



EMPLOYMENT TRIBUNALS

Claimant: Miss Karissa Govender

Respondents: (1) Miriam Kelele-Nuvi
(2) Claire Ashton
(3) Jenny Papaeliopoulos
(4) Sally Hook

Heard at: London Central ET (by video/CVP) **On:** 10, 11, 12 October 2023

Before: Employment Judge Davidson
Mr T Harrington-Roberts
Mrs W Ellis

Representation

Claimant: in person
Respondents: Mr A Ismail, Counsel

RESERVED JUDGMENT

The unanimous decision of the tribunal is that:

1. the claimant's complaint of discrimination arising from disability is not well founded and is dismissed;
2. the claimant's complaint of harassment is not well founded and is dismissed.

REASONS

Issues

The issues before the tribunal, agreed by the parties, were as follows:

Discrimination arising from Disability (s.15 EqA)

1. Did any or all of the respondents know, or could they reasonably be expected to know, that the claimant was disabled, at the relevant time?
2. Did any or all of the respondents treat the claimant unfavourably? The claimant relies on the following conduct:

First Respondent - Miriam Kelele-Nuvi ("R1"):

- 2.1. on about 11 August 2022, did R1 tell Jenny Papaeliopoulos ("R3") that she didn't think the Claimant was ready to come back to work yet as the Claimant was not taking the medication she needed;
- 2.2. on about 12 August 2022, did R1 send the claimant home from work because (according to R1) the claimant was not on the mood-stabilising medication she needed;
- 2.3. on about 12 August 2022, did R1 give Claire Ashton ("R2") an ultimatum that if she allowed the claimant to work then R1 would not lead the team and would go home.

Second Respondent – Claire Ashton ("R2")

- 2.4. on 12 August 2022, did R2 follow up an alleged ultimatum from R1 and send the claimant home?

Third Respondent - Jenny Papaeliopoulos ("R3")

- 2.5. after visiting the claimant following her arrest, detention and release in August 2022, did R3 disclose confidential information to R1 regarding the claimant's mental health and personal situation without the claimant's knowledge or consent;
- 2.6. on 11 August 2022 at 10:07, did R3 send the claimant an email which stated (in relevant part): *"Tomorrow you're with Miriam on Team A, she doesn't think you're ready to come back to work yet particularly as you are not taking the medication you need and I agree"*;
- 2.7. on 11 August 2022 at 12:57, did R3 send the claimant an email which stated (in relevant part): *"I still think you need another review with an anti-psychotic and a mood stabiliser before you come back to work. Right now you're all over the place"*;
- 2.8. on 12 August 2022, did R3 send the claimant an email which stated (in relevant part): *"Miriam wouldn't have sent you home if you were fine. Your perspective is off right now. She wouldn't have done it for any other reason than your own good. Go back on meds"*;

Fourth Respondent – Sally Hook (“R4”)

- 2.9. on 2 September 2022, did R4 tell the claimant she would carry out a risk assessment and refer the claimant to Occupational Health;
 - 2.10. did R4 fail to carry out a risk assessment or a referral to Occupational Health;
 - 2.11. did R4 fail to take the claimant’s informal complaint on 2 September 2022 seriously and failed to take adequate steps to progress it.
3. If so, did all or any of the respondents’ acts / omissions / treatment of the claimant take place because of something arising in consequence of her disability, namely her emotional instability?
 4. If so, can the respondents show that the treatment was a proportionate means of achieving a legitimate aim, namely:
 - 4.1. to keep its staff, patients and the public safe;
 - 4.2. to protect the claimant’s wellbeing and safety;
 - 4.3. to deliver safe care; and
 - 4.4. to deliver the service in accordance with the National Protocols.

Harassment relating to disability (s.26 EqA):

5. Did any or all of the respondents engage in the conduct outlined above at paragraphs 2.1 – 2.11?
6. If so, was that conduct unwanted?
7. If so, did the conduct have the purpose or effect of either:
 - 7.1. violating the claimant’s dignity; or
 - 7.2. creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
8. If so, did it relate to the protected characteristic of disability?

