bid. She also relies on being informed later that Ms Sales had already questioned staff about the same issue but elected not to accept information which showed that based on pre-pandemic performance in 2019, the target was achievable.
113. Ms Tear gave evidence that she received an approach along with the other directors from Ms Sales to clarify the funding bid and the directors felt she was well within her capacity to seek clarification. This corroborates that the queries were genuine
114. Ms Sales' oral account of the issue we found to be honest and credible. She she only learned of the targets at the time the Claimant was leaving. The figures were shocking to her. In her view given the operating circumstances it would not be possible to deliver against those targets. She denied accusing the Claimant of lying with the figures. She said the reason she had asked the Claimant to attend was that she was still working with the organisation then, she had not had a conversation with Ms Branch about the justification by that stage and it was standard practice to review targets for the purposes of submitting a detailed performance report. Her own particular reflection at that time had been that by reference to staff to young person ratios, it had never been envisaged to work with hundreds of young people per year. The Respondent pleaded that "Ms Sales felt rightly that even without Covid these numbers were quite high and possibly unachievable" [p.57].
115. There is clear evidence too that Ms Sales was asking for some specific data which the Claimant had, to justify the targets [p.176]. We can

see that Ms Sales would be concerned, not just for the impact on the funding but from the point of view of the organisation's future credibility.

116. We noted the evidence of Ms Hurst and Ms Branch that Ms Sales expressed to them both that the Claimant had lied in reference to the funding application numbers. They claimed that despite her explanation that the numbers were based on pre-Covid numbers, the allegations of lying were repeated. Ms Branch also says that she provided a breakdown of the numbers, but that Ms Sales continued to accuse the Claimant of "falsifying" figures for the bid (Ms Branch WS at paragraph 4).

117. We have commented already on the evidence of Ms Hurst and Ms Branch which we do not find to be impartial. We reject that Ms Sales accused the Claimant of lying to either of them. Apart from anything else, she was aware of the good relationship between the Claimant and Ms Hurst and Ms Branch. It is wholly improbable she would deliberately disparage the Claimant to her known friends, on what those same friends were identifying were flawed grounds.

118. Moreover, and as we have said, we find Ms Sales's account correct. She called the Claimant to the meeting to explain transparently how the numbers had been decided how they would have been reached in normal times. Her purpose, we find, was to provide a sound explanation to funders as to why targets which demonstrably now had not been met, and could not be met, needed adjustment. This was crucial for the organisation's credibility and ability to attract future funding.

(6) Ms Sales' allegation of a conflict of interest in respect of the production of mental health videos by the Claimant's husband.

119. This project had been the subject of a funding application.

120. The Claimant commissioned a business which her husband works, HaighTech to carry out video compilation and editing.

121. We find she did so in good faith in the belief that HaighTech were best placed to undertake the project sensitively because of their knowledge of the Respondent's clients. She also considered HaighTech were value for money, and this fitted in with other volunteer and staff family members being paid for work. The latter is not disputed by the Respondent, including in the case of partners.

122. Although the Claimant said in text messages that it was okayed before the grant application went in, there is no evidence to support this. As at 9 December 2021, the price was clearly *then* known to Ms Tear however, she did not consider that it had been documented.

123. We find, however, that the directors were not informed in any formal way prior to HaighTech commencing work— it was neither in the meeting minutes or in the thread of their discussions that Mr Haigh would be receiving remuneration. By contrast, In the December 2020 meeting [p.183], once the issue had arisen, the directors recorded:

“It was unknown until very recently that Jo had arranged for her husbands’ business to do the editing, this isn’t an issue but we do need costings and we need to compare these to other quotes.”

124. Correspondingly when Ms Sales identified this was a potential conflict of interest, she requested that the Claimant put the video production on hold so that she could further raise the matter with the directors.
125. The Claimant has disputed that the conflict of interest policy before us at page 281 was ever brought into effect. The Claimant says that the staff were not notified that this policy would be adopted, it having come into being in draft for the purposes of obtaining CIO status which was ultimately not achieved.
126. We have not seen evidence of it being formally adopted. It is right that CIO status did not proceed. Nothing of significance turns on this. Even though the Respondent was not a registered charity, as an accountable distributor of public funds it was reasonable for the Respondent to ensure (and to insist on *documenting*) that its directors were not unfairly financially advantaged by virtue of their position. That could potentially happen either directly or indirectly. This made it appropriate to investigate and to establish that the work being done by a party closely connected to a director, reflected the organisation’s genuine needs and represented value for money. The fact that the Claimant’s husband’s contract may have been the first to have been scrutinised in this way is neither here nor there.
127. We did not hear evidence from Sam Benson, who had been a director and was a friend of the Claimant’s, in whom she confided about her ongoing concerns. Messages that the Claimant has disclosed which passed between them on 9 and 11 December include, we think the following revealing passage:
- Andrea is doing what we pay her to do and certainly not trying to upset anyone. The amount of respect she has for you and what you’ve achieved is unreal. Directors are just doing our jobs to making sure that t’s are crossed [p.177]*
128. The second sentence in particular is clear evidence that Ms Sales had a high personal regard for the Claimant and that, amongst the directors, there was a clear sense of needing to ensure that appropriate diligence and governance were in place. The Claimant argues, in effect, that Ms Benson’s position has since altered about events. This does not alter our conclusion.
129. In a similar vein on 9 December 2021, Ms Tear, whose evidence the Claimant challenged in these proceedings wrote that *“Andrea is just ass covering with the videos, I know we won’t get a better price and would be quite happy to continue with the lads, we just need to make sure all the boxes are ticked first. She has to do her due diligence on this.”* [p.173]
130. It was the Claimant’s dealings with Ms Sales over this matter which we find were pivotal in the deterioration of their relationship. The extent of Ms Sales’ request was for the project to be halted, costs to be given and an

example of one of the videos to be provided. We accept Ms Sales' evidence that she did this informally and that she also made the point of reassuring the Claimant (as did Ms Benson and Ms Tear) that her plans would likely still be able to go ahead but things needed to be done properly.

131. A Facebook messenger conversation between the Claimant and Ms Sales became very fraught. It ended with the Claimant saying she was about to smash her printer, have a meltdown or go manic.

132. She then indicated she and her husband were expecting the money, that she was having a crisis with her car that she would be without a laptop and printer and be leaving the organisation worse off in comparison to when she started.