The hearing

9. The case had been listed for four days but the listing was reduced to three days due to judicial resources. The hearing therefore dealt with liability only and the tribunal’s decision was reserved.
10. The tribunal heard evidence from the claimant and from each of the respondents. There was a bundle of documents running to 469 pages, a supplemental bundle

running to 14 pages and 11 pages of evidence attached to the claimant's witness statement.

Facts

11. The tribunal found the following relevant facts on the balance of probabilities.
12. The claimant worked as a non-registered vaccinator at University College London Hospitals NHS Foundation Trust (UCLH), having been supplied to UCLH by her employer, Bank Partners (BP). The respondents accept that she has a disability for the purposes of the Equality Act 2010.
13. The claimant was employed by BP and signed their terms and conditions on 13 January 2021. BP was responsible for carrying out Occupational Health Assessments for the claimant and the claimant had an obligation to inform BP if she was charged or cautioned by the police during her employment.
14. The first respondent is employed by UCLH as Band 6 Team Lead Nurse.
15. The second respondent is a registered nurse and is employed by UCLH as Clinical Lead for the vaccination programme for North London Central.
16. The third respondent was a vaccinator supplied to UCLH by BP.
17. The fourth respondent is employed by UCLH as Workforce Project Manager.
18. The claimant started her first shift with UCLH vaccination service on 24 May 2021 as a Band 4 vaccinator. The vaccine programme was carried out in accordance with the relevant UK Government National Protocols for the administration of Covid-19 vaccinations to individuals ("National Protocols").
19. In November 2021, she was formally diagnosed as having borderline personality disorder by a private psychiatrist. According to the claimant's disability impact statement, on bad days she has low mood, no motivation, tiredness, intrusive thoughts or interpersonal issues. She struggles with interpersonal relationship fall outs, stressful life events and managing her emotions. It can affect her day-to-day life in that her mood can change in an instant and mainly her mood issues are confined to close personal relationships which, prior to her therapy, resulted in angry feelings.
20. The private psychiatrist signposted the claimant for dialectical behaviour therapy (DBT) and prescribed a mood stabiliser, Lamotrigine 25mg, with a view to increasing the dose in time. The private psychiatrist was responsible for the claimant's diagnosis, but not her ongoing treatment and it was intended that future treatments and remedies would be accessed through the NHS.

21. In the event, the claimant experienced side effects to the Lamotrigine and, after referring back to the psychiatrist, she stopped taking that medication. She was no longer under the care of the private psychiatrist and her GP is unable to provide mood stabiliser medication as this can only be prescribed by a psychiatrist. She was awaiting specialist psychiatric advice but was not prescribed any replacement mood stabilisers after she stopped taking Lamotrigine.
22. The claimant had a referral with an NHS Mental Health hub on 8 February 2022 which comprised a telephone triage assessment. The care plan that arose from that assessment was that she was put on a waitlist for complex emotional needs pathway with psychoeducational groups to start in May 2022. She attended eight weekly sessions starting in May 2022 over Zoom. UCLH accommodated this by arranging her work shifts around these appointments.
23. The claimant continued to work with UCLH team and, by all accounts, was a competent vaccinator, safe and good with clients. On occasions the first respondent noted that she was hyperactive, displaying high energy levels. She responded well when this was pointed out to her.
24. On 23 February 2022, there was an incident at Bidborough House, a vaccination centre, after a vaccinator colleague (David) refused to pair up with the claimant. It transpired that the claimant had been in a personal relationship with David. She accepted that his conduct made her angry and she shouted in front of colleagues and members of the public on the shop floor. There is a dispute about whether the claimant threw an object at David. The internal investigation at UCLH after the claimant's resignation referred to the incident as the 'Stapler incident'. There was no direct evidence before us that the claimant threw a stapler, and we make no finding that an object was thrown. We accept that the relevance of the incidence for the respondents stems from the claimant's behaviour in shouting on the shop floor in front of colleagues and clients and not from the throwing of any object. No further action was taken in relation to that incident.
25. At the time, the claimant linked her behaviour to her diagnosis, commenting that she had a problem regulating anger, had mood fluctuations and could go 'from 0 to 100' in an instant. She now claims that this incident is unrelated to her BPD and any person who had been treated in the way David treated her would have reacted that way. We find that it was reasonable for the respondents to conclude that this incident was at least in part a manifestation of her BPD.
26. The claimant told the third respondent, who was a close friend, about her diagnosis. She alleges that the third respondent told the first respondent. The third respondent denies this and the first respondent says that she found out from the claimant herself. How the first respondent learned of the claimant's diagnosis is not an issue before us but we find that the first and third respondent had knowledge of the claimant's diagnosis by February 2022.