133. This is, we find, corroborated by contemporaneous messages between the Claimant and Ms Tear. It was clearly frustrating for the Claimant and became stressful for her.

(7) Ms Sales lied about the Claimant to the Respondent's directors about failure to plan and prepare Christmas projects

134. We noted the allegation as originally stated in the Claimant's ET1 was that Ms Sales had lied to directors claiming that no volunteers were available and that the project was unachievable [p.19]. This does not read like an obvious allegation of unfavourable treatment towards the Claimant.

135. Of course, it was rightly added by the Tribunal Judge at the preliminary hearing whose job is to distill what are the possible legal claims. It suggests to us, however, that the dominant complaint is about the project not going ahead. That impression is furthered by the Claimant's related comments of letting down working relationship and severing ties [p.19] and Ms Sales lying simply to avoid working Christmas [p.60].

136. We find the position is this:

- The organisation's previously supported CCM in the delivery of food parcels to disadvantage people, on Christmas Eve. This had gone on for the past 3 years. Only 3 staff had in fact undertaken this work, of whom Ms Hurst was one.
- No evidence was put before us to support that Ms Sales lied and made accusations [Claimant's WS para 8] about the Claimant's lack of organisation to anyone at the Respondent.
- Ms Branch's evidence was that she had been informed by Ms Sales that the project was not going ahead and that she (Ms Sales) had already been told by Michelle from CCM that none of the Respondent staff or volunteers were needed. It is clear from her witness statement that she deduces from a message between the Claimant and CCM (i.e., not a text to which she was a party but one she was shown) that she was misled by Ms Sales about that (Ms Branch's WS – para 5).

- Ms Branch has not referenced any accusations that were made to her about the Claimant's organisation. In her oral evidence when questioned about what discrimination there was, she said her "belief" was that Ms Sales wanted to cut ties with organisations that had relationships with the Claimant. That is rather a different thing.
- Ms Hurst gave no positive evidence for the Claimant either. Indeed, the thrust of her evidence was that she had heard about the cancellation from the Claimant, it was disappointing for her family and that this lack of communication was disrespectful. Her criticism therefore was of the management style of Ms Sales.
- Ms Tear, the director, did not identify that she was told any information about a wont of organisation either.

137. We have had regard to the text message from which we are satisfied the Claimant's allegation substantially flows [p.180]. It shows that Michell of CCM in a text message confirmed to the Claimant that Ms Branch had called her to tell her the Respondent would not be helping. The text message does not reference direct contact between Ms Sales or CCM. The message does carry the implication that there may have been disappointment by CCM that help was not being provided, simply specific requests for parcels for their own service users. To that degree we see it suggests CCM would still have been keen to have volunteers. It raises, perhaps, questions about the earlier discussions between Ms Sales and CCM.

138. However, these are all matters of inference and conjecture. It is in no way sufficient to demonstrate any of the following: (a) the actual allegation of discrimination we must decide, (b) ill will or hostility towards the Claimant by Ms Sales for any reason (including her disability) or (c) some propensity to dishonesty by Ms Sales.

(8) Alleged refusal by Ms Sales to communicate directly with the Claimant between December 2020 and January 2021

139. Following the Claimant's response to the pausing of the mental health videos and scrutiny of the conflicts of interest position, Ms Sales asked Ms Benson to speak to the Claimant to see if she was okay to try and calm things down. The Claimant described this herself as a welfare call. When asked by the Claimant about why, given those concerns the Claimant's mental health was not addressed or mediation did not take place, Ms Sales gave persuasive oral evidence that she did not feel safe messaging the Claimant and did not want to be bombarded with Facebook messages. She did not see it as her place to implement the mental health plan because the Claimant was operating at a higher level than her at the time.

140. In her witness statement the Claimant complained that mediation was suggested but refused. She did not say who made the suggestion. She

did not put to Ms Sales in cross examination details of *her* proposal for mediation. We also observed that the Claimant's alleged witness to the offer of mediation was Ms Branch in the Claimant's document attached to her ET1 [p.19].

141. We find the Claimant herself made no direct suggestion to Ms Sales of mediation.
142. Ms Branch touched upon her own concerns about being a conduit for potentially sensitive wage information of third parties. She said that prior to March 2021 though necessarily after 3 February [p.186 - when she was asked to send on wage details] she tried to discuss her concerns with Ms Sales and to suggest she have a mediation session with the Claimant and directors. Again, at this stage no formal complaint had been made by the Claimant; rather the focus was on managing the handover with least problems.
143. Having regard to all of the evidence, we are not satisfied that a request for mediation was made by Ms Branch at this time. There would be no reason to suggest it. There was clear dissatisfaction by the Claimant in reference to Ms Sales, but no clear dispute had emerged which required to be resolved. At the Claimant's instigation ("I quit") there was to be no ongoing relationship.
144. We also found it probative that when asking Ms Branch to convey a message about wages, Ms Sales also requested that an apology be delivered to the Claimant for what she candidly described as the appalling situation with the bank. Thus, the communication had features of courtesy that would attend in person conversation. This speaks in our view to the question of unfavourable treatment as well as "the reason why".

(9) Ms Sales allegedly claimed that the Claimant had taken over a class in March 2021 and that a complaint had been received about the Claimant's involvement.

145. We have set out previously the circumstances in which the Claimant came to attend the mental health drop-in session on 19 February 2020. This was a group being run by Ms Branch. The Claimant herself indicated it was appropriate to obtain Ms Branch's consent for what amounted to gatecrashing. We think that reflects an act of respect and an acknowledgement that the Claimant was not in the position of an ordinary service user but somebody who had previously run such sessions. To our mind, it would not be gatecrashing were the Claimant simply asking to attend because she herself felt in need of services.
146. The evidence of Ms Branch was that the Claimant did not take over the session but that the Claimant was persuaded by herself and Ms Hurst to stay with the group and show service users how to make jewellery. She said it was not unusual for service users to show other service users how to do a certain hobby or craft. They denied telling Ms Sales that the Claimant

had run the class. Rather Ms Sales sought to get them to confirm repeatedly that such was the case.

147. We found convincing and preferred the evidence of Ms Tear and of Ms Sales on this point. The effect of that evidence was that Ms Branch did tell Ms Sales that the Claimant had run the class. It must be noted the Claimant's own, much more contemporaneous description was of "me offering a jewellery making session [p.116]. That is an unnatural way to describe being reluctantly persuaded into showing people, as a service user, how to make jewellery.