27. In early July 2022, the claimant went to volunteer in India on a medical programme for five weeks. She returned to the United Kingdom on 7 August 2022. While she was away, her long-term partner (Stewart) blocked her and changed his number. She tried to find out what was going on from friends and family but was not able to.
28. The claimant and the third respondent had an exchange of Whatsapp messages on 8 August 2022, including making arrangements to meet for dinner the next evening. The claimant told the third respondent that Stewart had blocked the claimant and changed his number. The third respondent told the tribunal that she was worried about the claimant and the claimant accepts that the third respondent was messaging her in her capacity as close friend. As part of the exchange of messages, the third respondent told the claimant to '*call her GP first thing*', that she needs '*meds quite urgently*' and that she should stop messaging Stewart's family or they will '*probably call the police*'.
29. The claimant attended Stewart's flat on 8 August 2022 to speak with him. He called the police and she was then arrested at 11pm that night for violent entering (denied by the claimant), harassment and malicious communication. She was held in custody for 16 hours and her phone was confiscated. At 1am the police called the third respondent to inform her of the claimant's arrest as the claimant had put her down as her next of kin.
30. The third respondent was aware that the claimant was due to be on shift on 10 August 2022 and was not going to be able to attend. She notified the first respondent of the claimant's arrest so that arrangements could be made to cover the shift. The claimant told the tribunal that she was unhappy that the third respondent had told the first respondent of her arrest, but she accepts she never raised this at the time. She said she would have liked to control the way the information was disclosed but that the opportunity to do so was taken away from her by the third respondent informing the first respondent about what had happened.
31. The claimant was released on bail at 3pm on 9 August 2022 with bail conditions including a prohibition on going to Stewart's flat. Her phone was retained by the police for evidence.
32. She told the third respondent that she did not want to go out for dinner as arranged but asked her to come to her flat to keep her company. The claimant wanted to speak to the first respondent. As the claimant did not have a phone, she called the first respondent on the third respondent's phone, on loudspeaker with all three of them on the call.
33. We heard detailed accounts of this conversation from the first respondent and the third respondent, but the claimant did not refer to it at all in her witness statement and, when asked, said that she could not recall what was said in that conversation. On this basis we accept the evidence of the first and third respondents.

34. In that phone call, the claimant was distressed, apologetic and remorseful. She said she was going to do everything possible to get well. She said she had not been on any medication in a long time and that she wanted to take steps to get better, including getting mood stabiliser medication, to see a psychiatrist urgently and to see the GP. The first respondent said that she was not judging her, and her main concern was for her to get the help she needed. She said she should not return to work but see the mental health team and go back on medication that would stabilise her mood. The claimant accepts that they were supportive and showed concern about her.
35. We find that the first and third respondents understood from this conversation that the claimant would urgently seek a GP appointment and take steps to go back on mood stabilising medication. It was agreed that she would not attend her shift the next day, 10 August 2022.
36. The claimant agreed that the first respondent and the third respondent could discuss her situation with each other and, although she said she was not necessarily happy about it, she accepted it, particularly as she had no mobile phone.
37. On 11 August 2022, the claimant saw her GP and her dose of anti-depressants was increased and she was prescribed medication for anxiety. She told the third respondent that the GP would put in a referral to the psychiatrist to review medication as only they can prescribe mood stabilisers or anti-psychotics, which the claimant told the third respondent was what she wanted and what she had asked from the GP. She then said that she was grateful for having the day off but thought she would be able to work the next day.
38. The third respondent told her that she needed to have the review with the psychiatrist before coming back to work. In her message, she said '*Miriam agrees*'. She said she didn't think the claimant would cope and that if that was the case, the issue would be escalated higher than the Band 6 leader.
39. The messages between the claimant and the third respondent included the following:
- 39.1. *"Tomorrow you're with Miriam on Team A, she doesn't think you're ready to come back to work yet particularly as you are not taking the medication you need and I agree";*
- 39.2. *"I still think you need another review with an anti-psychotic and a mood stabiliser before you come back to work. Right now you're all over the place"*