148. We accept Ms Sales had genuine concerns arising from the fact that the Claimant may have been delivering work in circumstances where she was no longer a volunteer on the books nor an employee, and that this should be properly executed and planned. The Claimant did accept in cross examination that it was vital anyone needing sessions was insured and the service users should be given notice of who was leading them.

149. Ms Sales candidly accepted that this event contributed to the development and implementation of the conflict of loyalty policy to which we have referred, and which meant that the Claimant could not be a service user of the organisation.

150. However, there were already existing concerns held by Ms Tear that a number of attendees of the mental health drop-in group were friends and family of the staff members who were attending for the social aspect, rather than being in need of services.

151. Ms Tear explained that she supported the implementation of the policy regardless of whether it was prompted by the Claimant's actions because it was needed to protect staff and clients going forward. We found her oral evidence impressive in conveying what we found to be her genuine belief that the policy was an important ethical document in overall terms. She described the directors were looking at the position of other people attending the group and where a complaint came in would the group leader be able to deal with it in an impartial manner. Ms Hurst in fact agreed that she felt it was a good policy at the time.

152. So far as the second factual aspect is concerned, we have not had any clear or cogent evidence of any officer of the Respondent inventing that a complaint had been received about the Claimant's involvement.

(10) The Respondent posted a photograph of the Claimant's daughter on its website without the consent of the Claimant

153. The photograph in question included, as well as the Claimant's daughter and another service user, Ms Hurst's two daughters who are both adults as well as Gail Dobson-Burns husband and young child. The photograph had previously been used on the Respondent's website and on its Facebook page and was in current use. It was chosen on this occasion to reflect services being offered for family support. This was not the purpose for which the photograph was originally taken and displayed.

154. The evidence of Ms Sales is that she asked Ms Branch if the organisation had pictures of families to feature in its new campaign of “I can be happy project” which was a project to provide family support services. She says she does not recall who suggested using the photograph including the Claimant’s daughter, but it was resolved to use it, provided the necessary consents of those depicted were obtained. In her oral evidence Ms Sales was clear that she had told Ms Branch and Ms Hurst that the Respondent needed consent from everybody in the photograph. She said she understood Ms Branch and Ms Hurst were doing so and that she trusted them in good faith to obtain that.
155. In our view that has a compelling logic and is consistent with (a) Ms Hurst being in a position to readily obtain her daughters’ consent and (b) Ms Hurst or Ms Branch having a good ongoing relationship with the Claimant, making it feasible for them to speak with her about it.
156. We see that from the Claimant’s perspective, given the strains that had emerged in the relationship and the Claimant’s association had formally ended, it was to her a slightly bemusing choice of marketing material. To that degree we can also understand why, in the Claimant’s mind, when she saw the photograph, it may have seemed an action targeted at her. However, that is a different question from whether it was related to or because of her disability.
157. We are quite satisfied there was no demand or insistence by Ms Sales to use the image, as Ms Hurst or Ms Branch suggested in their evidence. More to the point, we are quite satisfied that Ms Sales had an honest expectation that staff would seek her consent and report to her if it was not obtained.
158. An important matter supporting that conclusion is that there was a consenting process undertaken with the Claimant’s own witness, Ms Burns-Dobson. This may not have been in very specific terms (i.e., to what particular purpose - whether website update or new campaign) However, Ms Dobson-Burns confirmed that she had been approached to give permission for the photograph of her child to be used on the website.
159. This corroborates that permissions were a live issue, and in our view therefore lends credence to the evidence of Ms Sales that she honestly believed Ms Hurst and Ms Branch were going to get them.
160. Secondly, Ms Hurst in cross-examination when asked whether Ms Sales said that consent was needed from everyone said, she did not know whether Ms Sales said everyone or not.
161. The fact therefore (which is common ground) that the Claimant was not approached for consent is not an action which Ms Sales contrived or desired. It may well have its origins in miscommunication. If in truth the omission was that of Ms Branch and Ms Hurst then the Claimant cannot (and we imagine, does not) rely on their actions for the purposes of this complaint.

(11) Ms Sales allegedly accused the Claimant of hacking the Respondent's Facebook site

162. On or around 15 March the Claimant informed the Respondent in writing that the Facebook page of the Respondent on her personal account was now scheduled for removal [p.119]. We find this was not read and appreciated at the time. At the hearing Ms Sales was taken by the Claimant to the relevant notification. However, we find she genuinely had not remembered this detail. Correspondingly, following the resignations of 14 March when Ms Sales received notification that the Facebook page was scheduled to be deleted by the Claimant, Ms Sales was genuinely deeply concerned that there had been unauthorised access. Facebook were not in a position to comfort her that hacking had not taken place. The Claimant was not listed as an administrator. It followed, and Ms Sales readily accepted, that she assumed the Claimant had somehow hacked it. This led to a conversation with Ms Tear. In terms of public pronouncements as the Claimant noted in her complaint of 26 March 2021, she was not named on public social media. Rather she "presumed" that internal conversations and communications brought her personal name to the forefront [p.123].

163. We have seen that:

- On 19 March Ms Tear posted onto the Facebook page that it appeared the main page account had been hacked [p.211].
- On 23 March 2021 Ms Sales sent an email indicating to the Respondent's contacts that there had been unauthorised access to the Facebook page and urging that services had not been affected. The information had not been compromised.
- In terms of any direct allegations against the Claimant, at its highest, this comes from a text message sent to the team leads by Ms Sales saying that the Claimant was trying to delete the page (which was true), and had somehow accessed the page (which was reasonable on the basis of the information she was aware of). In another message she indicated to Gail Dobson-Burns that the Claimant's aim was likely to be belittling the Respondent's service.

164. Putting all of this together, we are quite satisfied that from an external point of view the Respondent did not attribute inappropriate hacking to the Claimant. That could only have been an inference made by those with detailed knowledge of the organization. It would also be speculative.

165. In terms of the internal communications about this, the Respondent through Ms Sales said that there had been hacking. She also conveyed that the motivation the Claimant had for doing that was a nefarious one. However, the reason why she did so, we find, was a genuinely held belief that the Claimant had asked for it to be removed. It was a reasonable surmise on the information received from Facebook about what was causing the deletion, that the action was deliberate and intended. Ms Sales had also checked that the Claimant was no longer admin which gives rise

to an inference of non-consensual access. As Ms Sales knew, the Claimant as founder and manager over such an extended period must have known the importance of the Facebook groups.

166. In all the circumstances therefore, we exclude that the reason why Ms Sales asserted that the Claimant had hacked the Facebook page was because the Claimant was disabled nor did it relate to her disability.

(12) The Claimant was required to collect her belonging from an unheated gymnasium that did not have any chairs where she could rest

167. The Claimant attended the premises to collect personal items by agreement on or around 14 April. There was some preparation for this by way of sharing of lists of items. In the course of that correspondence, which was detailed, the Claimant did not raise any concerns, questions or requirements about the manner of collection and whether or not chairs or other resting spaces would be required by her. We have been provided with a video taken on the telephone of Karena Duffy, the Claimant's friend who accompanied the Claimant together with Ms Branch. The previously identified items had all been moved into the gym just towards the front of the building.

168. The Claimant acknowledges that during the course of this exercise both Ms Tear and Ms Crawford carried heavy items to the car for the Claimant. The Respondent's explanation as to why the items were corralled in the gym and not the heated training room, is to reduce the carrying distance. We accept that the office was in use by Ms Sales, and the Respondent had taken the sensible decision that she not be involved to avoid unnecessary tension. We accept that.

169. There was a chair in the room. The Claimant's allegation in this respect is wrong. She said in her oral evidence that this was not suitable for her needs. However, the Claimant did not at any point raise an issue about the alleged suitability of the chair nor about the temperature or lighting. This was despite her, during a tour of the rest of the premises to identify further items, expressing her view unhesitatingly about other items such as the smell from the drains. Our observations were that Ms Crawford and Ms Tear were polite and offered help, which the Claimant herself characterised in her oral evidence as "huge". We are satisfied the Claimant's genuine rationale for having it in the gym was proximity to the front door which in turn lessened the burden upon the Claimant in moving the items.

170. We did observe the Claimant groaning at one point when she stood and pushing her hand against a wall and that she appeared to have some difficulty getting off the floor at one point. She was also wearing a splint and/or small bandage on right arm. Despite this, she seemed to be volunteering in some moments for more weight than she needed to, having regard to the willing bystanders, including Ms Branch.

(13) Allegation of financial impropriety against the Claimant with the suggestion that she had misused or misallocated funds of circa £3000

171. The submission of the Respondent about this allegation is that it has no prospect of success. The Claimant acknowledges that may be the case (paragraph 50 of her submissions refers). The Claimant, in response to a question from the Judge, indicated she had no evidence to support that this allegation had been directed at her by the Respondent. It was not a matter within her original claim. She said she was only aware the Respondent had made the allegation following reference to it by the Respondent's representative at a preliminary hearing.
172. The evidence submitted by the Respondent is quite contrary to there ever being such an allegation of impropriety. The witness statements of Janette Tear and Ms Sales make this clear.
173. This aspect of the complaint is therefore without merit and is struck out under r.37(1)(a) as having no prospect of success.

LAW

Jurisdiction

174. The Equality Act 2010 (EqA 2010) provides time limits for bringing claims. The provisions relevant to this case are as follows:

123 Time limits

(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
(b) such other period as the employment tribunal thinks just and equitable

...

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;*
(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

- (a) when P does an act inconsistent with doing it, or*
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it” “Continuing Act”.

175. We considered **Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, CA** and **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530, CA** in respect of the correct approach to continuing acts. The Tribunal should look at the substance of

the complaints in question — as opposed to the existence of a policy or regime — and determine whether they can be said to be part of one continuing act by the employer.

Discretion to extend time – just and equitable

176. The Tribunal has the discretion to extend the time limit for a discrimination claim to be presented by such further period as it considers just and equitable (section 123(1)(b), EqA 2010). A tribunal has a wide discretion when considering whether it is just and equitable to extend time. The Tribunal also had regard to the cases of **Adedeji v University Hospital Birmingham NHS Foundation Trust [2021] EWCA Civ 23** which cautioned against over-reliance on the “Keeble factors”¹. The best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular the length of, and the reasons for, the delay (as per Underhill LJ in Adedeji at paragraph 37) .

Direct Discrimination

177. Section 13 EqA 2010 provides so far as material:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(8) This section is subject to sections 17(6) and 18(7).

Discrimination arising from Disability

178. Section 15 provides so far as material:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

¹ a) the length of and reasons for the delay;

(b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the extent to which the party sued had cooperated with any requests for information;

(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;

(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

179. In **Paisner v NHS England and Coventry City Council [2016] IRLR 170, EAT**, the Employment Appeal Tribunal provided guidance when considering these kinds of claims, and the question of causation. The following principles emerge

180. A tribunal must first identify whether the Claimant was treated unfavourably and by whom. In contrast with direct discrimination cases, no question of comparison arises.

181. The Tribunal must identify what caused the unfavourable treatment. The focus is on the reason in the mind of the alleged discriminator. The motive of the alleged discriminator is irrelevant.

182. The tribunal must determine whether the reason or cause was “something arising in consequence of the Claimant’s disability. This is an objective test and does not depend on the thought process of the alleged discriminator.

183. The “something” that caused the unfavourable treatment need not be the main or sole reason but must have at least a significant (more than trivial) influence on the unfavourable treatment, and so amount to an effective reason or cause of it.

184. The causal link between the something that causes unfavourable treatment, and the disability may include more than one link. The more links in the chain between the “something” and the disability, the harder it is likely to be to establish the requisite connection as a matter of fact.

Harassment related to Disability

185. Section 26 provides:

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

(5)The relevant protected characteristics are—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

186. The Claimant bears the burden of proving that the unwanted conduct related to disability (subject to s.136). The question of whether any unwanted conduct related to disability had that effect must be considered objectively taking into account the Claimant's subjective perception. In **Grant v HM Land Registry and another [2011] IRLR 748**, the Court of Appeal reminded Tribunals that they should not "cheapen the significance" of the words of the harassment section as "They are an important control to prevent minor upsets being caught by the concept of harassment".

Failure to make reasonable adjustments

187. Sections 20, 39(5) EqA 2010 and Schedule 8 to that Act operate to impose a duty on employers to make reasonable adjustments, as well defining the circumstances in which an employer will not be subject to that duty.