40. The claimant decided she was feeling better and was intending to work on 12 August 2022. She was concerned about not earning money as she depended on herself alone. On 12 August 2022, she had been rostered for an outreach vaccination programme which took place in the back of a van, with a tent attached. This is an enclosed environment with members of the public attending to receive vaccinations. The third respondent warned her against going to work as she would be sent home. As the claimant did not have a phone, the third respondent was passing messages to her from the first respondent and also included her own thoughts.
41. The claimant attended for her shift on 12 August 2022. The first respondent did not consider it appropriate for her to be on shift and said she should go home. The first respondent conferred with her manager, the second respondent, before finalising the decision. The second respondent was working remotely and was not able to intervene directly. There was a Teams call with the claimant, the second respondent and the first respondent. We find that the second respondent was aware that the claimant had a mental health condition although she may not have been aware of the exact diagnosis. The first respondent felt so strongly about the matter that she said she would not lead the shift if the claimant was allowed to work. She was concerned about the small, enclosed environment of the van and the aggressive behaviour exhibited by the claimant on that day and during the Teams call. If there had been an administrator role available which was not patient-facing, the claimant would have been offered that, but no such role was available on that day. The claimant was therefore sent home and paid for 4 hours.
42. The third respondent sent the claimant the following message *“Miriam wouldn’t have sent you home if you were fine. Your perspective is off right now. She wouldn’t have done it for any other reason than your own good. Go back on meds”*;
43. After her encounter with the claimant, the second respondent wrote to Helen Rudanec (Workforce Project Manager), informing her of what had happened and asking her to inform BP and to ask them to refer the claimant to Occupational Health. The claimant was contacted by BP in relation to the Occupational Health process.
44. The claimant attended work on 13 August 2022. BP had omitted to inform her that she needed to be re-audited for vaccination work, due to her extended absence in Africa. On 13 August 2022, she was told that she needed to be re-audited before she could be put back on shifts and she agreed to being reassessed.
45. On 17 August 2022, the claimant was told that UCLH would carry out a risk assessment regarding the arrest and her failure to report it to BP. She was told that this could take a few weeks.
46. On 24 August 2022, the claimant breached her bail conditions by attending at Stewart’s flat. She was arrested and the police took her to A&E because she

expressed suicidal thoughts. She waited at A&E for about four hours before leaving, when she was told that the wait would be another few hours.

47. On 1 September 2022, the claimant had her psychiatric assessment and the outcome was that she would not be treated with medication but with DBT.
48. On 2 September 2022, the claimant filed an informal complaint regarding the treatment she faced from three individuals in the vaccination team between 9 and 13 August 2022 (the first, second and third respondents). She specifically stated that the complaint did not relate to the risk assessment. The fourth respondent telephoned the claimant at about 5.30pm on Friday 2 September to discuss her complaint. The fourth respondent suggested mediation, which the claimant was interested in. The fourth respondent told the claimant that she would be away on annual leave, returning on 12 September 2022, when she would pick this up again.
49. On 12 September 2022, the fourth respondent returned to work after annual leave and the claimant asked for an update. The fourth respondent said that there was no update yet and asked for some information about the police incident from the claimant. At that point, the claimant revealed that she had been re-arrested for breach of bail conditions. The fourth respondent told her that this would probably negatively impact the risk assessment. Later that day the claimant withdrew the informal complaint and escalated it to a formal complaint. She then resigned and said she did not want to be contacted by anyone from the team.
50. The claimant then submitted her tribunal claim.
51. UCLH followed up the formal grievance by investigating the claimant's allegations. The claimant was not invited to participate in the process as she had stated she did not want to be contacted. The grievance was not upheld.
52. On 26 October 2022 the claimant referred the first respondent to the Nursing & Midwifery Council complaining of discriminatory behaviour and breach of confidentiality. On 2 June 2023, the Nursing & Midwifery Council found no evidence of discrimination or breach of confidentiality and declined to take any further action.