188. Section 20 EqA 2010 provides (so far as material):

"Duty to make adjustments

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

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

189. To establish a provision, criterion or practice (PCP), there must be an element of repetition, actual or potential. In **Ishola v Transport for London [2020] ICR 1204**, the Court of Appeal said that all three words “provision”, “criterion” and “practice” “..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.” A genuine on-off decision which is not the application of policy is unlikely to be a practice: **Nottingham City Transport Limited v Harvey [2013] All ER (D) 267.**

190. According to s.212(1) EqA ‘substantial’ means more than trivial. This is a question of fact to be assessed on an objective basis and is not a high threshold to satisfy.

191. The disadvantage must be linked to the disability, however. Simler P said in **Sheikholeslami v University of Edinburgh UKEATS/0014/17/JW** that:

“The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question a...For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person’s circumstances.

49. ... The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.”

192. Paragraph 20 of Schedule 8 of the EqA 2010 provides:

20(1)A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question; and

(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.”

193. It follows that under s.20(1)(b) an employer may succeed in defending an RA claim by demonstrating lack of actual or constructive knowledge of either the employee’s disability or the likelihood of the employee being placed at a substantial disadvantage by the relevant PCP. The burden of proving a defence of this kind lies on the employer.

Reasonable steps

194. For an adjustment to be reasonable, it is sufficient that there is a prospect of it alleviating the disadvantage: **Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10.**

195. As for effectiveness, that falls to be determined in the light of the information available at the time of the alleged breach **Brightman v TIAA Limited UKEAT/0318/19**

Burden of proof

196. Section 136 provides as follows:

(1) This section applies to any proceedings relating to a contravention of this Act.

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

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

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

197. We have also considered the associated case law which we list alongside the principles extracted:

- **Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913**: the burden of proof at stage one is on the Claimant
- **Wong v Igen Limited [2005] EWCA**. (NB Although this relates to a predecessor provision, the guidance remains relevant.) The Court of Appeal (CA) said that the outcome at the first stage will usually depend upon what inferences it is proper to draw from the primary facts found by the tribunal. The CA cautioned against too readily inferring unlawful discrimination merely from unreasonable conduct. However, it will not be an error of law for a tribunal to draw an inference of discrimination from unexplained, unreasonable conduct at the first stage of the two-stage burden of proof test.
- **Laing v Manchester City Council [2006] ICR 1519**, EAT provides that, in deciding whether or not a prima facie case has been made out (i.e. whether the burden has shifted under stage 1) the tribunal should ignore the substance of any explanation proffered by the employer for the treatment, turning to it only once the burden has shifted. This does not mean that at the first stage the tribunal should consider only evidence adduced by the Claimant and ignore the Respondent's evidence. The tribunal should have regard to all the facts at the first stage to determine what inferences can properly be drawn.
- **Madrassy v Nomura International [2007] ICR 867** – something more than a difference in protected characteristic and a difference in treatment is required.

198. The tribunal has taken into account all aspects of the law, additional to the above, as set out in the parties' written submissions.

Applying the law to the facts as we have found them

199. The Tribunal noted there is a jurisdictional point (i.e., the time limit point) which if determined in favour of the Respondent would mean that parts of the claim could not proceed. Having heard significant evidence on the entire case, however, the Tribunal determined that it would be appropriate to reach its conclusions on the substantive merits of the claim and, in fact, to do so *before* determining the jurisdictional point to ensure no element of prejudging its conclusions.

200. Section 136 is relevant to all of the complaints since it applies where any contravention of the act is alleged. However, it is of greatest potential application to direct disability claims.

201. The tribunal had regard to the 2 analytical stages provided for under section 136. It first considered what if any primary facts had been adduced from which the tribunal could in the absence of any other explanation decide that discrimination took place.

202. The Claimant ,quite understandably, has not addressed us specifically in relation to s.136 either individually in reference to the individual allegations or in a holistic way.
203. From her evidence and submissions, it seems to us that the following particular matters inform the Claimant's overall position as to the "reason why" the conduct she complains of occurred was all because of her disability of Ehlers Danlos and/or Bipolar.
204. Firstly, that *the "ongoing accusations and behaviours...only started when the Claimant admitted struggling with mental health (bipolar disorder) and worsening physical health (Ehlers Danlos Syndrome) that was requiring jaw surgery* (para 9 of her submissions).
205. The Claimant here we understand to be relying on the circumstance of her complaints so closely following the timing of her revealing information not of having disabilities but it seems, particular issues associated with them.
206. On the issue of this being "the trigger" – thus denoting cause and effect - the Tribunal noted that in the original ET1 however the Claimant gave as the reason for her resignation *health issues (needing to rest – , needing jaw surgery, needing to lower sugars to avoid diabetes and needing additional physio for a)joint stability plus personal issues (...accusations and husband's health)*. Mental health was not really an issue. We know she says the Respondent's later actions caused poor mental health but that was later on.
207. We have also noted that worsening bipolar/mental health - at that stage - was not mentioned in the texts with Ms Tear and with Ms Benson. So, the point about disclosure and unfavourable treatment being coincidental in time even, is not fully made out.
208. Over and above this, we do not think the Claimant's disclosure allied to the timing of those matters of fact we have found proved (only allegations 3, 6, 8(in part), 9 (in part) 10, 11, 12 (in part)) gets anywhere near causing the burden to pass.
209. What is needed is facts that would allow a reasonable Tribunal to conclude on the balance of probabilities that there was discrimination. Even putting aside the Respondent's explanations, this is simply far too circumstantial. Those limited factual allegations that we have found proved do not constitute unexplained unreasonable conduct.
210. The second is that constellation of "accusations" directed towards the Claimant in such close succession despite them all being negated. She describes it in this way: "*Claimant argues that as one false accusation was demonstrated to be unfounded another accusation arose, it is this ongoing behaviour that helps paint a picture of ongoing harassment and discrimination, not one case point or allegation alone but continuing*

allegations and accusations with no evidence instigated by the admission of the Claimant suffering with her mental health. (para 54 Claimant's submissions).