The law

The relevant law is as follows:

Section 15 disability discrimination

53. Under section 15 EA 2010

- (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

(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.

54. There must be unfavourable treatment and the reason for the treatment must be because of something arising in consequence of B's disability. This is an objective question and does not depend on the motive of the alleged discriminator.

55. The threshold for 'unfavourable treatment' is relatively low and it is enough that the person is put at a disadvantage or can reasonably say that they would have preferred to be treated differently (*Williams v Trustees of Swansea University Pension and Assurance Scheme and another* [2018] UKSC 65).

56. The objective justification test requires the unfavourable treatment to be both an appropriate means of achieving a legitimate aim and a reasonably necessary means of doing so (*Homer v Chief Constable of West Yorkshire* [2012] UKSC 15). The tribunal should consider whether the measure taken was proportionate at the time the unfavourable treatment was applied and whether or not a lesser measure could have achieved the legitimate aim.

Section 26 Harassment

57. Section 26 EA 2010 provides that:

(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.

58. Detriment does not generally include conduct which amounts to harassment (section 212(1) Equality Act)

59. Unwanted conduct means the conduct was unwelcome or uninvited by the claimant.

60. The threshold for conduct to amount to harassment is high. Not all unwanted conduct amounts to creating an intimidating, hostile, degrading, humiliating or

offensive environment. According to Elias LJ, tribunals must not cheapen the significance of these words (*Land Registry v Grant [2011] EWCA Civ 769*).

Determination of the issues

61. There were a number of matters raised by the claimant in her witness statement, her cross examination and her final submissions which were not in the agreed List of Issues. Where relevant to do so, we have made findings of fact in relation to these matters, but we have not included them in our determination of the issues.

Knowledge

62. We find that the first and third respondents had knowledge of the claimant's disability at the relevant times.

63. We find that the second respondent had sufficient knowledge of the claimant's condition to amount to knowledge, even if she was not aware of the exact diagnosis.

64. We find that the fourth respondent had knowledge of the claimant's disability at the relevant time.

Claims against the first respondent

Discrimination arising from disability

65. We find that the first respondent told the third respondent that the claimant was not ready to come back to work yet, partly because of her medication status but also due to the behaviours she had exhibited, the context of having been arrested and detained for custody for 16 hours and the need for medical intervention. We do not find that this was unfavourable treatment as the first respondent was repeating back to the claimant what the claimant had told her, with a view to supporting her and achieving the best outcome for her.

66. If we are wrong and this was unfavourable treatment and that this arose from something arising in consequence of her disability, namely her emotional instability. We find that this was a proportionate means of achieving a legitimate aim and that the first respondent had in mind the need to keep staff, patients and the public safe, to protect the claimant's wellbeing and safety, to deliver safe care and to deliver the vaccination service in accordance with the National Protocols.

67. We find that the first respondent did send the claimant home from work on 12 August 2022, partly because of her medication status but also due to the behaviours she had exhibited, the context of having been arrested and detained for custody for 16 hours and the need for medical intervention. We find that this was unfavourable treatment and that this arose from something arising in consequence of her disability, namely her emotional instability. We find that this was a proportionate means of achieving a legitimate aim and that the first

respondent had in mind the need to keep staff, patients and the public safe, to protect the claimant's wellbeing and safety, to deliver safe care and to deliver the vaccination service in accordance with the National Protocols.

68. We find that the first respondent gave the second respondent an ultimatum by saying she would not lead the shift if the claimant was allowed to work. Although the second respondent told us that she did not regard it as an ultimatum, we find that, to all intents and purposes, that is what it was.

69. We find that this arose from something arising in consequence of the claimant's disability, namely her emotional instability. We find that this was a proportionate means of achieving a legitimate aim and that the first respondent had in mind the need to keep staff, patients and the public safe, to protect the claimant's wellbeing and safety, to deliver safe care and to deliver the vaccination service in accordance with the National Protocols.

70. We considered whether the first respondent made unreasonable assumptions or jumped to unfair conclusions in not allowing the claimant to work on 12 August 2022. However, we accepted her evidence of her genuine concern and desire to do the right thing. She felt a responsibility to others, including staff and clients, as well as to the claimant. It was a harder decision for her to send the claimant home than to allow her to work but she decided that was the correct decision. We also note that the first respondent had worked with the claimant a lot and knew her well and was aware of her potential emotional states.

71. We find that this was the first respondent's clinical judgment as leader of the service for that shift, taking into account the work environment in the van, her experience with the claimant and her understanding that the claimant was intending to see an urgent psychiatric review with a view to starting mood stabilising medication.

72. We note that the NMC considered the allegations made by the claimant against the first respondent, reviewing the clinical context. The NMC concluded that no action was required to be taken against the first respondent.

Harassment

73. The claimant had agreed that the first respondent and third respondent could discuss the claimant's readiness for returning to work and therefore the conversation between them was not unwanted conduct.

74. We find that being sent home was the only conduct on the part of the first respondent that was unwanted by the claimant. She was sent home for the day and paid for 4 hours of her shift. This was the only decision taken by the first respondent relating to the claimant's suitability to work and had a limited impact on her being for that day only. The decisions taken on 13 August and thereafter which prevented the claimant from going back to work were not taken by the first respondent and do not form part of the issues before us.

75. We find the first respondent's conduct does not reach the threshold for harassment and we therefore find that it did not violate the claimant's dignity or create an intimidating, hostile or degrading or offensive environment.

Claims against the second respondent

Discrimination arising from disability

76. We find that the second respondent sent the claimant home after the claimant had escalated the issue to her by not accepting the first respondent's decision to send her home. We find that the second respondent upheld the first respondent's decision. We find that this was unfavourable treatment and it arose from something arising in consequence of the claimant's disability, namely her emotional instability. We find that this was a proportionate means of achieving a legitimate aim and that the second respondent had in mind the factors relied on by the first respondent in reaching her decision. These were the need to keep staff, patients and the public safe, to protect the claimant's wellbeing and safety, to deliver safe care and to deliver the vaccination service in accordance with the National Protocols. The second respondent also witnessed the claimant's emotional state on that day with her shouting and crying on the call. We find that the second respondent was entitled to rely on the first respondent's clinical judgment about allowing the claimant to be part of the vaccination team on that day.

Harassment

77. We find that being sent home was unwanted by the claimant. She was sent home for the day and paid for 4 hours of her shift. This was the only decision taken by the second respondent and had a limited impact on the claimant. We find it does not reach the threshold for harassment and we therefore find that it did not violate the claimant's dignity or create an intimidating, hostile or degrading or offensive environment.

Claims against the third respondent

Discrimination arising from disability

78. We find that after visiting the claimant following her arrest, detention and release from police custody, on 9 August 2022, the third respondent did not disclose the fact of the claimant's arrest to the first respondent. There was a three-way call between them in the evening following her release, in which the claimant herself told the first respondent about what happened.

79. There had been an earlier phone call, prior to the claimant's release from police custody, when the third respondent informed the first respondent of the arrest, but this is not an issue before us. In any event, we find that this was related to the fact that claimant was going to be absent from work, which arose from circumstances

flowing from her emotional state, but this information was necessary to pass to the first respondent, for operational reasons.

80. We find that on 11 August 2022, the third respondent sent the claimant an email which stated: *"Tomorrow you're with Miriam on Team A, she doesn't think you're ready to come back to work yet particularly as you are not taking the medication you need and I agree"*.

81. We find that on 11 August 2022, the third respondent sent the claimant an email which stated: *"I still think you need another review with an anti-psychotic and a mood stabiliser before you come back to work. Right now you're all over the place"*.

82. We find that on 11 August 2022, the third respondent sent the claimant an email which stated: *"Miriam wouldn't have sent you home if you were fine. Your perspective is off right now. She wouldn't have done it for any other reason than your own good. Go back on meds"*.