211. This is another piece of circumstantial evidence. We do not find it sufficient to allow us, as a reasonable Tribunal, to conclude on the facts found, that the Claimant's treatment was because of the Claimant's disabilities.
212. Finally, the Claimant has focused on what she says was a flawed investigation by the Respondent into her complaints against Ms Sales. She is exercised by the fact that she was not interviewed for that purpose and nor were Ms Branch or Ms Hurst. I allowed the Claimant to ask questions about this, on the basis that it may have some possible relevance to the burden of proof. The evidence of Ms Tear was that there had been an investigatory meeting into Ms Sales' conduct. Her oral evidence, which we accept, was that witnesses were spoken to - albeit not Ms Branch and Ms Hurst who like the Claimant, had left the organisation. The Respondent's investigation did not progress to a disciplinary. They were satisfied with Ms Sales' conduct. These facts could not reasonably lead to an inference of the Claimant having been discriminated against.
213. Applying the law to the facts found in reference to the individual allegations of direct discrimination:
- **Allegation 1** As a matter of fact Ms Sales did not "refuse" to learn sign language. The facts on which the Claimant's case rests have not been proved.
 - **Allegation 2** Ms Sales did not refuse eye contact with the Claimant; she made eye contact with the Claimant to the same degree as a person without a hearing impairment. The facts on which the Claimant's case rests have not been proved.
 - **Allegation 3** We find there were no more than 2 occasions where the Claimant was unable to undertake her one-to-one sessions in the space which she had planned. This caused her some degree of inconvenience. The same thing affected others too. Consistent with our factual findings, the Claimant has not demonstrated that the treatment was less favourable to her in comparison to the way in which a non-disabled person would have been treated. To the extent that it was less favourable treatment she has not demonstrated that it was because of her disability. We accepted the evidence about the team needing to increase their use of space.
 - **Allegation 4** As a matter of fact Ms sales did not accuse the Claimant of stealing iPads. The facts on which the Claimant's case rests have not been proved.
 - **Allegation 5** This similarly fails since the underlying factual premise is not made out to our satisfaction. There was no accusation of an inaccurate bid having been made by the Claimant, whether deliberately or otherwise.

- **Allegation 6** As a matter of fact Ms Sales did identify that there was a conflict-of-interest. As with her actions in relation to the iPads and the funding bid, there is an identifiable and consistent theme to the beginning of Ms Sales' tenure as manager. She was there as the organisation's first professionally paid manager. She was acting consistent with proper managerial principles in highlighting this matter. It was in the interests of the Respondent, and its directors and employees and service users that due diligence take place. It follows the burden of proof has not shifted and we are not satisfied that the reason why the conflict of interest was raised was because of the Claimant's disability. We would also add, the effective reason for the contract not proceeding - and thus any direct or tangible prejudice to the Claimant - was that the Claimant took exception to the notion that the matter should be reviewed by the directors and regularised. HaighTech would in all likelihood have completed the job in due course.
- **Allegation 7** There were in fact no lies told about the Claimant's role in the Christmas project. This is something which the Claimant appears to have wrongly inferred. The facts on which the Claimant's case rests have not been proved.
- **Allegation 8** There are two aspects. We have not found a refusal to mediate. We have found a lack of direct communication by Ms Sales towards the Claimant. However, this was something she also desired. The use of Ms Branch and Ms Hurst to convey messages has not been demonstrated to be because of her disability. In the examples of communications which she had asked to be passed on, there was nothing about them suggestive of discrimination.
- **Allegation 9** There are two aspects. We find that in reality the Claimant had taken over the class thus any comment made by Ms Sales to this effect was correct. The Claimant was not present as a service user. She had previously been a volunteer and indeed manager. The Claimant then got materially involved beyond attending and on a par with what was done in such a drop-in session by a leader. Even more importantly, Ms Sales was also acting on information provided to her we find by Ms Branch who was there. She said the Claimant was running the class. There was no lie that a complaint had been made.
- Allegation 9 therefore fails as not being unfavourable treatment because of disability and as to the second part (the "lie"), the underlying factual premise not having been proved.
- **Allegation 10** As a matter of fact, consent for use of the photograph was not obtained. However, there was no intention by the Respondent, through Ms Sales, to use the offending photograph without consent. The burden of proof has not passed, and the Claimant has not proved that this was less favourable treatment because of her disability.
- **Allegation 11** This has been proved as a matter of fact. However, the burden of proof in respect of discriminatory motivation has not passed. Ms

Sales had good, genuine and honest grounds for believing unauthorised access (i.e. hacking) has taken place and a clear need to share information with colleagues about a development that could have serious implications. The Claimant has not satisfied us that this was unfavourable treatment because of her disability.

- **Allegation 12** harnesses a number of factual elements. The Claimant was required to collect her belongings from a gym which was unheated. However, a chair was provided. The allegation is established in fact therefore, as to part. However, the burden of proof has not passed, and we are not persuaded that the reason why the collection proceeded from the gym was because of the Claimant's disability. On the contrary, it was chosen as a location in order to be of assistance to the Claimant and the conduct of the Respondent's directors (offering and giving assistance in lifting items) runs entirely counter.

Discrimination arising from Disability

214. These complaints are confined to the refusal to learn sign language and the refusal to make eye contact which have not been found as matters of fact. They accordingly fail.

Failure to make reasonable adjustments

PCP 10(a) and (b)

215. We consider that there was a PCP of not requiring staff to learn sign language to assist the Claimant and (which we think to be the gravamen of 10(b)) there was a PCP of not requiring the Respondent to make enhanced eye contact with the Claimant to assist with communication. However, we find no sufficient evidence of a substantial disadvantage to the Claimant in respect of sign language. The Claimant said the impact upon her was serious, but this is not consistent with the Claimant's level of sign language and lack of any contemporaneous complaint about it.

216. To the extent that not requiring enhanced eye contact was a PCP, the Respondent could not reasonably have been expected to know that the Claimant was likely to be placed at the substantial disadvantage alleged. The list of issues makes clear the specific disadvantage is in her communication with Ms Sales. We have found that Ms Sales and the Claimant agreed at an early stage that if the Claimant struggled to hear she would let Ms Sales know. She did not do so. Ms Sales had also directly witnessed an occasion when the Claimant's hearing was not impaired in anyway. Putting these two things together means that the Respondent was not on sufficient actual or constructive notice of the disadvantage to be required to make an adjustment.

PCP 10(c)

217. We find the alleged PCP 10(c) to be contorted reworking of what is in truth an allegation of section 13 or section 15 discrimination. We do not blame the Claimant for this; she did not plead it herself.

218. This was a one-off act and is not capable of being a PCP. We would also say that the Respondent did not know that the Claimant would suffer a substantial disadvantage. They had aggregated items in advance and by list. It need not have been a lengthy process to collect the items. The Claimant's needs are not fixed by reference to her conditions. At no point did she tell the Respondent either when making arrangements or on the occasion itself of adjustments she required. Yet she vocalised other issues stridently.

Harassment

219. The question for us is whether those of the factual allegations 2 to 12 we have found proved (namely 3, 6, 8(in part), 9 (in part), 10, 11, 12 (in part)) were unwanted conduct. With the exception of 8 (no direct communication with Ms Sales) we find the conduct was unwanted.

220. The Claimant must demonstrate then that the conduct was related to her disability. We have found no sufficient evidence that it was. We have kept in mind that in contrast with the "because of" test for direct discrimination, harassment does allow for a looser connection between the conduct and the protected characteristic.

221. It is also *not* necessary for us to consider whether or not the Respondent would have treated somebody without the relevant protected characteristic in the same way. However, even taking account of these two principles no sufficient connection has been demonstrated to us.

222. Across all those factual allegations which are proven, we have found no nexus at all between the actions complained of and the Claimant's disabilities. Rather each allegation has been shown persuasively to be unconnected. The connection not being made, we do not need to consider what the purpose or effect was.

223. Having made these findings, we think it is right to record our conclusion in respect of an overarching submission made by the Respondent. It characterises the Claimant as knowingly unreasonable, if not vexatious. It says:

- The Claimant has been upset and concerned by a series of matters arising from the directors instituting upgraded governance, commensurate with the scale of the operation; and
- She has "falsely and unreasonably" contrived a discrimination claim to frame her feelings as former founder parting from an organisation. This involves the Claimant deliberately misconstruing innocuous reasonable actions and trying to frame them into discriminatory conduct.

224. This is not the basis on which we have decided the case.

225. Further, on what we have so far seen and heard, we are not persuaded it is a fair analysis.

226. The transfer of management and resignation of the Claimant was a time of high sensitivity for the board and the Claimant's own health was not as robust as it could have been. Our assessment is that the allegations, by and large, reflect an embedded, honestly held (albeit thoroughly misplaced) belief that unlawful discrimination has been perpetrated against her. The Claimant is a highly intelligent woman. She has put forward complex analyses which interlink different matters, and which have an appearance of cogency. They are suggestive to us of a tendency to draw patterns and conclusions that are not objectively warranted. That is not unusual once distrust sets in within relationships and with all respect to the Claimant, we must fairly take into account that the Claimant's own health issues may contribute to or potentially predispose her to this. We note at p.70 the Claimant connects being "paranoid" - her word - to her experience of bipolar disorder and also identifies that the Claimant's bipolar was made worse by the situation.

Time Limits

227. In respect of time limits early conciliation started on 19 April 2021 which we accept means that complaints pre-January 2021 are out of time unless part of conduct extending over a period, or it would be just and equitable to extend time.

228. On that basis we have been invited to decline jurisdiction in respect of all allegations which predate 20 January 2021. The dividing line therefore - given the Claimant's lack of specificity in allegation 8, becomes allegation 8 i.e., 1-8 are potentially out of time.

Conduct extending over a period?

229. We conclude that on no view can allegation 1 be an aspect of conduct extending over a period within the meaning of section 123 (3) of the Equality Act 2010. As we have mentioned, it is a key part of the Claimant's case that "bunching" of the unfavourable treatment in a short period beginning with the revelation of her deteriorating health is circumstantial evidence that the reason was because of a disability. It is inconsistent with that proposition to suggest earlier treatment is linked to it.

230. Unlike in a case in which the question of time limits is being considered as a preliminary issue, we have had the benefit of all the evidence which we can and must bring to bear on this question. We are not satisfied that the incidents are linked, given the evidence we have heard and seen. The complaints do not have the quality of an ongoing situation or continuing state of affairs. This means the Claimant cannot bring in allegations 1 to 8 (as direct discrimination, indirect discrimination or harassment) by relying on the date of allegation 12 (i.e., 13 April 2021) which was in time.

231. In respect of the reasonable adjustments claim, time begins from the time when the person does something inconsistent with an adjustment being

made or at the end of the period when such an adjustment should have been made. Logically, that must at the latest be when the Claimant left her work in late December 2020. It follows that there can be no jurisdiction in respect of PCP 10(a) and (b), unless an extension is granted. PCP 10(c) is in time.

Extension of time?

232. We considered the following factors:

- Length of the delay – this varies but at its highest is as long as 7 months.
- The Claimant has explained the rationale for proceedings not being issued sooner in a statement for that purpose [p.70] and in her closing submissions. Within the latter she describes lengthy delays after letters by her, her waiting for the full internal investigation which was not completed, the time necessary for the Claimant to research and investigate representation before finally contacting ACAS.
- The Claimant has not suggested, and we have not found evidence, that her physical or mental health was such that it prevented her directly from issuing proceedings. She said that she was made unwell by the situation [p.70] but the detail of this has not been explained to us. We are certainly satisfied that she became stressed and her disability could make that hard to manage. However, the Claimant has not provided any medical evidence to us pertaining to this period. She has been aware since the ET3, if not before, of the Respondent taking limitation point so has had good and fair opportunity to present a case in support of an extension.
- The Claimant does not identify that she learned new or material facts about her treatment after limitation expired and which informed making a claim. Rather, her case is that it was only the repeated nature of the unfavourable treatment caused her to identify the feelings she experienced in relation to the earlier behaviour from December 2020, was not the Claimant overreacting or being paranoid [p.70]. We do not find the evolving interpretation (and reinterpretation) of events by the Claimant is a good ground on which to exercise jurisdiction to extend time. She was not misled or deceived by the Respondent. With one exception all allegations 1 to 8 are of matters of which the Claimant was contemporaneously aware and of which she was a direct witness.
- The only exception to that is allegation 7, the Claimant's allegation of Ms Sales lying to directors, i.e., conduct of Ms Sales to which she was not directly privy. We have made findings about this already. The Claimant has not adduced any witness evidence or documentary evidence to substantiate the allegation that Ms Sales had lied to directors to the effect that the Claimant had not organised this event. It remains opaque to us, even now, the basis on which the Claimant says that she discovers the alleged lie. It

follows the Claimant cannot rely on any aspect of later discovery to support an extension of time.

- If no extension is granted, the Claimant will suffer a sense of injustice that part of her claims have been excluded by dint of time. However, not all claims have been. She also has our written findings which show the time-barred claims are not meritorious in law.
- The Respondent does not seem to have suffered any significant forensic prejudice. It answered the case well with witness evidence and significant retained documents.
- However, time limits in the employment Tribunal are to be strictly exercised.

233. Taking account all of the factors, it is not just and equitable to extend time.

234. It follows there is no jurisdiction in respect of these complaints.

**Tribunal Judge A Miller-Varey
(acting as an Employment Judge)**

22 September 2023

Sent to the parties on:

26 September 2023

For the Tribunals Office

Notes

1. Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Annex A

Causes of Action

The below allegations are relied upon by the claimant as causes of action in relation to the discrimination claims:

(1) From about May or June 2020 through to mid-December 2020 one of the respondent's managers, Andrea Sales, refused to learn sign language to facilitate communication with the claimant who has a hearing impairment.

(2) Between November 2020 and mid-December 2020 Ms Sales refused to make eye contact with the claimant when speaking to her. The claimant says that this causes her a particular difficulty since she relies upon lip-reading due to a hearing impairment.

Note: In respect of those causes of action at (1) and (2) above the claimant relies upon the physical impairments of Ehlers Danlos and her consequential hearing loss. In respect of the remaining causes of action the claimant relies on both Ehlers Danlos and her Bipolar Disorder.

(3) Between November 2020 and mid-December 2020 the claimant was not allocated a place to work or to meet clients, Ms Sales informed her that there was no available work space.

(4) In late November 2020, Ms Sales accused the claimant of stealing iPads.

(5) In December 2020, Ms Sales accused the claimant of making an inaccurate funding bid in relation to a young person's funding.

(6) In mid-December 2020, Ms Sales accused the claimant of having a conflict of interest in respect of mental health videos which she was producing with her husband.

(7) In about mid-December 2020, Ms Sales "lied about" the claimant by informing directors that the claimant had failed to plan and prepare projects for the Christmas period, which included the delivery of food and Christmas hampers. (8) A refusal by Ms Sales to communicate directly with the Claimant between December 2020 and January 2021. The claimant alleges that the last instance of this was in January 2021 when Mrs Sales refused to attend a meeting with her for the purposes of mediation.

(9) In about March 2021, Ms Sales said that the claimant had "taken over" a class which she had attended in a voluntary capacity and Mrs Sales allegedly lied by saying that a complaint had been received from a client about the claimant's involvement in that class.

(10) In about March 2021, the respondent posted a photograph of the claimant's daughter on its web-site without the consent of the claimant or her daughter. The claimant says that this was removed following a complaint to the ICO.

(11) On or about 18 or 19 March 2021 Ms Sales accused the claimant of "hacking" the respondent's Facebook site in conversation with Gail Dobson-Burns and Kerry Carruthers.

(12) On 13 April 2021, when the claimant attended the respondent's premises to collect her belongings, she was required to do so from an unheated gymnasium which did not have any chairs where she could rest.

(13) In about September 2021 the respondent alleged financial impropriety on the part of the claimant, with an accusation that she had misused or misallocated funds in the sum of approximately £3000. Claims

Direct Discrimination – s 13 Equality Act 2010

All of the causes of action set out at (1) to (13) above are relied upon as direct disability discrimination. In respect of each cause of action, the tribunal will determine:

1. Whether the claimant has proven facts from which the Tribunal could conclude that, in any of those matters relied upon, the claimant was treated less favourably than someone in the same material circumstances, (i.e. without a disability), was or would have been treated.
2. If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of her disability or disabilities?
3. If so, has the respondent shown that there was no less favourable treatment because of her disability or disabilities?

Discrimination arising from Disability – s15 Equality Act 2010

The claimant relies upon the causes of action at (1) and (2) above. The Tribunal will determine:

4. Whether the respondent knew or could reasonably have been expected to know that the claimant had the disability or disabilities at the material time.
5. If so, whether the respondents treated the claimant unfavourably by reason of:
 - a) Ms Sales refusing to learn sign language to facilitate communication with the claimant;
 - or
 - b) Ms Sales refusing to make eye contact with the claimant when speaking to her.
6. Whether (under section 136) the claimant has proven facts from which the Tribunal could conclude that the unfavourable treatment relied upon above was because of something arising in consequence of disability. In this case the “something arising” was the claimant’s hearing loss and her inability to communicate effectively without either eye contact or the use of sign language.
7. If so, whether the respondent can show that there was no unfavourable treatment because of something arising in consequence of disability.
8. If not, whether the treatment was a proportionate means of achieving a legitimate aim.

Failure to Make Reasonable Adjustments – s20 Equality Act 2010.

9. Did the respondent know or could it reasonably have been expected to know that the claimant had a disability or disabilities?
If so, from what date?

10. A "PCP" is a provision, criterion or practice. Is the following a PCP which the respondent had in place:

- a) Not requiring its staff to learn sign language to assist the claimant with communication;
- b) Not requiring its staff to make eye contact with the claimant to assist with communication; and/or
- c) Not providing a room with heaters and chairs to enable the claimant to properly rest when she was collecting her belongings in April 2021.

11. If so, did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability. The substantial disadvantage in the case of not requiring staff to learn sign language or to make eye contact is that it impaired the claimant's communication with Ms Sales, the claimant's manager. In respect of the lack of provision of a heated room and chairs, the substantial disadvantage is the added discomfort caused to the claimant because of her physical disability.

12. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

13. Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage?

Harassment – Section 26 EqA 2010

The claimant relies upon all the causes of action above as matters which amount to harassment save for item (1).

15. In respect of any matters relied upon, what happened and was there any unwanted conduct?

16. If so, was it related to the claimant disability or disabilities?

17. If so, did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

18. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Time limits

19. Given the date of the notification to ACAS, 19 April 2021, the claims which took place before 20 January 2021 are potentially out of time. The tribunal will determine:

19.1 Whether any acts of discrimination took place within three months (allowing for the early conciliation extension) of the presentation of the claim form; and, if so

19.2 whether there was there conduct extending over a period which brings any earlier claims of discrimination (which are otherwise outside of the time limit) within time pursuant to section 123 (3)(a) EqA 2010; and, if not

19.3 whether the claims made outside the time limit were brought within such further period as the tribunal finds just and equitable having regard to:

19.3.1 Why were the complaints not made to the tribunal in time; and

19.3.2 whether, in any event, is it just and equitable in all the circumstances to extend time.