83. We do not find that this was unfavourable treatment because the third respondent was acting in the claimant's best interests, as her friend, and liaising with the first respondent, as agreed to by the claimant. The comments she made were a follow-up from the claimant's own comments during the telephone conversation on 9 August 2022.

84. If we are wrong that this was not unfavourable treatment, we find that these comments arose from something arising in consequence of the claimant's disability, namely her emotional instability. We find that this was a proportionate means of achieving a legitimate aim and that the third respondent had in mind the need to keep staff, patients and the public safe, to protect the claimant's wellbeing and safety. The third respondent understood from the claimant that she wanted a psychiatric review and mood stabilising medication so that the events leading to her arrest would not be repeated. Her communications with the claimant were based on this understanding and made with the intention of supporting the claimant, as her friend, but also understanding the safety issues in the workplace.

Harassment

85. The claimant had agreed that the first respondent and third respondent could discuss the claimant's readiness for returning to work and therefore the conversation between them was not unwanted conduct.

Claims against the fourth respondent

Discrimination arising from disability

86. We find that the fourth respondent told the claimant that she would carry out a risk assessment on 17 August 2022 and that this would take some time. On 2 September 2022, the fourth respondent replied to an informal complaint by the

claimant which expressly excluded the risk assessment. In any event, the claimant did not object to having a risk assessment.

87. The responsibility to carry out an Occupational Health referral was BP's and not the fourth respondent's responsibility. The claimant was told that BP would be asked to deal with the Occupational Health issue and was aware that this would not be something the fourth respondent would deal with. In any event, the claimant did not object to having an Occupational Health referral.
88. We find that the fourth respondent started the risk assessment process in August 2022. The fourth respondent accepts that she did not keep the claimant fully updated as to the progress of the risk assessment but she explained that many staff were absent during August and the programme had been asked to include Polio vaccinations, which was an additional call on resources at that time. The fourth respondent was away on annual leave from 3 September to 11 September 2022. She attempted to take further steps on her return on 12 September 2022 by asking the claimant for the police report. She found out about the second arrest and told the claimant that this could impact the risk assessment. The claimant then told her she no longer wanted the risk assessment carried out as she was resigning.
89. We find that the fourth respondent did not fail to carry out a risk assessment. Although the risk assessment was not completed by the time of the claimant's resignation, this was due to a number of factors requiring investigation and follow-up as well as the fourth respondent's annual leave. We do not find that the time taken to undertake the risk assessment was unreasonable. We therefore find that this does not amount to unfavourable treatment.
90. If we are wrong and there was unfavourable treatment, the unfavourable treatment is the delay, which is not related to the claimant's emotional instability arising in consequence of her disability. The delay is due to a number of factors including the holiday period in August, the demands on the service to include polio vaccines and the fourth respondent's annual leave.
91. Although the need for a risk assessment followed on from the claimant's arrest, which itself flowed from her emotional instability, the risk assessment would have needed to be carried out whatever the reason for the arrest had been. We therefore find that this took place because the claimant was arrested, not because of something arising in consequence of her disability.
92. We do not find that the fourth respondent failed to take the claimant's informal complaint seriously or that she failed to take adequate steps. She received the complaint on her last day before annual leave and phoned the claimant before she left explaining that she would be on annual leave for the following week. On her return from annual leave on 12 September 2022, the claimant followed up with her

and then resigned on that day. We find that the fourth respondent did not treat the claimant unfavourably.

Conclusion

93. We recognise that the decision to send the claimant home and the subsequent delay in getting clearance to return to work caused the claimant financial problems and that this came at a difficult time for her and she was inevitably frustrated at the decisions which led to this. However, we have found that the respondents needed to balance her needs with those of other stakeholders and we find that the respondents at all times acted in good faith.

94. The claimant's complaints of discrimination arising from disability and harassment relating to disability fail and are hereby dismissed.

Employment Judge Davidson
Date 19 October 2023

JUDGMENT SENT TO THE PARTIES ON
.19/10/2023

FOR EMPLOYMENT TRIBUNALS

Notes

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions: 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.

CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing