



EMPLOYMENT TRIBUNALS

Claimant: Mr Gabriele Orsini

Respondent: Royal Free London NHS Foundation Trust

Heard at: London Central (via CVP)

On: 19 – 27 June 2023

Before: Employment Judge Woodhead

Ms Brayson

Mr Benson

Representation

For the Claimant: Ms Iqbal (Counsel)

For the Respondent: Mr Steward (Counsel)

JUDGMENT

1. **The Claimant's claims of direct disability discrimination (s.13 Equality Act 2010 (EqA)) are dismissed having been withdrawn at the start of the merits hearing.**
2. **The Claimant's claims of discrimination arising from disability (s.15 EqA) are dismissed having been withdrawn at the start of the merits hearing.**
3. **The unanimous judgment of the Employment Tribunal is as follows:**
 - a. **The Claimant's claims of failure to make reasonable adjustments are not well founded and are dismissed.**
 - b. **The Claimant's claims of unlawful harassment are not well founded and are dismissed.**

REASONS

THE ISSUES

1. The Claimant started work with Respondent on 26 August 2016 as Head of Accounts Receivable and Treasury. He was employed until his retirement, for ill health, on 16 January 2023.
2. It was accepted by the Respondent that the Claimant has, and had at the material times, a condition (chronic lymphedema) that results in leg ulcers which amounts to a disability under the EqA.
3. The Claimant asserted that stress and, particularly workplace stress, exacerbated his disability. The Respondent denied that the Claimant was subject to workplace stress or that there was a link between stress and worsening in the Claimant's leg ulcer condition.
4. The parties agreed that the adverse effects of the Claimant's disabilities were most accurately explained in the Claimant's disability impact statement (p140 – 142). The Claimant's representative confirmed that the Claimant had taken ill health retirement because of his leg ulcers.
5. It is clear from the Claimant's impact statement that his chronic lymphedema has a significant impact on the Claimant's normal day to day activities and quality of life (and that of his family), that it can be very painful, uncomfortable and difficult for him in a wide range of respects (including but not limited to affecting his ability to sleep). It has caused him to need regular nursing visits (to attend to the ulcers) and has also led to him being hospitalised. It is also clear that it has an impact on his mental health (particularly when the sores are bad) including feelings of shame, embarrassment, guilt (e.g. with respect to the burden placed on his wife), humiliation, depression, lack of self-esteem, frustration, worry, stress, anxiety, lack of self-confidence and loneliness/isolation.
6. The issues in the claim were not clear at the start of the hearing, as is explained below, but having been clarified the claim focused on alleged failures to make reasonable adjustments in the period January 2020 to mid-March 2020 (when the COVID pandemic lockdown began), in the three weeks following 1 March 2022 and in the period between February 2022 and the three weeks after 1 March 2022. The Claimant also brought claims of disability harassment focused on acts or failures to act at the end of January 2020, from May 2021 onwards and in January 2020.

THE HEARING

7. The Claim was listed for this hearing at a preliminary hearing for case management held on 13 October 2022 (**the PH**) at which an Employment Judge sought to clarify the issues in the claim, as it then was, and made orders for further particulars to be provided. The Claimant, through his professional representatives, then provided a lengthy email on 22 January 2023 (143- 149) in response to the additional information that the Tribunal had ordered be given.

8. The Respondent conceded that the Claimant's leg ulcers did constitute a disability on 25 January 2023 (page 152) and made clear that no other concession was made.
9. As referenced above, notwithstanding that the issues in the claim remained substantially unclear, neither party took steps to address this by agreeing a list of issues.
10. The next step that the Respondent took was, as late as 12 May 2023, to apply to the Tribunal to amend its response.
11. Both parties had professional representation but the parties came to the hearing:
 - without a list of issues having been agreed;
 - with a bundle of documents totalling 1835 pages (**Bundle A**) (which the parties conceded contained significant duplications and errors in its organisation);
 - the Respondent seeking to add a further set of documents which had only recently been disclosed to the Claimant, which were not in a paginated or indexed bundle and which counsel for the Claimant had not had the opportunity to fully review and said at first glance appeared to be repetitive of the main tribunal bundle. The Claimant's representative on day two of the hearing said that the Claimant did not oppose the papers being put before the tribunal and they were subsequently provided as a bundle (Bundle B) of 131 pages (**Bundle B**). However, the witnesses did not in the event refer to it (in evidence in chief or under cross examination). The Claimant objected to the investigation report relating to Ms Parkes being admitted. The Claimant said that if it was admitted then Ms Parkes would want to adduce other written documents to put it in context. We decided that it was not proportionate to allow those further documents in but would not prevent the Respondent from asking questions.
 - the Respondent introducing, with the agreement of the Claimant, a witnesses' (Mr Laver's) resignation letter.
 - the Claimant applying to amend his claim to include personal injury arising out of the alleged acts of discrimination;
 - the Claimant withdrawing his claims of direct disability discrimination and discrimination arising from disability;
 - the Respondent applying to amend its response (which was not contested by the Claimant and allowed by the Tribunal).
12. By 15:50 on the first day of the hearing, after taking time to work through and get clarity on the Claimant's remaining claims of failure to make reasonable adjustments (s.20 EqA) and unlawful disability harassment (s.26 EqA), the parties were still unable (despite the Tribunal's assistance) to reach agreement on the issues to be determined by us and agreed to spend

what remained of the afternoon working on achieving an agreed list of issues for 10am the following morning.

13. Throughout the hearing counsel for both parties were included in and given the opportunity to make representations on the decisions being made and the use of the time allocated to the hearing. When not sitting with the parties the Tribunal spent the time reading the witness statements and reviewing the reading list which had been provided by counsel for the Claimant (and on which the Respondent was given the opportunity to comment).
14. The Claimant needed breaks every hour or so of 5 / 10 mins (whilst giving evidence and listening to proceedings) which he was afforded and it was made clear to him and his representative that if at any point this was overlooked or if he needed another break, then we would give it.
15. On the second day of the hearing (20 June 2023) the parties had still not reached agreement on the list of issues and despite the assistance of the Tribunal this was not achieved until that afternoon (see the final list of issues in **Appendix 1**).
16. We then heard the Claimant's application to amend the claim to include a claim for Claim for general damages/PSLA and future loss (including loss of earnings) for personal injury arising out of the Respondent's alleged failure to make reasonable adjustments. We heard submissions from both parties on this and, after deliberating and considering the authorities, we concluded that the balance of prejudice was in favour of the Claimant and that the application to amend should be allowed (notwithstanding that it had been made at the very last minute). Oral reasons were given to the parties and it was made clear that of course, if the relevant allegations of discrimination were found to be out of time, then the claim for personal injury damages would also be out of time.
17. We then started hearing evidence from the following witnesses for the Claimant:
 - Claimant (formerly Head of Accounts Receivable and Treasury at the Respondent).
 - Linda Parkes (a former employee of the Respondent who had been Head of the Accounts Payable from October 2014 to May 2022). Her evidence essentially focused on support for the Claimant and complaints about Ms Hamilton and Mr Awan's approach to management, which she said caused her stress.
 - Stuart Laver (a former employee of the Respondent who had been Treasury Manager, (January 2019 – December 2021), Interim Treasury Manager, (October 2017 – December 2018), Senior Credit Controller, (February 2017 – September 2017) at the Respondent and who left the Respondent on 2 January 2022). He had been under the management of the Claimant and in his evidence he complained about the management style of Ms Hamilton and Mr Awan. The Claimant's representative agreed that we should admit into evidence a short separate document constituting Mr Laver's resignation

letter from the Respondent (as referenced above). We accepted the Respondent's submissions following cross examination of Mr Laver that the resignation letter undermined the assertions in Mr Laver's witness statement.

18. We heard evidence from the following witnesses for the Respondent:
 - Karen Hamilton - Head of Finance, Performance, Development and Improvement, who took over responsibility for managing the Claimant at the start of the first pandemic lockdown in March 2020.
 - Hameer Awan - Assistant Director of Finance – Financial Control and the Claimant's line manager for a period between the end of 2019 and the start of the first pandemic lock down in March 2020.
 - Liana Toulon - People Management Specialist for just over a year and prior to which she was a Senior Employee Relations Adviser. She joined the Respondent in 2017 as an Employee Relations Adviser.
19. Both parties provided written submissions which they supplemented orally.
20. Although originally listed for liability and remedy to be concluded in three days, this listing proved to be insufficient. With the agreement of the parties, the tribunal decided to extend the hearing by one day and confine ourselves to the question of liability.

FINDINGS OF FACT

21. Having considered all the evidence, we find the following facts on a balance of probabilities.
22. 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 the legal issues.
23. The Respondent is an Acute National Health Service Foundation Trust that provides a wide range of local and specialist healthcare services to the population of North West London.
24. Over the period of the Claimant's employment he had a range of serious challenges with his health including but not limited to lymphedema causing leg swelling, large blisters (which would become infected and bleed and leak fluid - the disability relied upon by the Claimant in his claim), serious obesity (including weight gain of 4 stone between April 2021 and August 2022) (page 65-66), cellulitis, hypertension, hydrocele of the left testicle (by May 2022 the Claimant had had three procedures in hospital for this condition and it needed an operation which was delayed because of the pandemic), bleeding ischial pressure sores/ulcers, osteoarthritis (wrists and knees), asthma, inflammation and gout (pages 82, 393, 570, 1178, 1256). These health issues quite understandably make the Claimant's day to day life very challenging.

25. Prior to the events in question the Claimant was line managed by Lubna Dharssi (Assistant Director of Finance – Financial Control).
26. The Claimant began reporting to Mr Awan from November 2019. Ms Dharssi had informed Mr Awan about a flexible working arrangement that she had put in place for the Claimant which enabled him to work from home. Mr Awan also knew that it had been agreed with the Claimant that the arrangement would be reviewed in March 2020. We explain in our analysis and conclusions that we accept Mr Awan’s evidence that in January 2020 he did not withdraw flexible working arrangements from the Claimant.
27. We also accepted Mr Awan’s evidence that he had never asked or expected the Claimant to work long hours or weekends or expected him not to take his breaks. Mr Awan was aware of one occasion on which the Claimant was working late to produce a report but Mr Awan did not expect the Claimant to work late on it and had involved the Claimant in the preparation of the report because the Claimant had expressed interest in it and Mr Awan had offered him support with difficulties the Claimant had in preparing the report. We accept that, had the Claimant told Mr Awan that the report was too much for him, he would have reallocated the task. We do not accept the Claimant’s assertion that Mr Awan insisted that the Claimant “*carried on working whilst he was signed off sick from the 23 January 2020 to 20 March 2020 if I wanted to keep my job*” (CWS para 13). We find that concerns were raised by Lisa Marsh (Director of Operations) with Mr Awan towards the end of January 2020 that the Claimant was working when he was on sick leave and that Mr Awan was concerned about that and told the Claimant that he should not be working if he was not fit to do so. At the Claimant’s request the Respondent subsequently reclassified from sick leave to flexible working the period from 23 January 2020 to 20 March 2020 (page 316 and 351)
28. The Claimant’s sickness absence over the relevant period as documented by the Claimant on 23 June 2022 (p1320) can be summarised as follows :
 - 21 December 2016 to 22 December 2016
 - 24 April 2017 to 25 April 2017
 - 20 September 2017 to 31 December 2017
 - 11 March 2019 to 13 March 2019
 - 3 July 2019
 - 23 January 2020 to 20 March 2020 (as referenced above – re-categorized as flexible working by Mr Awan in February 2021)
 - 21 April 2020 to 12 June 2020
 - 12 January 2021 to 21 February 2021
 - 29 April 2021 to 28 February 2022 (the Claimant’s position was that from 30 January 2022 to 28 February 2022 he was not allowed to return to work. Ms Hamilton was trying to ensure that he was fit to return to work)
 - 7 March 2022 to 23 June 2022
29. We accepted Mr Awan’s evidence that Ms Dharssi did not formally manage the Claimant’s considerable sickness absence whilst she was his manager. When Mr Awan started managing the Claimant under the Respondent’s policy the Claimant was resistant. His medical conditions made him more

prone to sickness absence and therefore the formal trigger points under the Managing Attendance Policy. The Managing Attendance and Sickness Absence Policy (pages 1645 – 1674) defines long term sickness as a single period of absence of 14 consecutive calendar days or more. It goes on to provide:

8.2 The trust trigger point for long term absence is:

An episode of sickness absence that exceeds 14 calendar days.

**The basic Bradford Score formula is:*

E x E x D where:

E = the number of Episodes of absence in a specified period

D = the total number of working Days of absence in that period

The Bradford Scores received from Workforce includes non-working days in the score as this information is generated from ESR. The non-working days will not be included within the calculation as to whether a sickness trigger has been activated and should be removed from the score before the triggers are considered.

8.3 This is best shown by example. Take three employees with the same total days' absence in a given period (10 days), compare the Bradford Scores:-

Employee 1 - 1 absence of 10 days Bradford $1(E) \times 1(E) \times 10(D) = 10$

Employee 2 - 3 absences - 3, 3, & 4 days Bradford $3(E) \times 3(E) \times 10(D) = 90$

Employee 3 - 10 single days absence Bradford $10(E) \times 10(E) \times 10(D) = 1000$

Therefore

Employee 1 - No trigger reached - No action required

Employee 2 - If all 3 absences occur in a rolling 3 month period - Episodes trigger reached - action required

Employee 3 - If all absences occur within a rolling 12 month period - Bradford Factor trigger reached – action required

8.4 There may be occasions when it is felt that the application of the Bradford Score should be adjusted for certain absences to ensure a fair and consistent approach. For example, if an employee returns to work from an absence before they are completely well, works for a day, and then is absent for a further period, the manager may decide following discussion with a member of the ER service team to class

this as a single episode at their discretion. In addition, managers have the discretion to apply these rules flexibly.

8.5 Absences which require an employee to not attend work due to infection control issues will be dealt with in accordance with the provisions set out in section 11 of this policy.

[...]

8.7 All absences count towards an employee's sickness entitlement and absence must be reported on the system.

8.8 Please note that in cases where the Occupational Health and Wellbeing Centre advise that an employee is not fit to undertake their role for the foreseeable future, it may be necessary to proceed directly to Formal Stage 2 or Stage 3 in exceptional circumstances.

[...]

8.13 MANAGING LONG TERM SICKNESS ABSENCE (LASTING 14 OR MORE CALENDAR DAYS)

The aim of this process is to ensure that employees who are absent due to long term sickness (i.e. a period of 14 consecutive calendar days or more with no immediate prospect of return to work) are treated fairly and sensitively and are supported in making a return to work, if and when they are fit and able to do so. The Occupational Health and Wellbeing Centre will need to be involved from an early stage. The informal stage of the procedure will be followed as set out in (section 8.9) as is the case with managing short term absence.

In such cases, it is essential that regular (weekly) contact should be maintained and a file note kept. This is a joint responsibility, therefore the employee and line manager must agree on how this contact will be maintained. In exceptional cases, this may involve home visits in agreement with the employee. In these circumstances it will be appropriate for the line manager to be accompanied by a member of the Employee Relations Service.

Every effort will be made to facilitate an employee's return to work, which may include making reasonable adjustments under the Equality Act 2010.

In line with Agenda for Change terms and conditions, a decision on the appropriate way forward (i.e. return to work, redeployment or termination of contract) must be made no later than twelve months from the date the absence started, or where the employee has exhausted their entitlement to sick pay.

Employees are still obliged to provide Fit Notes, be available (health permitting) to attend meetings and adhere to trust terms, conditions, policies and procedures.

At least 10 working days' notice will be given to employees to attend formal meetings. The employee has the right to be accompanied by a workplace colleague or Trade Union representative. If a manager is aware of which Trade Union representative is advising his/her employee, it is recommended that they liaise to arrange a mutually convenient meeting date.

Where possible a communication plan should be discussed and agreed between the employee and the line manager. This will be based on reasonable and regular two-way communication.

30. The policy also sets out a three stage process that can lead to an employee's dismissal for long term sickness absence and includes the following in respect of ill-health retirement, dismissal on the grounds of capability and movement between the long term and short term procedures:

8.19 ILL-HEALTH RETIREMENT (If applicable)

Employees will be eligible to apply for ill-health retirement where they have at least two years' NHS Pension Scheme membership and their GP and/or the Occupational Health and Wellbeing Centre have advised that they are permanently incapable of carrying out their duties.

The line manager should seek confirmation through the Occupational Health and Wellbeing Centre than an application for ill-health retirement would be supported.

The employee must consult the Pensions department for details of how to apply for ill-health retirement.

Approval for ill-health retirement rests solely with the NHS Pensions Scheme Medical Advisers and the decision may take up to three months. The trust may consider dismissal on grounds of capability before the employee has been notified whether their application for ill-health retirement has been approved by the Pensions Agency. However, the dismissal will not affect the Pensions Agency decision.

8.21 DISMISSAL ON THE GROUNDS OF CAPABILITY

Where the Occupational Health and Wellbeing Centre have advised that the employee is no longer able to perform their substantive role, or where they are not able to advise when the employee is likely to be fit, or if the employee has refused suitable alternative employment or none is available, the employee will be advised that dismissal on the grounds of capability is likely and that a hearing to consider the situation and decide on appropriate action will be convened. A letter confirming the hearing arrangements and the potential outcomes must be sent to the employee, by recorded delivery or delivered by hand.

9.0 MOVEMENT BETWEEN LONG TERM AND SHORT TERM PROCEDURES

9.1 In situations where an employee is being monitored under the short term procedure and they have been absent for 14 calendar days (before the scheduled review meeting) and if their record indicates that this episode of sickness absence will continue for a further period, depending on the reason for absence, it may be necessary to make a referral to Occupational Health to enable effective sickness management. The scheduled review meeting should take place in line with the long term absence process.

9.2 There may be circumstances where an employee is being monitored under the short term procedure and the formal review meeting is unattended due to continued sickness (i.e. at the point of the review the employee is off sick but has not yet activated the 2 week trigger). If the employee returns to work before the 14 calendar days or more trigger is activated, the formal short term review meeting will be rescheduled. However, if the employee's sickness continues and activates the 14 calendar days or more trigger, the review meeting will be rescheduled and held as a formal long term review.

9.3 Where an employee has returned to work from an episode of long term sickness and is being monitored under the long term procedure, should further short term sickness arise, the employee will be managed in line with the short term procedure and will be invited to a Stage 2 Sickness Absence review.

31. We accepted Ms Hamilton's evidence that the Claimant gained 5 years' service with the Respondent on 25 August 2021 and that at this point he gained entitlement to the Respondent's full sick pay benefits of full pay for 6 months and half pay for 6 months. Ms Hamilton suggested that this entitlement recharged after a minimal period of return to work and did not apply to a rolling 12 month period. Ms Hamilton was not able to be precise in her evidence on how this entitlement recharged. We were not referred to it but the bundle included a contract of employment for the Claimant setting out the following entitlements (page 187):

Occupational sick pay

Your occupational sick pay entitlement is based on your reckonable NHS service, as set out above, and calculated as follows:

During the first year of service: 1 month's full pay and 2 months' half pay

During the 2nd year of service: 2 months' full pay and 2 months' half pay

During the 3rd year of service: 4 months' full pay and 4 months' half pay

During the 4th and 5th years of service: 5 months' full pay and 5 months' half pay

After 5 years' service: 6 months' full pay and 6 months' half pay

The maximum sick leave pay entitlement for any employee is 6 months' full pay and 6 months' half pay.

Your full sick pay entitlement (inclusive of occupational sick pay and SSP) shall not exceed the amount of your normal pay (including statutory benefits, any recruitment and retention premia, and any other regularly paid supplements). Where it does, your sick pay allowance will be reduced accordingly.

If your pay reduces to half pay owing to the length of your sickness absence, you will receive half the amount that is normally payable by the Trust for the period in question. However, your half pay plus your SSP entitlement (or state benefit) together must not exceed full pay. Where it does your half pay will be reduced accordingly.

32. We accepted Ms Hamilton's evidence that the Claimant remained resistant to being managed under the Respondent's Managing Attendance Policy during her period as his manager which lasted from the start of the COVID-19 pandemic in March 2020 until the end of the Claimant's employment.
33. When, at the start of the pandemic, Ms Hamilton took over line management responsibilities of those working at home (including the Claimant) and those working in Accounts Receivable/Payable and Cash Management her role was one of oversight. Individuals would come to her if they had particular issues. Mr Awan, Assistant Finance Director, provided supervision on day-to-day matters.
34. We accepted Ms Hamilton's evidence in cross-examination that prior to being his line manager she had a good working relationship with the Claimant and that when she took over line management of him it was not at all clear to her why there would be any need for the Claimant to work late or over the weekends.
35. We accepted Ms Hamilton's evidence in re-examination that, because Ms Dharssi had not kept records of the management of the Claimant's sickness absence, and after speaking with the Respondent's employment services team, it was preferable to treat the Claimant as if he had not been on sick leave at all prior to 2021 and as if he had the full entitlement to sick pay (6 months full 6 months full pay and 6 months' half pay). Ms Hamilton chose to "wipe the slate clean" from April 2021. This was preferential treatment of the Claimant because he had clearly had substantial prior sickness absence and at that point had not reached 5 years' service (meaning that the sick pay entitlement should have been prorated under the terms of the Claimant's contract).
36. The Claimant had poor working relationships with the two people who he managed, namely Sonia Griffiths and Stuart Laver. Ms Dharssi told Mr Awan about those difficulties when Mr Awan took over management of the Claimant from her but he considered that the disputes were resolved by that point. However, Mr Awan was not managing the Claimant for very long and

we accept Ms Hamilton's evidence that in fact relations between the Claimant and his direct reports remained poor, even up to the period of the Claimant's attempted phased return to work in March 2022. We accept Ms Hamilton's evidence in cross examination that over the course of the Claimant's lengthy periods of absence things had changed and moved on in the Claimant's team and she had done work to improve conditions for the Claimant's team and offered the Claimant support in improving relationships with his team. We accepted the evidence in her witness statement (KHWS para 21) that the Claimant was still not speaking at that time to Mr Laver or Ms Griffiths and that at a return to work meeting on 28 February 2022 the Claimant asked if he could spend all of his time with Cashiering (not Accounts Receivable) because he did not get on with them. We accepted Ms Hamilton's evidence that as well as being an accountant, she is a trained coach and mediator and therefore had the skills to assist the Claimant in this regard but that the Claimant did not want to have contact with her because he did not want to be managed by Ms Hamilton under the Respondent's attendance management policy.

Sickness absence to April 2021

37. Over the period between April 2020 and April 2021 the Claimant had substantial periods of sickness absence (i.e. in the periods between April 2020 and 12 June 2020 and then January 2021 to February 2021). The potential for a stress risk assessment was first raised by occupational health in July 2020 to provide supports at times of high stress.
38. We accepted Ms Hamilton's evidence that it was not apparent when there might be such times of high stress, given the nature of the role, and refer to our findings set out below as to the Claimant's approach to work and the duties he performed. Over this period there was some discussion between the Claimant, Ms Hamilton and Mr Awan about the Claimant's work objectives and relationship with his team members.

Return to work 22 February 2021 to 28 April 2021

39. The Claimant returned to work for approximately two months between the end of February and the end of April but then suffered a worsening of his leg ulcers and commenced sick leave again which lasted through to the end of February of the following year (2022).
40. On 19 August 2021 the Claimant raised his Data Subject Access Request to which the Respondent replied on 21 September 2021 (page 1829) and to which we refer to in our analysis and conclusions below.

Sickness absence 29 April 2021 to 28 February 2022

41. Given the amount of sickness absence that the Claimant had suffered and whilst he remained on sick leave, Ms Hamilton in accordance with the Respondent's policies, initiated the Respondent's sickness absence review process at the informal stage. We accept her evidence that this was intended to be a supportive measure and an acknowledgement that his

absences had not at all times been consistently managed under the Respondent's policy.

42. We also accept Ms Hamilton's evidence that that regular contact would be helpful during the Claimant's sickness absence so that she could best support him with the aim of coming back to work (page 395-404). She and the Claimant agreed to have weekly catch-ups while he was off sick via email.
43. We accept Ms Hamilton's evidence that in July 2021 she discussed the most recent occupational health advice with the Claimant (pages 493-495) and that she explained that the Claimant should be taking regular breaks including when he was working from home (pages 483-488).
44. We accept that Ms Hamilton:
 - explained to the Claimant that when he was working she only wanted him to be doing standard hours and that she wanted him to complete a stress risk assessment and work station risk assessment when he was feeling well enough to do so.
 - wanted to be in a position to discuss those assessments with the Claimant when he was well enough to return to work.
 - had taken note of OH comments with respect to time allowances for the Claimant meeting targets.
45. Ms Hamilton held a Stage 1 formal attendance management meeting with the Claimant on 18 August 2021 (pages 542-554) and 11 November 2021 (pages 632-639) while he remained on sick leave and was waiting for an operation on his testicle hydrocele. The notes of the 11 November 2021 meeting record:

Reduce workload as soon as possible

Karen sent Gabriele a copy of the JD she found on the Trust intranet (hoping it was the correct version); for Gabriele to confirm the areas he wants to reduce. At the meeting Gabriele did say that the JD I found was not correct. Karen reconfirmed that was the only one she found, and recognised that our (finance) JDs are not necessarily up to date but happy for Gabriele to identify/ state the workload he wanted to reduce. Gabriele asked if I or Laura Kapihya could do that for him. Karen said no, this has to be completed by Gabriele as you know what work is causing you the stress.

To work standard hours only to avoid issues recurring

Karen reconfirmed she is happy for Gabriele to work his standard hours

To do workstation assessment to provide him with office equipment such as a seat cushion and a declinable desk if operationally feasible

I did provide Gabriele with both the Stress risk assessment and Work station risk assessment asking him to complete and return. The issues being that Gabriele made it clear the every time he spoke to me I caused him more stress. Due to this, our contact is currently limited to Wednesdays at 11am via email a only.

Karen asked Gabriele if he was happy for Karen to ask the Trust Health & Safety team to visit him at home to carry out the necessary assessments. Gabriele agreed and agreed for me to provide the team with his contact details.

Karen to organise.

To have regular 5 – 10 minute breaks every hour for circulation due to his health condition

Karen confirmed that Gabriele has been working from home since 2019 and is happy for Gabriele to take the necessary breaks

To give more time to meet Targets

Gabriele to provide Karen with the list of exercises where he feels he needs more time to complete

Flexible working for a better work life balance can work from home

Gabriele is currently working from home. What else would Gabriele want to have in place to ensure a good work life balance

Equality act 2010 is likely to apply, and I recommend to consider managing disability related sickness separate to sickness absence management

I believe Gabriele has another grievance to deal with this issue

Recommendations from September 2021 Occupational Health Report I recommend that a Stress Risk Assessment is done at work as work related stress has been cited. The assessment tool can be found on Freenet, in Policies, “Staff wellbeing and Managing Stress Policy”. The completed assessment should be reviewed with management and will help you to identify risk to the employee’s health. Additionally, it will guide management on appropriate measures to put in place to prevent or to reduce stress related risk.

As above Gabriele has agreed for the Health & Safety teams to visit his home to carry out the assessments.

[...]

Will be moving to Stage 2 of the Long Term sickness absence policy. Date agreed Friday 3rd December 2pm via teams.

[...]

Gabriele talked about the fact he was unable to secure any appointments with the NHS re his surgery. He has been cancelled 4 times to date which is very frustrating. Jim talked about the possibility of a phased return to work. Gabriele make it very clear that what without the surgery that would not be possible. Currently struggling to sit or stand and any prolonged period.

46. There then followed an exchange of emails and documents between Ms Hamilton and the Claimant in which Ms Hamilton sought to understand that was causing the Claimant stress. Key parts of that correspondence are set out below (pages 642, 657, 679-682, 702-704). There was also correspondence between Ms Hamilton and the Claimant over this period regarding his health status and operation and between Matt Hall (Head of Health and Safety) and the Claimant. In an email of 29 November 2021 (page 658) Mr Hall commented:

“Cushion – The clinical team suggested a proper cushion to aid circulation but have not defined what this is. Given the chair has cushioning we would not normally recommend anything extra as I would be concerned it could make things worse. If you discuss with the clinical team or OH what might be appropriate. Though I hope that standing more frequently will help prevent problems also We discussed standing desks, at the moment you are not able to remain in one position long enough for this to be a useful option. But it is something that could be considered in future”.

47. The other emails we make specific reference to are as follows:

From the Claimant to Ms Hamilton and Mr Mansfield (the Claimant’s trade union representative)

Sent: 13 November 2021 16:22

Subject: Stage 1 meeting 21st November 2021 - JD and Stress risk assessment form

Hi Karen,

As discussed in our stage 1 meeting on Thursday, I have started to review the JD and Stress risk assessment form you sent me because it’s been playing on my mind and I cannot stop thinking about it and sleep at night. I have reviewed my notes, emails etc. and I have the following comments to make.

I can see the JD you sent me is incorrect and out of date. Also it states on your copy of the JD that this is the JD for a Band 8a but this is also incorrect. The JD that I was given when I joined the RFL (which appears to be the same as yours apart from it stating band

8a) did not state a banding because it was in the process of being updated/changed by Lubna.

This was something I brought up with Lubna when I joined because I had questions about my JD and wanted to further clarification about my duties and responsibilities etc. Lubna told me the JD and Treasury Policy was being updated and I should focus all my attention on Accounts Receivable (cash collection, dispute resolution, processes and procedures, staff management, IT & System issues, improvements etc.) and not to worry about the JD and Treasury because Zewdi, Sana, Phil and Lubna would continue to manage Treasury function and would update the policies and procedures. Whenever I spoke to Zewdi about the Treasury Policy (its processes and procedures) Zewdi would get upset, so Lubna asked me to leave this with her.

My JD was brought up again when Mark Boyer reviewed all the JD's back in 2018. I had a meeting with Mark about my role and we compared it to my JD. I was told the reason why there was no banding mention on my JD and Mark's copy of my JD was because this was the JD for Head of Accounts Receivable & Treasury role when it was initially going to be a band 8b. I was told that my role had changed before I joined and it was no longer going to be a band 8b but an 8a because there had been changes and some of the duties and responsibilities were no longer to fall under me. Yet again my JD was not updated but Lubna did meet with me and clarify my role as "Head" by instructing me to let Sonia manage AR and Stuart to manage Treasury and my role as "Head" was to oversee the departments and to monitor, guide, support, lead, set goals, delegate, provide training and develop and improve the department.

I also brought this matter up again when I was having issues with Sonia back in 2018/2019. In fact, I requested for my JD to be updated on the Facilitation & Mediation Referral Form and again in the Mediation meeting Sonia and I had in early 2019 because "Role Clarity Issues" (i.e. duties and responsibilities etc.) was causing us issues and was one of the "reasons for referral" (please see below). In the Mediation Outcome Report sent by the mediators, it stated "As a recommendation, the mediators have suggested that LD review both parties job description to clarify and overlap in role and review the job titles as appropriate". My JD was not updated but I did request further clarification on this and I was told by Lubna that I had the final say in decision-making but I needed to empower others (i.e. Sonia and Stuart) in order to deliver their teams agreed departmental (AR & Treasury) targets, goals, objectives etc. and for me to help them when needed and not to forget that Sonia was Head of Accounts Receivable.

As requested, I will begin to review the JD next week and I will identify the area I would like reduced and changed, and I will also complete the Stress risk assessment form.

From Ms Hamilton to the Claimant and Mr Mansfield

Sent: 17 November 2021 11:01

Subject: RE: Stage 1 meeting 21st November 2021 - JD and Stress risk assessment form

Hi Gabriele

So that we are clear, my ask is for you to tell me what elements of your current role you feel is causing you stress. As I said at the meeting that isn't a task myself or Laura can perform for you. Only you can assess the stress effectively.

I have accepted that your JD may not be up to date. I have already stated that that JD was the only one I could find. If you have another version, then please share. Please remember the ask is for you to document the specific tasks that you do on a regular basis so I can review and identify what reasonable adjustments can be made to improve the situation for you.

As you know, I have been involved with you and your team since March 2020 and this is the first I am hearing of any issues with your JD other than it being out of date. but happy for your JD to be re-evaluated moving forward.

My only other comment is this; I am one of the many mediators in the Trust. Mediation is a process used to resolve difference between two individuals in this case you and Sonia. Not for JD clarification around roles and responsibilities. This would not have been the right forum and I would like to think the mediator told you that at the time.

Regards

Karen

From the Claimant to Ms Hamilton and Mr Mansfield

Sent: 18 November 2021 09:08

Subject: RE: Stage 1 meeting 21st November 2021 - JD and Stress risk assessment form

Hi Karen,

In our meeting you asked me about my JD and what elements of my current role I feel is causing me stress. As I stated in the meeting, I had not read my JD recently but I knew it was incorrect and out of date because I had brought his up previously with Lubna etc. All I was trying to say is that I had highlighted this previously on more than one occasion.

Also in our meeting I said that it was not the JD that was causing me stress but management (Hameer and Karen) demands and

expectations (I notice this has not been logged in the meeting notes). Things have changed a lot since Lubna and Phil left. I no longer have the support and understanding I once had. The management style is completely different i.e. management is more aggressive, results driven and less supporting and understanding to staff needs. The overall atmosphere is a lot worse. Management are very negative (you are criticized especially if you view your opinion or say the wrong thing).

Trying to tell your managers that they have set unrealistic expectations isn't easy, especially when they are not interested in listening to you and just want the work done (i.e. the reports etc.) on time whatever the reason. I've tried to voice my concerns because I feel I'm being pushed (pressurised) to do more (too much) and I'm feeling overwhelmed, because the deadline are too tight or the task is beyond my capabilities. But instead of listening to me, it soon turns into a performance issue.

You are left with no choice but to work longer hours and over the weekend and this becomes the norm. To make things worse it's the way you are spoken to and made to feel, as if you are not good enough. This is a form of verbal bullying by using hurtful words, mean comments, insults, threats to upset and control you and others. The emotional strain (bullying) of having to speak to that person again is concerning because of the intimidating behaviour and being unsure what they are going to do or say (or reveal things you have told them in secret because they have sometimes act like a trusted friend or colleague). They appear to not care and enjoy criticizing your flaws (faults) in a disapproving way and harming your reputation and self-confidence. This affects your morale and trust in management because you feel victimised, harassed and insecure in your job, and begin to question your place within the trust.

It then becomes stressful and extremely frustrating to work with a manager who has unrealistic expectations and when you try to explain yourself and you are told "if you can't stand the heat, get out of the kitchen", "everyone is replaceable", "we all do long hours" and "this is the NHS and we are not going to change". The message from Karen (management) is clear - If you don't want to do the job etc., there are hundreds of people who are desperate for work and we'll go find them. This response and attitude tells you management do not care about their staff and health and wellbeing and they are only interested in results. This response tells you lot about your manager and the Trust. It's depressing, you feel drained and you feel you are being set up for failure and you begin to lose respect and trust in your manager.

Finally, it gets to a point that you feel you are being bullied and harassed because of the way you are spoken to (in an aggressive and unpleasant manner), the facial expressions shown, the lack of interest in listening to your concerns, the way they demand the work

and the consequences if it's not met i.e. the deliberate intention to put you in fear of your job. Forget the employer's duty of care to its staff because management are not interested. You are forced to work harder, work longer hours, take on more work because management are only interested in results and not staff welfare.

Eventually, the stress and pressure of the increasing workload makes you unwell and is the cause why you are signed off work for work related stress etc. You eventually feel burnt out and become very ill which then brings on more stress from HR etc. Management are simply unwilling to admit that they are setting unrealistic targets and expectation from employees and this is unfair.

You want to know the reasons behind my burnout and stressors at work. Below are some of the reasons that come to mind:

- I feel I have little control. I'm not able to make decisions about my schedule and workload for me and my department.*
- Targets, deadlines, prioritise and goals constantly change.*
- I'm unsure about my expectations (i.e. management demands and expectations). I need to know what management expect from me, my role/position and department.*
- I want to know how management are going to measure me, my tasks, and my department performance.*
- I want to a clear job description of duties and responsibilities etc. for myself and Sonia's position (i.e. Head of Accounts Receivable) to avoid any misunderstandings (Role Clarity Issues)etc.*
- A poor work culture. Staff/team conflicts, the attitude and morale of staff is very low and management micromanage you.*
- A lack of work-life balance. I give a lot of my energy and time to work and my family and personal life suffers.*
- I do not get enough time to relax and recharge my batteries because work is always on my mind and I struggle to get a good night sleep.*
- IT and System issues. This causes delays and is very frustrating.*

As stated in my previous email, I have started to review the JD and Stress risk assessment form you sent me and I hope to get these completed once I'm feeling better. I spoke to my GP yesterday regarding how I was feeling and I have made an appointment to see him in two weeks.

From: Ms Hamilton to the Claimant and Mr Mansfield

Sent: 24 November 2021 11:57

Subject: RE: Stage 1 meeting 21st November 2021 - JD and Stress risk assessment form

Hi Gabriele

Some of concerns below I will not be able to respond to, so can I please ask that you discuss those with your GP.

With reference to your JD, I have already said I accepted that your JD may not be up to date. I have suggested that you document the specific tasks that you do on a regular basis that cause you stress so I can review and identify what reasonable adjustments can be made to improve the situation for you.

Hammer and Karen were not logged in the meeting notes as that was not our discussion. You suggested that myself and Laura identify the stressful parts of your workload. I stated that this can only be completed by you.

I refute your statement around support, or lack it. As you are aware I actually started coaching session with you to get you to where you needed to be. You have stated in the past that you were grateful for my input. It saddens me that you now feel differently.

You also told me about the support you received from Laura and I believe Hameer especially around month end.

Allegations of bullying are taken seriously in this Trust and by me. Can I please ask you to document this in line with Trust policy link here to trust policy here with guidance in what needs to happen

We have never had a conversation where those statement were used. These are very serious allegations and needs to be investigated, Can I suggest you please document as above. Using the bullying and Harassment policy.

With reference to the reasons behind your burnout, as I have said above I need to understand the cause and the specific duties you believe are unreasonable , then they can be addressed.

Regards

Karen

From the Claimant to Ms Hamilton with Mr Mansfield

Sent: 20 December 2021 10:09

Subject: Information Requested - JD and Stress risk assessment form etc.

Attachments: # stress-risk-assessment-form (from Karen H)..docx

Hi Karen,

Sorry for the delay but I've had (and am still having) issues with my laptop and not being able to access my archive folders and shared drive. This means I've not been able to access my notes/files, but I tried my best to provide you with the information you requested. Therefore, please find below:

- 1) Changes/updates to my job description;
- 2) What I find stressful at work;
- 3) Stress Risk Assessment form;
- 4) Reasonable adjustments the Trust could make;

1) Please find below my recommendations (changes/updates) to my job description. As explained previously, the JD you sent me was for a band 8b. Since joining the RFL a lot of my Treasury duties was being done by either Lubna/Phil (such as applying for extra bank accounts, development of the trust cash and investment policy, decisions on where to invest/borrow monies, relationship with external bankers and cashflow forecasting etc.) and Zewdi (Treasury Manager) and then Stuart, as instructed by Lubna. I did question this when I joined, when Zewdi left and we were recruiting for a new Treasury Manager, but this never changed because this was the process put in place by Lubna and the rules we were told to follow (how things were to be done).

Also, we had to ensure that my role and the Treasury Manager's role had clear segregation of duties and therefore I had been set up differently on the system to Zewdi/Stuart/Sana (e.g. I never had the authorisation rights to do journals and I had no access rights to certain screens in efinancials, shared drives and folders etc. and when making payments - I'm set up as the authoriser and cannot make payments). Also, we had to take into account that we were only allowed one main person to contact the bank relationship manager (which has always been the Treasury Manager).

My role as "Head" was to oversee the departments and to monitor, guide, support, lead, set goals/targets, delegate, provide training, develop and improve the department. I was told to focus on AR/Billing, Credit Control, Cash Collection (and increasing telephone calls), Dispute Resolution (and setting up a dispute log), Reviewing Processes/Policies, Projects (with Andy Stevens, Mark Boyer, EY, Jacqui Robins etc.), working on SBS cash

collection/disputes/reporting with Linda and Michael, recovery of debt (via external agencies), negotiate complex disputes, data cleansing, producing weekly and monthly reports, departmental meetings, staff appraisals, MaST Compliance, recruitment and staff management etc.

JD for Head of Treasury and Accounts Receivable

This role is responsible for the day-to-day management of the Treasury and Accounts Receivable function, including line management of 2 members of staff (Head of Accounts Receivable and Treasury Manager) and to monitor, guide, support, lead, delegate, and develop and improve the department.

The Department Head's responsibilities includes:

- Ensuring that accounts receivable, credit control, banking and treasury matters are recorded and executed in a timely, accurate, and compliant manner.*
- Working to ensure treasury's strategy is aligned with the rest of the trust.*
- Responsible for ensuring approval processes, policies, procedures are implemented and adhered to across our Trust.*
- Delivering regular reporting on treasury and cash management, and presenting findings to staff and other stakeholders.*
- Managing process controls compliance and data analysis to drive insight.*
- Ensuring that staff performance is managed appropriately and that fair workload allocation processes are in place.*
- To provide professional leadership and management, and developing a culture of excellence, continuous improvement, co-operation and respect.*
- Liaising with existing staff members, clients, and other stakeholders in order to achieve deadlines, set goals, objectives and targets.*
- Observing, analysing, and offering suggestions to improve on current operations.*
- To contribute to the development and maintenance of the Trust policies and core values.*
- Scheduling meetings with staff and other stakeholders.*
- Support and advise with cash collection, dispute resolution, negotiate complex disputes and approve payment plans (instalments).*
- Assisting with recruitment and training.*
- Meet with teams to review ledgers, performance and discuss any issues.*
- Sit with staff 1-2-1 and discuss any concerns, issues etc.*
- Establishing professional relationships with clients, auditors, staff, and other stakeholders.*
- Successful completion of Internal and External Audits for the department.*

- *Customer and patient complaints are dealt with promptly and professionally.*
- *Finalise HealthRoster and create and approve weekly Bank Staff timesheets in HealthRoster.*
- *Produce month end reports including KPI & Trend Report spreadsheet.*
- *Authorise expenses claims.*
- *Approve invoices received relating to PO number raised by us.*
- *Review contracts and agreements.*
- *Approve accounts (debts) passed to collection agencies.*
- *Ensuring all health and safety, as well as Trust policies are followed by staff at all times.*
- *Attending workshops, lectures, and training sessions wherever possible.*
- *To assist in maintaining a satisfactory level of general housekeeping within the department*

2) You asked me to list “what I find stressful”. As explained, it’s not primarily my duties and responsibilities because I feel with the right amount of time, training, guidance and support I’m able to achieve these. I thought I had already outlined this in my previous emails, but the main work that has caused me stress are the reports I was told to take over from David Mallagh.

Below are the main causes (in no particular order):

- *Excessive pressures and demands to meet rising expectations but with no increase in job satisfaction, appreciation or return.*
- *Lack of support, training and control over how I do my work (having to take on more work without question or being asked)*
- *Fear of consequences of not meeting deadlines, goals and targets.*
- *Pressure to work at optimum levels all the time.*
- *Long hours, changing/tight deadlines, and ever-increasing management demands.*
- *Criticism (fault finding) and negativity from management regardless how hard I, my department and team work.*
- *The way I’m spoken to and made to feel, as if you are not good enough.*
- *Changes in management (completely different management styles). Management can quickly become unpleasant, harsh and unfriendly which makes you feel nervous around them.*
- *Unable to take breaks or lunch due to workload.*
- *Risk of organisational change and job losses (mergers, acquisitions, restructures or downsizing).*
- *Spending months on projects, then consultants recommendations are ignored or not used (Andy Stevens, Mark Boyer, Jacqui Robins, EY – automation of large reports).*
- *Karen says things like “Everybody's replaceable”. Not the most motivating or inspiring thing to hear i.e. your boss doesn't seem to care if you leave.*

- *Management (Hameer) not interested or concerned about my wellbeing and not acting on OH report recommendations i.e. not reading my OH reports, not performing a stress risk assessment or making any reasonable adjustments to help me with my stress and disability.*
- *Lack of respect and a disregard of my disability e.g. between 23.01.20 to 20.03.20 whilst I was working from home Hameer tried to remove my flexible working arrangement by forcing me to work from the office full time or get myself signed off sick.*
- *Lack of trust - recently, Karen asked me for proof of my disability even though I had disclosed/informed the RFL of this before I joined, I had been assigned a disabled parking space by Enfield Council when I joined, it was logged on ESR, I've had a blue badge for over six years, I've used a walking stick/crutches daily for years, I have a key to the disabled toilets, and I've had a different fire evacuation route and procedure for disabled staff in place with Adrian Laugée (Facilities Satellite Manager) for the past five years.*

I have the feeling my director (Hameer) does not like me or respect me. Our relationship did not start off on the right foot (between 23.01.20 to 20.03.20 whilst I was working from home Hameer tried to remove my flexible working arrangement by forcing me to return to work in the office full time or get myself signed off sick, and then by telling to work whilst I was signed off sick). Also, I feel he's not interested in building a positive working relationship, never asks how I or my team are doing, I feel that he is always probing me and trying to catch me out, and I feel he has a underlying lack of trust and respect in me, my position and my department.

The stress I have been feeling since Lubna/Phil's departure (over the past two years) has led to me having more sick days, feeling burnt out (feeling worried, drained, and overwhelmed), disengaged, and causing a strained relationships with management. I also feel we had a poorly managed change over from Lubna/Phil to Hameer/Karen due to their completely different management styles. Lubna was a very good communicator and helped lead her teams to meet deadlines etc. She was approachable, happy to have meetings and conversations with staff that made them feel relaxed and part of the process. Phil was hands on and would spend time with you and show you how to complete a report or task (by giving hands on training and detailed notes). Finally, management failure to observe the welfare of staff (the stress/anxiety being caused by the demands in the workplace), and lack of concern and action to start a workplace investigation (stress risk assessments) has made my health worse e.g. Lubna was more concerned and caring about staff welfare and when she saw I was in pain/discomfort with my legs/disability, Lubna spoke to me and sent me to OH for help. Based on the OH report etc. she later approved me having a flexible working arrangement.

3) Stress Risk Assessment – please see attached form.

4) Any Reasonable Adjustments that the Trust could make – see recommendations/suggestions below (in no particular order):

- *To work fewer hours per day or days of work (part time).*
- *Change to working hours - having a longer working day therefore allowing me to take more/longer official breaks from my desk during the day.*
- *Have flexible working and better work-life balance e.g. allow me to work from home.*
- *Make changes to tasks, duties or responsibilities (reduced workload, duties or reallocation of duties/tasks to a colleague).*
- *Reduce the stressful working environment (and reduce mental health problems).*
- *Providing additional equipment – I will speak to OH regarding the seat cushion due to my poor blood circulation.*
- *Reduce the amount of work being escalated to me.*
- *Give clear written instructions (objectives, targets, goals, deadlines etc.) to avoid confusion.*
- *Job performance – make a ‘reasonable adjustment’ to take into account my disability.*
- *To have regular 5– 10 minute breaks every hour for circulation due to my disability/health condition.*
- *A change of role to an OH-sanctioned job.*
- *More support from management – reduced targets, deadlines etc.*
- *Provide support during times of high stress demands.*
- *Change how things are done – update procedures and processes.*
- *Find another permanent position for the employee that still involves some management tasks, but was not as intense as the previous job.*
- *Redeployment.*

During my 5+ years at the Royal Free London I have become very ill/unwell and have developed illnesses I’ve never suffered from before. This has put a lot of strain and pressure on my wife and family and has changed my life in a bad way, both mentally and physically i.e. I’m no longer able to do many things now that I was able to do before I joined.

I am extremely concerned that I am no longer able to work in this environment/atmosphere and I’m afraid I will become seriously ill again just like before. My hospital (ulcer clinic nurses) and GP had already stated (as early as January 2020) that work related stress was impacting on my disability and making me ill but no risk assessments, changes (reasonable adjustments) were made or have been made. I reported this immediately and on many occasions but nothing changed and this resulted in me being admitted into hospital and having to take further long term sick with reduced pay. I do not think the management style, demands, pressures, changing deadlines and priorities are going to change just for me, and therefore I would be grateful if you could let me know if we have any other suitable roles within the Trust on a

permanent basis (full or part time) which takes into account my disability, because I cannot risk or afford to become seriously ill again.

48. On the 24 December 2021 the Claimant finally had his long overdue testicle hydrocele operation and after recovery felt able to consider a return to work at the end of January 2022.
49. Ms Hamilton had herself been on sick leave since 20 December 2021 but told the Claimant on 12 January 2022 that she would review his response of 20 December 2021 (as referenced above) (page 696).
50. On 20 January 2022 Ms Hamilton replied to the Claimant as follows (copying the Claimant's Trade Union representative, Mr Mansfield) (page 702-704):

Subject: RE: Information Requested - JD and Stress risk assessment form etc.

Hi Gabriele

As discussed earlier you sent this to me on my first day of my annual leave; I was not back in the office until 10th Jan. I believe I responded on the 12th acknowledging receipt of this email.

This final process was for you to identify your work related stresses. I accepted that your JD was not up to date so asked you to produce a list of tasks that you found stressful. I did not ask you to re write your JD. There is a process in the Trust for JD reviews, this cannot be addressed as part of your sickness review.

What you find stressful

These points need to be part of one document, the stress- risk assessment document. As an example, you talk about your flexible working agreement, surely that should be mentioned under "existing workplace precautions"?

We also agreed at the Stage one sickness review meeting that we would focus on current issues related to this period of sickness.

With reference to your comment around lack of Trust from me, I refute this. The conversation we had was about the recent policy release around disclosing disability to your manager so they could help staff work as effectively as possible. You kept referring to a disability register, we later agreed that there is not central register. I asked about your disability in order to see what I could do to assist your return to work. as the time you were happy to disclose.

The assessment form

With reference to the risk assessment form you completed, I have attached for your attention the associated policy. As you are aware, this form should be completed with me present. You have documented on many occasions that you find it stressful talking/communicating with me; so we agreed that you would complete the document yourself. Can I please ask you to review what you have written in line with Trust policy guidance.

The idea being that you identify the stress, what action has been taken to date and what further action is needed. I note you have only filled out one column we did agree that you would complete the form on your own for review and agreement. Hopefully the policy will assist you.

With reference to the entries you have stated under the column headed "Specific causes of workplace stress identified within each category", all allegations need to be substantiated, so it would be helpful if you could provide examples. Along with the precautions that have already been put in place

I am also concerned that you have again stated that you have been bullied and harassed at work. I take these allegation seriously and urge you to report these allegations so they can be investigated in line with Trust policy. Link to policy for you <https://freenet2.royalfree.nhs.uk/documents/preview/89443/Bullying-Harassment-Policy-and-Procedure->

Reasonable Adjustments

We have a meeting planned for Thursday 27th January. I believe we already accommodated the OH recommendations bar the work related stress. Can I suggest we pick this up at that meeting.

Regards

Karen

51. The Claimant replied at 21:33 that evening to say (page 702):

Hi Karen,

I have not and was not trying to re-write my JD. As requested I have reviewed my JD and listed my recommendations (changes/updates) which is what I thought you requested, as per your emailed dated 17th November 2021 at 11:01 (called - Stage 1 meeting 21st November 2021 - JD and Stress risk assessment form).

In your email you said "I have accepted that your JD may not be up to date. I have already stated that that JD was the only one I could find. If you have another version, then please share. Please remember the ask is for you to document the specific tasks that you do on a regular basis so I can review and identify what reasonable adjustments can be made to improve the situation for you.

Also, you asked if I had another version (which I don't) so I thought outlining a JD for Head of Treasury and Accounts Receivable might be useful and helpful if you were considering updating my JD in the future.

It's my wife's birthday today so I will try and look at the rest of your email next week.

52. On 27 January 2022 there was a meeting between Ms Hamilton and the Claimant to discuss completion of the work related stress form (page 720). Mr Mansfield from the Claimant's Trade Union and Ms Laura Crutwell (Employee Relations Advisor) were also present. The meeting appears to have in fact taken place on 28 January 2022 (pages 729 – 736).
53. On 31 January 2022 Ms Hamilton sent the Claimant the following message (page 756-757):

I hope all is well with you. I was just checking in to see if you are ok as I was expecting to hear from you on Friday following our attempts to go through the stress risk assessment.

As you are aware, we agreed to postpone the Stage 2 meeting by one week as you are hoping to return to work once you have clarity from your GP today. We therefore agreed to meet on Friday 28th at 1:30 to go through the stress risk assessment so we could identify the adjustments you would like to see before you could return to work.

Unfortunately on Friday you have a lot of technical difficulties with your new laptop and could not get teams works. We ended up speaking via WhatsApp video. Due to the technical difficulties, the hour I allocated to complete the form was up and I needed to attend another meeting.

We agreed that now you knew what was needed to complete the form, you would work on this and we would meet at 4pm to review.

At 4pm I called via WhatsApp video and you informed me that you spent most of the afternoon talking with SBS regarding your sick pay entitlement. You advised that you would completed the document today and send over me Friday night. once completed.

Unfortunately, as of sending this I have not received any documents from you and I am emailing to see if all is well and if you had completed the form. I'd be grateful if you could send this to me asap so we can support you in returning to work as soon as possible.

I look forward to hearing from you, and will await our Wednesday update as normal. I have included Jim and Laura for their information ahead of our reconvened meeting on Friday.

54. The Claimant replied just over an hour later on 31 January 2022 to say (page 756):

I'm confused. Your email is sending mix messages. One the one hand you are saying I failed to have the meeting with you and on the other hand you say we had the meeting on Friday via WhatsApp.

We had our meeting but unfortunately we were not able to complete the form due to technical issues. We then spoke after your meeting on Friday and I told you I had not finished completing the stress risk assessment form and that I would work on it over the weekend, as I had already been at my desk for a few hours without moving.

As explained in our meeting last week, my appointment today with my GP was to discuss the results of my blood test etc. I had my telephone appointment with my doctor this afternoon (at 1.25pm) and my GP said he's still happy for me to return to work and to leave me in the hands of occupational health regarding my work related stress. He said I must ensure that occupational health monitors my stress and that the stress risk assessments and reasonable adjustments etc. are done before resuming duties.

I'm not sure why you need a Wednesday update regarding my condition when I'm technically back at work as from today (my sick note ended on the 29/01/22). You told me on Friday that I would be on Medical Leave until I receive the medical report from my ulcer clinic, which was requested by occupational health. Hopefully this will be sent to me later this week.

Finally, as requested in our meeting on Friday, please find attached my amended Stress Risk Assessment form. I tried my best to complete this form for you, as instructed. I have spent a lot of time (over 12 hours) working on this on Friday afternoon, on Sunday and today and I hope this is good enough for us to meet.

55. Ms Hamilton understandably moved to Stage 2 of the attendance management process with a meetings in December 2021 (pages 670-674) and 27 January 2022 (pages 721-727). We accept her evidence that at each stage of this process Ms Hamilton agreed to extend the review periods (pages 632-639, 772-773) and at each stage of the process, occupational health reports were sought and considered (pages, 435-437 493-495, 628-630, 713-719, 1157-1163, 1526-1527, 1572-1 578) by her. We accept her

evidence that these reports formed the basis of discussions at the attendance management meetings.

56. There then followed a further exchange of emails on 1 and 2 February 2022 between the Claimant and Ms Hamilton (pages 774-776):

1 February 2022 8:33 with Claimant response in bold at 10:06:

Hi Gabriele

We postponed the Stage 2 sickness meeting for the following reasons

- You had a GP appointment on the 31st January with your doctor. Based on that discussion and your result your GP would decide on whether or not you are well enough to return to work. We now have your comments below*

I did not say this in our meeting last week. I said in our meeting that my sick note was ending on the 29th January and I was coming back to work as from Monday. As explained in our meeting last week, my appointment for the 31st January 2022 with my GP was to discuss the results of my blood test etc. I had my telephone appointment with my doctor yesterday and my GP said he's still happy for me to return to work and to leave me in the hands of occupational health regarding my work related stress. He said I must ensure that occupational health monitors my stress and that the stress risk assessments and reasonable adjustments etc. are done before resuming duties.

- Recent occupational health report states that they need a report from a specialist before they can allow you to return to work. You said that you expect that report this week.*

As explained in our meeting last week, I have requested this and I received an update last week informing me that they are collating the information and they hope to have it this week. Unfortunately, I cannot speed up this process and I will update you as soon as I get any news. You said that OH require this report before I can resume work and therefore I would need to probably go onto Medical Suspension until occupational health receives the medical report and allows me back to work.

- Work related stress form. We agreed to meet on Friday at 1:30 to complete. You had technical difficulties, but you did agree you would complete on Friday night. I said as long as I got the completed documents in my inbox first this Monday I can start that review process. With reference to the document, can you please confirm this is complete. I note there are still quite a few specific causes of stress that you have identified but have not addressed in this form.*

We then spoke after your meeting on Friday and I told you I had not finished completing the stress risk assessment form because I had received a long call from NHS SBS and that I would continue to work on it on Friday and over the weekend, as I had already been at my desk for a few hours without moving (and my legs were hurting). As promised I have completed this form for you the best I can. Unless I do not understand this document or process, this form should have been completed by you and I presume the form is only completed once we've had our meeting.

Please can you tell me what you are referring to when you say "still quite a few specific causes of stress that you have identified but have not addressed in this form".

- *There was no agreement or discussion around your sick period stopping on the 29th January 2022.*

Not sure what you mean by my sick period stopping on the 29th January. All I said was my sick note ended on the 29th January 2022 and I was planning start work on Monday 31st January. You said this would not be possible as I could not start until OH received the medical report from my ulcer clinic, and until then I would probably need to go onto Medical Suspension.

With reference to our meeting on Friday, yes, you did ask me about medical leave and my answer was I don't know we will have to find out. I did not confirm anything to you on Friday I would appreciate it if you can confirm the status of the stress form.

I'm not sure what you want me to confirm. Please can you be more specific?

Look forward to meeting up this Friday.

I'm sorry for any misunderstandings but that's why I requested for Jim to join the meeting, so to avoid this. I did call Jim after our meeting and Jim told me that although my GP says I'm OK to return to work, OH needs the report from my Ulcer Clinic and until they receive the report I would be going onto Medical Suspension or Garden Leave on full pay.

I look forward to Friday.

2 February 2022 10:03 from Ms Hamilton (page 782)

I have reviewed the Stress Risk Assessment form. Your specific causes of stress need to be tangible and substantiated with actual examples of specific issues you are experiencing. Most of your comments are just not specific enough for me to adequately review your workload to reduce your stress and time limitations.

I have attached a schedule which I would like you to complete and return to me before our meeting on Friday. Essentially this schedule covers a typical working month for you.

Guide to complete

Working Day: I suggest you use the working days for the monthly reporting cycle

Specific Task: Detail the task(s) you are performing on that day

Requested by: This can be you or anyone else in the business

Target Audience: who is it for

Frequency of request: Can I suggest if the request is daily then add to each day so we are clear it a repetitive task

Estimated time: self-explanatory.

Task in JD

Stress cause

Stress scale

What causes the stress

What is your proposal to manage that stress

Please do let me know if you need further clarification.

57. Attached to Ms Hamilton's email of 2 February 2022 was a spreadsheet and we understand, and think it was reasonable, for Ms Hamilton to have taken this approach given our finding that the Claimant had been reluctant to talk to Ms Hamilton and had not given Ms Hamilton anything tangible to work on to address the stress the Claimant was saying he was being caused. Further emails were then exchanged including the following:

2 February 2022 11:02 from the Claimant (page partially on 778 and then at 334/335):

As requested in your email dated 31st January 2022, below is my "Wednesday update as normal" regarding how I'm feeling etc.

As I said in my previous email, I'm not sure why you need a Wednesday update when I'm technically back at work as from the 31st January 2022, as my sick note ended on the 29/01/22. Also, you told me in our meeting last Thursday that you had read the latest OH report and I could not resume work until OH had received the medical report from my ulcer clinic. You said as from Monday this week I would probably need to go onto Medical Suspension.

On Monday my GP called me to discuss my blood test results. At the same time we discussed "how I was feeling" and I informed my GP that I had returned to work. My GP said that was good but my mental wellbeing needs to improve and he's still happy for me to return to work and to leave me in the hands of occupational health regarding my work related stress. He said I must ensure that occupational health monitors my stress and that the stress risk assessments and

reasonable adjustments etc. are done before resuming duties.

Just two days into returning to work I'm already finding that nothing's changed and we are still having the same misunderstandings between us (that's why I requested for Jim to be in the meeting on Friday, so to avoid this happening).

In our last conversation last Friday, I told you I had not completed the form and that I would continue to work on it on Friday and over the weekend, as I had already been at my desk for a few hours without moving. I do not understand the urgency of this report i.e. it needed to be completed on Friday or you must have it in your inbox first thing Monday, considering it is nearly two years overdue.

Please do not forget, Hameer first wrote to OH in February 2020 saying I was suffering from work related stress, and as per the Staff Wellbeing & Managing Stress Policy (I have abbreviated it below) management should have performed a stress risk assessment and put into place action plans to address any issues:

- *s1.2 Under the Management of Health and Safety at Work Regulations (1999) employers have a statutory duty to regularly assess potential risks to the health, safety and welfare at work of their employees. This includes minimising the risk of stress-related illness or injury to employees.*
- *sS1.3 The Trust recognises that work-related stress is an issue and acknowledges that prolonged exposure to excessive stress can be a risk to the mental and physical health of employees*
- *s2.1 The aim of this Staff Wellbeing and Managing Stress Policy is to enable staff at the Royal Free London NHS Foundation Trust to identify stress and access support. It is recognised that stress in the workplace is a serious issue, which can cause individuals to suffer clinical symptoms, both mental and physical. The Trust has a responsibility to protect its employee's mental and physical health and is committed to providing a safe and healthy working environment.*
- *s2.2 The Trust will offer support to all staff that experience work-related stress. This includes employees who have been exposed to on-going stresses in the environment.*
- *s5.1.2 Directors will monitor factors that might suggest there is a problem with stress-related illness.*

s5.2.2 Managers will conduct departmental stress risk assessments annually (this does not negate the managers responsibility to undertake stress risk assessments on individual employees when necessary) and put into place

action plans to address any issues which may be identified (see appendix 4).

- *s7.2 The wellbeing of staff is addressed in the appraisal process. In my last appraisal dated 30/07/2020 it states “I’ve been back at work for several weeks and I’m*
- *waiting for my Occupational Health report which was performed last week”. The OH report which was sent advised management to perform a stress risk assessment etc. This was never done*

I’m now being asked to complete (all the columns) and amend the stress risk assessment form, which I originally sent to you in December 2021. This took me a further 12 hours to complete and as my wife said to me “you are already back to working weekends”. As I stated previously, in the Staff Wellbeing & Managing Stress Policy it states that Appendix 4: Stress Risk Assessment Form needs to be completed by the manager in discussion with the staff member, i.e. not me. I was willing to complete part of the form i.e. specific causes of workplace stress, to help you, so I do not find it helpful to complain about how I completed it.

I have already said this previously, that I do not find working for Hameer and Karen easy or rewarding especially when you are made to feel that you are always doing something wrong and you need to watch your back and every word you say. Working and feeling this way is hard and stressful, and it makes it very hard for your mind to focus and work correctly.

I hope this outlines how I’m feeling just two days back at work

2 February 2022 11:08 from the Claimant (page 781):

This is another form for me to complete. I will have a look at it but is this form part of the Staff Wellbeing and Managing Stress Policy which we are following?

2 February 2022 11:21 from Ms Hamilton (777)

Just so that we are clear, you have not returned to work. We have not fulfilled the requirement in order for you to return.

Can you please ensure you are not performing any work related duties.

We will pick up on Friday.

2 February 2022 11:32 from the Claimant (page 777):

You say “Can you please ensure you are not performing any work related duties”.

I would like to say that since going off on long term sick at the end of April, I have had to spend hundreds of hours having to read emails, reply to emails, read policies, speak to people, fill forms, attend meetings, fix errors, fix I.T. issues, return my laptop to Enfield, complete some MaST reports, reset my passwords etc.

When I was signed off sick with work related stress, my GP told me that I needed rest, not to work and no stress. This has been impossible because I have had no option but to still worry about work. Nearly on a daily basis I had to write emails (some very long) to try and defend myself because I have felt hounded and made to feel I was doing something wrong. Apart from Jim, I do not feel I have received any real support and I was hoping returning to work this week was going to be a positive thing.

58. On 4 February 2022 Mr Khalid Hasnaoay (Senior Employee Relations Adviser) advised Ms Hamilton at 11:51 (page 779):

I have had a discussion with Dr Basil which I explained to him the reasons for Medical Suspension and he was satisfied as long as we are following HR process.

As discussed yesterday please follow below steps in today's meeting:

- *Make sure GO still insist that he is fit to return to work*
- *Discuss and complete the risk assessment*
- *If complete successfully please complete a return to work form*
- *Agree phase return for 6 weeks*
- *Agree a date for him to submit his specialist report to Dr Basil*
- *Once the report received by Dr Basil he will arrange an appointment to discuss his health and Ill health retirement*

If you can't agree or you have concerns relating to any of the above then you can support with offering A/L and if not agreed then medical suspension will be put in place until the report is submitted to Dr Basil. I advise to give him 5 working days to submit the report otherwise he will need to submit a fit note.

59. Ms Hamilton and the Claimant then had the following email exchange on 4 February 2022:

From the Claimant to Ms Hamilton at 12:36
Subject: RE: Recent Meetings

I spoke to Jim yesterday regarding the forms that need completing. Asking speaking to Jim, I spent a further 7 hours yesterday and today amending the previous Stress Risk Assessment form I completed, as this form (Appx.4) is part of the Staff Wellbeing Managing Stress Policy.

I hope I have completed the form correctly. Can we discuss this in our meeting later today.

From Ms Hamilton to the Claimant at 13:00
Subject: RE: Recent Meetings

Just off to another meeting

I have had a quick look and unfortunately my response is the same.

There is nothing there that is tangible or specific enough for me to review your work related stress and time limitations.

Hence the reason why I asked you to fill out the form I created for you and return that to me today.

See you at 2pm

From Ms Crutwell to the Claimant and Ms Hamilton at 13:14
Subject: RE: Recent Meetings

Hi All

Please can we discuss this in our meeting at 2pm.

From the Claimant to Ms Crutwell and Ms Hamilton at 13:29
Subject: RE: Recent Meetings

Hi Laura,

I agree. I've tried my best to complete the form for Karen.

I think it would probably be best to follow the trust policy and have a meeting and let Karen complete the form. Karen can then send me the form to double check.

Obviously I would like Jim present, as all of this is not good for my mental wellbeing.

Kind regards,

Gabriele Orsini

From Ms Hamilton to the Claimant at 18:42
Subject: Sickness meeting Actions

Hi Gabriele/Jim /Laura

Please see below the actions we agreed at our meeting earlier today.

- **Sick note.** Gabriele to go back to his GP. We need GP to confirm “1 will/will not need to assess your fitness for work again at the end of this period” . Gabriele has agreed to contact GP and report back.
- **Sick Pay and payment.** Karen has agreed to review the correspondence
- **Stress risk assessment form.** After a lengthy discussion , it was agreed by Gabriele that he will complete the “Monthly tasks” schedule that Karen created for him. In that schedule, Gabriele has agreed to include all tasks that he performs in a typical month. Gabriele can you also please add at the bottom the tasks you only perform at Year/quarter end if different from the typical month. Once completed, Karen will discuss and agree with the relevant managers in Finance.
- **Returning to Enfield Civic Centre .** Karen informed the group that currently finance does not have an agreed allocation of desks to return to work full time. Based on the recent number allocated to Finance Karen believes that we will probably only be able to get staff in the office once or twice per week (at best). The current allocation of desk was 45 but that was reduced significantly after the most recent meeting. The outcome of that meeting was that the desk allocation would be re-drawn. Gabriele confirmed that he was happy to return to Enfield Civic Centre.
- **Occupational Health Specialist report.** Gabriele will continue to chase the relevant consultant.
- **Annual leave.** Karen has agreed to pay Gabriele’s annual leave. With reference to the email, I sent to you on the 25th August 2021 your entitlement for this financial year is [...]

As agreed, I will instruct payroll to pay you 22.17 days’ worth of annual leave. Which will leave you 7 days use for the rest of this financial year or carry forward to 2022/23.

- *We have agreed to meet again on Friday 18th February at 2 pm.*

I think I have covered everything, if not please do let me know.

Have a good weekend.

60. The Claimant completed the “Tasks by working days” spreadsheet and sent it to Ms Hamilton on 11 February 2022 (page 821) saying “*I tried my best to list all the tasks I perform, but it difficult to take into account all the interruptions/distractions and ad-hoc tasks that have an impact.*”.
61. On 16 February 2022 Ms Hamilton contacted the Claimant by email as follows at 16:15 (page 842):

Hi Gabriele

Below are the actions we agreed a few weeks ago. I think we need to postpone our meeting this Friday due to the following.

- You have not fully completed the schedule. I need to understand what your “proposal to manage your stress” is. I emailed you on Tuesday, I have yet to see a response. Just to remind you, this is a reasonable management request. Can I please have this by 9am tomorrow morning.*
- I received an electronic notification from occupational health this afternoon informing me that you have your report, I understand you have 7 days to review before I can see it. So probably not ready for Friday*
- I have seen nothing re the GP fit note*

Can I suggest next week Friday 25th at 2pm or Monday 28th at 2.30

A prompt response needed here

Jim/ Laura, are those dates /time suitable for you?

62. The Claimant replied at 16:40 as follows:

Hi Karen,

In response to your email, can I request the following:

- Completed the schedule/spreadsheet. I will complete the last column (“proposal to manage your stress”) but can I have until the end of the week as I’m not feeling great?*
- I only just had my meeting with OH and I need to speak to Jim and call OH back asap. I have called Jim and left a message on his voicemail to call me asap. Also, I’m not sure what OH report you talking about as I have not yet received a report?*
- Regarding the GP note you requested, I requested this from my GP last Tuesday, but I got a call late Friday informing me that my GP will not issue me will a note unless he sees me. Also my surgery have to get a copy of my phone call I had on the 31st January with my GP. Unfortunately, my GP can only see me on the 25th February due to going on holiday. So, I will send you your GP note as soon as my GP surgery sends it to me.*
- I happy to meet on Monday 28th at 2.30. This will give me time to get the GP note.*

I hope this ok.

63. The same day, 16 February 2022, the Claimant wrote to Ms Hamilton at 17:29 and attached a very detailed completion of the spreadsheet (page 841). On 21 February 2022 Ms Hamilton wrote to the Claimant with a new version of the spreadsheet into which she had spent some time adding detailed management comments. She asked the Claimant to focus on the “Monthly Consolidated Task List” tab to insert his responses to the queries raised by the team. She asked him for his responses by 9am on Wednesday 23 February 2022 to give the management team time to review the Claimant’s further comments. Ms Hamilton commented that, with respect to the Claimant’s comments in the section “Proposal to manage stress”, she had asked for further advice as she did not believe the Claimant’s recommendations would address the underlying concerns the Claimant had raised to her on numerous occasions around his work-related stress. After a number of emails sent back and forth between the Claimant and Ms Hamilton, the Claimant sent his responses on 22 February at 17:12 (page 911).
64. On 27 February 2022 the Claimant raised a lengthy grievance complaining about what he described as his treatment at work causing him undue concern and stress (page 931 and 936 - 959). He was prepared to attend the meeting which had been arranged for 28 February 2022 to discuss the Claimant’s return to work. A Return to Work meeting note for the 28 February 2022 meeting, on which the Claimant provided comments (pages 960 – 964) recorded that the Claimant had been off sick from 29 April 2021 to 28 February 2021 and noted that Ms Hamilton had been trying to understand how the Claimant’s work related stress could be addressed but this had not been achieved (despite the efforts we have recorded above). We have taken into account the Claimant’s evidence and the comments he made in that form but find that:
- the Claimant had consistently refused to fill out a stress risk assessment form and had taken a too inflexible and unreasonably stance in initially holding the line that his manager should complete it (we find that it was for the Claimant to tell his manager what he found stressful);
 - when he then used the form in December 2021 and January 2022 the Claimant did not, in a way that could reasonably be acted upon, identify specific tasks that caused him stress;
 - when Ms Hamilton then prepared a spreadsheet to try to break the impasse and get clarity on the sources of the Claimant’s stress the Claimant over complicated it such that it too did not help her understand what she needed to do to help the Claimant.
 - Ms Hamilton therefore asked the Claimant, during his phased return to work, which started on 1 March 2022 to complete a work diary over a three month period to identifying the work he performs and the time it has taken him to complete. She proposed this as a daily task to identify/reduce and remove (where possible) any stress. The Claimant’s comment on this was that he had lost confidence and trust in Ms Hamilton and did not feel welcomed at

work. This may have been how the Claimant felt but we do not find that he had good cause to feel this way given the genuine and serious attempts Ms Hamilton had made to try to understand the causes of his stress/complaints. To complement this approach, Ms Hamilton agreed to set up weekly meetings with the Claimant to support him with his weekly tasks and to ensure that he raised promptly any tasks that were causing stress and so that action could then be taken where possible.

65. Ms Hamilton sent the Claimant a letter of 28 February 2022 (pages 980 – 983) which gave a broad summary of the sequence of events which we accept:

Long-term sickness, work related stress & return to work

Long term sickness

As you are aware, we moved to a formal stage 1 and 2 of the Managing Attendance and Sickness Absence Policy & Procedure due to your level of sickness.

The periods in question are

<i>Date</i>	<i>No of Days</i>
<i>12/01/21 – 21/2/21</i>	<i>41</i>
<i>29/04/21 – 27/01/22</i>	<i>238</i>

At our scheduled meeting on the 27th January 2022, you declared yourself fit and ready to return to work. I made it clear that we needed the following to ensure you could return to work safely.

1) An Occupational Health report stating that you were in fact fit to return to work. The last Occupational Report I received in December 2021 declared you unfit for work. it also stated that Occupational Health needed a report from your specialist.

2) GP confirmation that you are fit to return to work as the form you provided to me was not clear as to whether the GP needed to see you again before you returned to work.

3) Completion of the Stress risk assessment which was recommended in July 2020 and June 2021. Throughout this period of your sickness, you have stated on several occasions in emails to me and at your Stage 1 and 2 Formal hearings, that your work-related stress was due to

- a. Performing duties, not in your job description*
- b. Working hours which are significantly over and above your contracted hours*
- c. Duties causing you unreasonable stress*

I agreed to refer you back to occupational health for an updated report. You agreed to contact your GP. We agreed that we would meet on Friday 28th January 2022 at 1:30 to complete the risk assessment form. You shared your concerns about meeting with me alone so we all agreed that I would record the meeting.

We actually met three times on the 28th January 2022; 13:30, 14:00 and 16:05. Due to technical difficulties and a call, you received SBS we were unable to complete the work risk assessment form together. We did, however have a conversation about what specifically needed to be on that form, and you confirmed your understanding. You stated that you would continue to work on the form that night until it was completed. I made it clear to you that if I received the form first thing on Monday 31st, I would then have time to review and comment by our next scheduled meeting. There was nothing in my inbox on Monday morning as agreed, so I emailed you at 13:39, you responded at 14:58 with the work stress risk form attached.

Work Related Stress form

I have asked you on several occasions to complete this form; your email responses have ranged from “ I am too stressed”, I cannot speak to my manager (Karen), to “Karen or Laura must complete this form for me”. We eventually agreed that you would complete the form independently, I would review once completed. No one else is better placed than you to identify your work related stress.

Reviewing the form, you completed and sent to me on the 31st January 2022, there were no tangible, specific tasks that you identified with regards to your work related stress that I could use to make reasonable work adjustments for you. In actual fact the form you produced was no different from the previous one you sent to me on the 20th December 2021 for which I made the same comments.

On the 2nd February 2022 I produced a schedule based on Finance working days for a typical month asking you to complete each section. The idea behind this schedule, was to deal with your specific work-related stress issues, tasks that you were performing outside of your JD and the time pressures you were having which were not allowing you to take holidays. I asked for this form to be completed in time for our scheduled meeting which was Friday 4th February 2pm

Your initial response was “I will have a look at it but is this form part of the Staff Wellbeing and Managing Stress Policy which we are following?”. My response was since June 2021, I have asked you to complete the stress risk assessment and you have refused, I intend to use this form to understand the specifics of your work related stress, time management and address the issue of you performing duties outside your job description.

After a lengthy discussion, it was agreed by yourself and Jim Mansfield that you would complete the schedule I prepared for you. Both Jim and I made it very clear that you needed to complete all columns. I also asked you to add a section for the items you performed on a quarterly/ year end basis.

On the Friday 11th February 2022, you returned the schedule but did not complete all columns as requested. I decided that the "Proposal to manage Stress" was probably the most important column so I emailed you on the 15th February 2022. You completed that section and returned the revised template to me 16th February 2022.

On Monday 21st February 2022, I produced a management response the tasks you identified as a typical month. I asked you to review and respond by Wednesday 23 February 2022. As there was a lot of repetition in your working days, I produced a consolidated tab and asked you to work on that tab.

On reviewing your initial schedule, I have the following concerns

- 1. I understand that you rang up one of your managers and asked them what meetings they attended on a regular basis and put them down as yours*
- 2. You have referred to meetings that are in your diary but do not take place.*
- 3. You also claimed to be the main lead on meeting which you do not attend.*
- 4. You do not produce meeting minutes, this is completed by others in your team*
- 5. I have evidence to suggest that you have received adequate training for the tasks you perform specifically around month end reporting. The DM reports specifically.*
- 6. With reference to daily calls, your teams have confirmed they do not escalate to you, but your line managers.*
- 7. Your role is Head of AR and Treasury, but you have not identified any management support towards your treasury team*
- 8. You have not demonstrated major roles and responsibilities that sit outside your job description.*
- 9. In a typical month where there are 9,000 minutes, you have failed to identify any excessive time over and above your standard working hours.*

My biggest concern is your proposal to manage stress.

You have suggested that you delegate your AR manager roles and responsibilities to your deputy for AR completely removing yourself from that level of responsibility. Or that you feel better, and you hope this will not be an issue in the future. You will communicate better with the manager you have stated on several occasions you are fearful to talk to.

I do not believe that this is an acceptable solution to managing your work-related stress. Your recommendations do not address your health and wellbeing adequately. My concern is that you will return to sickness if these issues are not addressed promptly.

I am however advised by Employment Relations that you need to return to work.

Recent Occupational Health report

The Occupational Health team have advised that you return to work 50% for two weeks, 75% the following 2 weeks and then full time. Regular support with myself. Again, a recommendation to complete the stress risk assessment.

I have also been advised that you may have flare ups and need the occasional sick leave.

Please note any future sickness will be treated in line with Trust policy.

Return to work.

You will return to work on Tuesday 1st March 50% duties until 15th March then 75% duties until 29th March. As we have failed to identify any reasonable adjustments, there will be none. I want you to complete a work diary for the next 3 months, identifying the work you have performed and the time it has taken you to complete. I also want to see evidence of that work.

Your work diary is effective from 1st March, can it please be placed on the shared drive, once set up, please send me a link. This will be reviewed on a weekly basis to ensure that if you have identified tasks that have caused your stress we can deal with them promptly where possible. Please note this is not a performance management exercise.

As discussed with you on the 4th February 2022, the finance team will be returning to the office. The desk allocation has been reduced significantly; which probably means that teams will be in the office once or twice a week at the most; this is yet to be finalised. You have confirmed that you do not have a problem returning to Enfield Civic Centre

Please do let me know if you need any further clarification. Otherwise, we can pick up any issues at our first meeting.

66. On 1 March 2022 the Claimant returned to work on a phased basis and Ms Hamilton sent him the letter of 28 February 2022 (above), the Return to Work Meeting form and the updated spreadsheet of tasks. The Claimant said that he was going to reply to the points raised in the letter. Ms Hamilton told him that morning that there was no need for the Claimant to formally

respond because the Claimant had raised the grievance referenced above. Ms Hamilton said that she wanted to use the spreadsheet of tasks schedule to work with the Claimant to ensure he had everything he needed to perform his your role and alleviate stress where possible. She asked the Claimant to instead focus on identifying what he thought his training needs were so that she could put that in place for him as soon as possible. She made clear that she had informed his colleagues that he was back at work and said that she expected him to be at their team meeting. Instead the Claimant spent time commenting on Ms Hamilton's letter (pages 992 – 996) and completing a form for his Union representative (Mr Mansfield) which we understand related to a personal injury claim the Claimant had raised following a fall at work (page 989). The Claimant then spent three and a half hours that afternoon working on an overpayment of pay / question in respect of his pay that he had been liaising with the head of payroll on. We accept Ms Hamilton's evidence that, had she known at the time that the Claimant was spending so much time on this, she would have stepped in to help him resolve it.

67. Late in the evening on 1 March 2022 the Claimant sent Ms Hamilton an email with a table summarising what he had been doing that day (page 1019).
68. The following morning, 2 March 2022, Ms Hamilton reminded the Claimant that he should be phasing back into the duties associated with his role, albeit on reduced time. She asked him why he had not been at the team meeting the previous day (to which the Claimant replied that he had been getting himself organised). She asked him why he was completing Union case forms and suggested that this was something that he should be doing outside his phased return hours (the Claimant thought this was work related). Ms Hamilton queried why the Claimant had been spending most of his time clearing emails and questioned why, on his first day back at work, he had not been with his team getting an update from them. To this the Claimant responded that he did not think that it would matter, given that he had been away for so long. The Claimant told Ms Hamilton that he thought her demands were unreasonable, that he felt harassed and that she was deliberately trying to cause him more stress and create more problems for him and that she was making clear that she did not want him back at work and was not going to make it easy for him. The Claimant said that he thought Ms Hamilton was being uncaring in her manner and attitude (page 1015). We do not consider those to have been reasonable assertions on the part of the Claimant. We consider that Ms Hamilton's expectations were fair in the circumstances albeit she expressed herself in a matter of fact way and was showing her frustration.
69. On 2 March 2022 the Claimant again did not attend a team meeting and Ms Hamilton reminded the Claimant to focus on thinking about his own training needs so that on Friday 4 March 2022 they could discuss and agree a training plan (page 1015). The Claimant then sent an email to two people he managed essentially asking them what training they thought he needed to support them as their manager. Ms Hamilton, understandably, questioned the Claimant's approach.

70. When, on 3 March 2022, the Claimant went back to Ms Hamilton about his training needs it was unsurprising that he reported that the two people he managed (who had been working without the Claimant's management for most of the previous 14 months) did not have any suggestions on what the Claimant might need to be trained on in order to manage them. Ms Hamilton spoke to them too and they told her they were very uncomfortable that their manager was asking them what training he need for him to manage them.
71. On Friday 4 March 2022 the Claimant and Ms Hamilton met (pages 1024 – 1037) and discussed the difficulties the Claimant had had in working relationships with people he managed and she gave him some thoughts on how he could focus on bringing himself up to date with changes in processes since he had been away and some practical things that he could do to move forward (including directing him to online training on financial skills and other soft skills associated with managing people and resilience. She acknowledged there was a limit to what the Claimant could achieve as he was phasing back in and clearly viewed the phased return as an ideal time for the Claimant to get up-to-speed with as much as he could. She guided the Claimant on the fact that certain tasks had been automated and that therefore there was capacity in the cashier team for them to do more and the Claimant needed to build up his working knowledge of what his direct reports did so that if they were away he could cover for them. The first priority was for the Claimant to get a better understanding of the work that the Treasury Team did (and the Claimant was clearly more comfortable with that given the difficulties he had in his working relationship with a member of the account receivable team). The aim was to get the Claimant's understanding up in the phased return so that he could hit the ground running in April. It appeared to have been a productive meeting where there was a meeting of minds as to how the Claimant would phase back into the changed working environment.
72. On Monday 7 March 2022 the Claimant went on sick leave again. At 10:52 he emailed Ms Hamilton saying he felt unwell and needed to go and lie down (page 1056). At just after mid-day he sent an email to occupational health to say *"As discussed today, I have reported myself sick at work because I cannot continue working in these conditions (stressful environment). I have only recently returned back to work but it's been made clear to me that attitudes will not change, no reasonable adjustments will be made and things will not improve, and these factors have a detrimental impact on my health and mental well-being. I cannot afford to become ill again because this is not fair to me or my family. Therefore, I wish to go ahead with your recommendation of retirement due to ill health. Please let me know what forms etc. I need to complete. As discussed today, I have reported myself sick at work because I cannot continue working in these conditions (stressful environment). I have only recently returned back to work but it's been made clear to me that attitudes will not change, no reasonable adjustments will be made and things will not improve, and these factors have a detrimental impact on my health and mental well-being. I cannot afford to become ill again because this is not fair to me or my family. Therefore, I wish to go ahead with your recommendation of retirement due to ill health. Please let*

me know what forms etc. I need to complete.” This email, the assertions it made (together with Claimant’s earlier grievance) was in contrast to the positive tenor of the Claimant’s meeting the previous working day with Ms Hamilton. We were not able to square the notes of that meeting with the assertions then made by the Claimant. We prefer the evidence of Ms Hamilton in this regard.

73. Ms Hamilton took the Claimant’s email, saying that he was ill, at face value. However, later that evening the Claimant sent Ms Hamilton an email (Subject: Work completed today) setting out what he had done that day (page 1062) leading Ms Hamilton to legitimately reply to point out that everything the Claimant had done post 10:50 had not been in the direct performance of his role and asking the Claimant to confirm what his health status was. The Claimant replied on Tuesday 8 March 2022 to say:

Please find attached my GP sick note until the 6th April 2022. I cannot afford to become seriously ill again, because this is not fair to me, my family and my work colleagues.

I’m concerned that I have already started to feel unwell so soon after returning. I was eager to return back to work at the end of January, but based on what I have experienced so far it is clear to me that I’m not really wanted back.

I’m very concerned about receiving no basic pay in February 2022 (which I was not informed about by payroll or anyone) and that I potentially have a large overpayment to be repay (-£8,226.07). Can I please remind you that it states in the Managing Attendance Sickness Policy and Procedures that my line manager will under s6.2.17 To notify the employee prior to the expiry of their occupational sick pay entitlement or an expected reduction in pay. Yet again this has no happened.

This overpayment is obviously concerning to me and is playing on my mind, due to being on SSP only and half pay for so many months. Having this amount (-£8,226.07) over my head has given me sleepless nights and I’m sure it has contributed to me not feeling well.

Also, I have attached the Return to Work Meeting form you sent me with my comments.

74. Ms Hamilton replied (page 1070) to make clear, legitimately in our view, that she refuted the Claimant’s comments about his return to work and pointing out that she had spent a lot of time the previous Friday discussing and agreeing with the Claimant his training needs and producing an action plan.
75. The Claimant made a number of detailed request for documents whilst he was on sick leave and soon after Ms Hamilton started the attendance management process described above. We accept that the volume of correspondence sent to the Respondent in respect of these requests was significant (which were for documents such as return-to-work interview

notes and copies of review meetings). We find that the Claimant wanted to try to undermine the Respondent's basis for restarting management of his sickness absence under their applicable policy. He was unhappy about the policy being applied to him and, as was the case with his approach to the Respondent's attempts to carry out a risk assessment, we find that he applied an inflexible, overly detailed and unreasonably rigid approach. We find that his requests for documents were an attempt to show that the Respondent had not followed the attendance management policy to the letter and to argue that he could not therefore be managed at a particular stage of that policy. We address in our analysis and conclusions how this request for documents was managed by the Respondent and the failings in so far as they relate to this claim.

76. We accept the evidence of Mr Awan and Ms Hamilton that the Claimant was detached and did not have a good working relationship with members of the team he managed and that the Claimant had a tendency to overcomplicate matters, as evidence by his approach to the stress risk assessment process, and was doing work on reports which did not need to be done and which others did not look at (or for his team which his team did not need) and that there was no need for him to be working long hours.
77. The people the Claimant was nominally managing were not relying on the Claimant for management. Particularly given the length of the Claimant's absence and the nature of his working relationship with the people he managed, those people were not seeking management guidance from the Claimant, they were going to others.
78. The Claimant complained that he found it stressful doing a report that had been the responsibility of someone called David Mallagh but we accept Ms Hamilton's evidence that the Claimant never actually took this work on because of the difficulties he said he had with understanding what it required. Subsequently the report was automated.
79. There was a cash flow report but that was created by the cashier team and the Claimant did not need to work on it.
80. There was a one-off report which Ms Hamilton conceded would have involved work for the Claimant at the time but the need for it arose out of a contract that the Claimant had entered into on behalf of the Respondent in error and in breach of protocol relating to online payments. The Claimant's error cost the Respondent a few hundred thousand pounds. As a result the Claimant had to produce a one off reconciliation report (which only he had the knowledge to do), for the law firm Bevan Ashford, to allow the Respondent sort out the problems that the contract had created.
81. We accept that the Claimant only had one monthly report that he would have had to do and accept Ms Hamilton's evidence that she genuinely could not understand why the Claimant asserted that his workload was so high. She was well placed to judge this as, during the extensive periods the Claimant was on sick leave, she had responsibility for teams including the Claimant's. In fact, one of the reasons that Mr Laver and the Claimant fell out was

because Mr Laver objected to the Claimant trying to get involved in Mr Laver's treasury work.

82. Mr Mark Pearse (Assistant Director of Finance (Contracting and Income) carried out a Stage 3 formal hearing under the Respondent's policies on 22 June 2022 the outcome of which was sent on 29 June 2022 (pages B57-58). The Respondent agreed to explore whether the Claimant could be redeployed to a suitable alternative role on a permanent basis and if that proved not to be possible it would explore the option of ill-health retirement (or termination of employment due to ill-health). Ultimately the Claimant's employment ended because he took ill health retirement on 16 January 2023.
83. We also note that in February 2022 the Claimant was in contact with Evita Kavvada (Associate HR Business Partner EDI - Staff Experience at the Respondent) in relation to a draft disability policy (page 848-850). What becomes clear from that correspondence is that the purpose of the policy was for the recording and reporting of disability related absence. It was not intended to be an alternative way of managing absence for disability related reasons or to take away the limits on sick pay entitlement if absence was for a disability related reason. However, it is clear that the Claimant was advocating a position whereby employees, such as himself, who had disability related absence should fall outside any formal or informal sickness absence management process and their disability related absence should not be recorded as sick leave or affect sick pay calculation or entitlement.

THE LAW

Equality Act 2010 (EqA), Part 5 Chapter 1, Employment, Etc Employees

84. Section 39 EqA provides:

[...]

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

[...]

(d) by subjecting B to any other detriment.

[...]

(5) A duty to make reasonable adjustments applies to an employer.

85. Section 40 EqA provides:

(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A's;

(b) who has applied to A for employment.

EqA, s136– burden of proof

86. The shifting burden of proof applies to claims under the EqA 2010.
87. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.
88. In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865 and confirmed that the burden of proof does not simply shift where M proves a difference in sex/disability and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

Liability of employers and principals

89. Section 109(1) provides that ‘anything done by a person (A) in the course of A’s employment must be treated as also done by the employer’. It matters not whether that thing is done with the employer’s knowledge or approval — S.109(3). However, the employer has a defence under S.109(4) where it can show that it took all reasonable steps to prevent A from doing that thing or from doing anything of that description. The section replaces similar provisions in the previous equality legislation, with the result that the substantial body of case law generated under the antecedent provisions continues to be relevant. Quite properly in our view, the Respondent did not rely on S.109(4).

Reasonable Adjustments

90. By s39(5) EqA a duty to make adjustments applies to an employer. By s21 EqA a person who fails to comply with a duty on him to make adjustments in respect of a disabled person discriminates against the disabled person.
91. s20(3) EqA provides that there is a requirement on an employer, where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter, in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
92. The EHRC Code of Practice on Employment (2011) (“**the Code**”) provides:

At Paragraph 6.24, that there is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask);

At paragraph 6.37, that Access to Work does not diminish or reduce any of the employer's responsibilities under the 2010 Act.

At paragraph 6.28 the factors which might be taken into account when deciding if a step is a reasonable one to take:

Whether taking any particular steps would be effective in preventing the substantial disadvantage;

The practicability of the step;

The financial and other costs of making the adjustment and the extent of any disruption caused;

The extent of the employer's financial or other resources;

The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

the type and size of the employer.

93. It is not necessary to prove that the potential adjustment will remove the disadvantage; if there is a "real prospect" that it will, the adjustment may be reasonable. In ***Romec v Rudham [2007] All ER (D) 206 (Jul)***, EAT: HHJ Peter Clark said that it was unnecessary to be able to give a definitive answer to the question of the extent to which the adjustment would remove the disadvantage. If there was a 'real prospect' of removing the disadvantage it 'may be reasonable'. In ***Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep)***, EAT: HHJ McMullen said that 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'. In ***Leeds Teaching Hospital NHS Trust v Foster*** [UKEAT/0552/10](#), [2011] EqLR 1075, the EAT said that, when considering whether an adjustment is reasonable, it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage.

94. Schedule 8 EqA (Work: Reasonable Adjustments) - Part 3 limitations on the duty provides:

S. 20. Lack of knowledge of disability, etc

(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;

(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.

Under Part 2 and an interested disabled person includes in relation to Employment by A, an employee of A's.

95. If relied upon, the burden is on the Respondent to prove it did not have the necessary knowledge. The Respondent must show that it did not have actual knowledge of both the disability and the substantial disadvantage and also that it could not be reasonably have been expected to know of both the= disability and the substantial disadvantage.
96. An employment tribunal commits an error of law if it fails to engage with how the step(s) that it finds should have been taken would have been effective to enable the disabled person to find work, continue working or, as the case may be, return to work — ***Tameside Hospital NHS Foundation Trust v Mylott EAT 0352/09*** and ***North Lancashire Teaching Primary Care NHS Trust v Howorth EAT 0294/13***.
97. In ***Brightman v TIAA Ltd EAT 0318/19*** the EAT emphasised that the question of whether an adjustment is or would be effective was one that had to be answered on the basis of the evidence available at the time the decision to implement it (or not implement it) was taken.
98. Consulting an employee or arranging for an Occupational Health or other assessment of his or her needs is not in itself a reasonable adjustment because such steps do not remove any disadvantage: ***Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664, EAT; Project Management Institute v Latif [2007] IRLR 579, EAT***.

Harassment

99. Section 26 EqA 2010 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.*
- (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.

ANALYSIS AND CONCLUSIONS

Disability

100. The Respondent accepted that at all material times the Claimant's leg ulcer condition was a physical impairment that amounted to a disability under section 6 of the Equality Act 2010 and we agree that it was.

Did workplace stress exacerbate the Claimant's disability (i.e. make his leg ulcers worse)?

101. The key cause of the Claimant's leg ulcers was his underlying health condition of lymphoedema. The Claimant did not adduce evidence that persuaded us that that stress or specifically work stress exacerbated his leg ulcers. The Claimant case relied on the following in support of this assertion:

- a range of documents in which the Claimant himself reported the link (without making clear on what basis he made that link);
- a management occupational health referral date 28 February 2020 (p.579/275) which suggested that it was the Claimant himself that had made the link between stress and an worsening of his leg ulcers and which recorded:

"Whilst having treatment he's been asked several times by different leg ulcer nurses what he thinks may have caused these ulcers and he can only think that it is down to the stress at work. The leg ulcer nurse told him to refer himself to OH, which he did on the 31st January 2020."

- With respect to his 2017 flare up, a document (again prepared by the Claimant himself (p1634)) in which he commented:

Return from 103 days sick - Leg Ulcers, leg swelling, lymphedema in both legs etc. In hindsight, I think this had been brought on my stress at work due to on-going staff issues/conflicts with Sonia Griffiths;

- The most cogent evidence which was a letter from his GP surgery of 9 August 2021 (p1835) which said:

"I gather over a period, it was observed by the nursing team that during treatments for the leg swelling and ulcers, the nursing staff noted marked improvement whilst he was away from work. On the other hand when he returned to work his condition deteriorated. This led to the observation that his condition was complicated by work related stress, which has had an impact on his disability"

However, it was not clear whether this was an opinion that the G.P. came to based on direct evidence from the nursing staff or simply something that the Claimant himself reported to the G.P.

102. It is clear that there were a number of stresses in the Claimant's life including:
- the difficulties he faced from his many serious health conditions (in addition to his lymphoedema);
 - the impact those various health conditions had on his ability to do normal day to day activities;
 - the fact that he was waiting for an operation through 2020 into 2021 during the pandemic;
 - the fact that he did not think the Respondent should be managing his attendance under its attendance management policy and his resistance to the more robust management of Ms Hamilton and Mr Awan in applying that policy to him (whereas previous management had not managed his attendance to the policies);
 - the poor relationships he had with the two people he managed;
 - his tendency to overcomplicate his own work (by doing tasks he did not need to do and making tasks he was doing more complicated than they needed to be).
103. At times of greater work pressure the Claimant would also inevitably have been sitting for longer periods of time and, given that that lymphoedema is a circulatory condition which means that the Claimant must mobilise his legs frequently, that is also likely to have been a contributing factor in flare ups.
104. His other health conditions and personal management of his health conditions could also have contributed to flare ups in his ulcers.
105. The data provided by the Claimant summarising the number of nurse appointments he had for his leg ulcers did not build in a correlation of the Claimant's assessment of his stress over the relevant periods or his sickness absence. In 2017 he had 25 nursing visits for his ulcers, 2018 there were 15, in 2019 there were none, in 2020 there were 155, in 2021 there were 52 in the first 5 months) and in 2022 there were none. We found that there was a correlation between his sickness absence and his leg ulcer treatment (but this was to be expected).
106. We tried to make an assessment ourselves on the available evidence but we were not persuaded that work place stress in particular materially contributed to any exacerbation in the Claimant's leg ulcers at the relevant time. We nonetheless went on to decide the other issues in his claim.

Did the Respondent have knowledge of that alleged effect of stress or would it have been reasonable for the Respondent to have known that stress had that effect?

107. We accept the Respondent's submissions that, whilst it knew that the Claimant asserted that workplace stress exacerbated his leg ulcers, the Respondent did not have adequate evidence to know that this was in fact the case and the Respondent was in any event focusing on trying to establish what it was about his work that was causing the Claimant to feel stressed as he alleged. We also do not consider that it would be reasonable to expect that the Respondent to have known that stress had that effect.

Reasonable adjustments claims

Did the respondent not have a flexible working policy allowing home working between Jan 2020 – mid-March 2020 (before COVID lockdowns came into force)?

108. The Claimant's assertion in this element of his claim was that Mr Awan, in a telephone conversation on 23 January 2020, withdrew flexible working arrangements that had been put in place by the Claimant's previous manager, Lubna Dharssi, in October 2019 for the Claimant to work some days from home. This arrangement was to be reviewed after 6 months and was put in place because of pain the Claimant was suffering as a result of arthritis in his knees.

109. The evidence presented to us on this point was not clear and was confused, even with respect to when the Claimant was on sick leave over the December 2019 – January 2020 period. On the balance of probabilities we find that:

- In December 2019 and January 2020 Mr Awan had only recently taken responsibility for managing the Claimant and others and was getting to grips with team and arrangements in the team.
- In December 2019 Mr Awan approved working from home for the Claimant (page 220) and in email correspondence between them the Claimant thanked Mr Awan for taking time to ask how the Claimant was doing with his legs and for giving his support to the Claimant in losing some weight.
- On the 9 January 2020 the Claimant sent an email to Mr Awan to let him know that he had a leg ulcer that had burst, had two other leg ulcers, had seen his GP and his GP had recommended the same treatment as the Claimant had had two years previously, that he not work the following week and that he work from home while he was having his treatment. Mr Awan replied by saying that was fine and that he hoped the Claimant recovered soon.
- On 23 January 2020 Mr Awan made a welfare call to the Claimant because he was concerned that the Claimant was working when he should have been recuperating on sick leave. It may be that Mr Awan could have expressed himself more clearly but what he said was that the Claimant, when he was

not signed off on sick leave, could work from home within the parameters of his existing flexible working arrangement.

- If the Claimant thought at the time that in fact his entire ability to work from home had been withdrawn by Mr Awan in that call, he did not complain about that to Mr Awan until sometime later and we consider that had this in fact been what Mr Awan had done then the Claimant would have raised it at the time. We find that the Claimant was not diffident in raising his needs or complaining.
110. We do not therefore find that the Respondent applied the alleged PCP to the Claimant and consequently do not find that the Respondent failed in any consequent duty to make a reasonable adjustment.
111. In any event, having considered the submissions of counsel for the parties, we find that this claim was not part of a course of conduct that might bring it within time, was brought out of time and we do not consider that it would be just and equitable to extend time.

Did the respondent not have a policy of allowing those who return to work on a phased basis to do so with more limited duties in March 2022?

112. We are clear on the evidence presented to us that the Respondent did have a policy of allowing those who return to work on a phased basis to do so with more limited duties. We do not therefore find that the Respondent applied the applicable PCP but went on to make the following findings.
113. By this time Ms Hamilton was the Claimant's manager (she had taken over from Mr Awan as a result of the impact of pandemic). Her letter of 28 February 2022 could certainly have been better and more clearly worded when it said (our emphasis | bold):

You will return to work on Tuesday 1st March 50% duties until 15th March then 75% duties until 29th March.

As we have failed to identify any reasonable adjustments, there will be none. I want you to complete a work diary for the next 3 months, identifying the work you have performed and the time it has taken you to complete. I also want to see evidence of that work.

Your work diary is effective from 1st March, can it please be placed on the shared drive, once set up, please send me a link. This will be reviewed on a weekly basis to ensure that if you have identified tasks that have caused your stress we can deal with them promptly where possible. Please note this is not a performance management exercise.

As discussed with you on the 4th February 2022, the finance team will be returning to the office. The desk allocation has been reduced significantly; which probably means that teams will be in the office once or twice a week at the most; this is yet to be finalised. You have confirmed that you do not have a problem returning to Enfield Civic Centre

Please do let me know if you need any further clarification. Otherwise, we can pick up any issues at our first meeting.

114. We were persuaded that the reference to a failure to identify any reasonable adjustments was simply a reference to the fact that Ms Hamilton, despite the efforts outlined in our findings of fact to identify what was causing the Claimant's alleged workplace stress, she had not been able to understand that and was not therefore in a position to put in place adjustments to address the stresses. As we reference above, she had therefore (reasonably in our opinion), concluded that this would have to be assessed by looking at the work the Claimant was carrying out day to day during his phased return to work and beyond and discussing what he was finding stressful as things progressed. We accept Ms Hamilton's evidence that the Claimant was not expected to carry out his full duties as if he were doing full time hours during his phased return to work. In fact at the point of the Claimant's return to work, she was in discussion with the Claimant as to what his role, in light of changes that had taken place while he was away, would be.

Did the Respondent not have a policy to follow the recommendations of its occupational health team?

115. We find that Respondent did have a policy of following the recommendations of its occupational health team and that it followed those recommendations with respect to the Claimant as far as reasonably practicable. In particular we find that:
- The Respondent did implement a phased return to work as commented on earlier in this judgment and did not fail in any duty to allow the Claimant to work remotely.
 - We accept the Respondent's position that it would have implemented regular meetings between the Claimant and his line manager for support and monitoring after the phased return to work but, because the Claimant went on sick leave very early in his phased return period (which was not completed) and then left the Respondent's employment under ill health retirement, the regular meetings did not come to fruition (beyond the initial return to work period).
 - The Respondent did, as far as could reasonably be expected in the circumstances (as described more fully in the findings of fact), carry out a stress risk assessment. However, carrying out a stress risk assessment was not an adjustment that the Respondent should reasonably have been expected to make. It would have been the findings of a stress risk assessment, once completed, which might have led to the identification of adjustments that the Respondent might have been under a legal obligation to make. We find that the Respondent was not to blame for the fact that the stress risk assessment did not get further than it did as explained more fully in our findings of fact.

- Owing to the fact that the Claimant went on long term sick leave, and then took ill health retirement, the Respondent did not fail in any duty associated with the Claimant needing occasional sick leave during flare ups in his leg ulcers.

Did the Respondent not have a policy for carrying out adequate stress risk assessments?

116. Carrying out a stress risk assessment was not a reasonable adjustment which the Respondent had a legal obligation under s20(3) EqA to make. A stress risk assessment might have helped identify a provision, criterion or practice that put the Claimant at a substantial disadvantage and might have led to reasonable adjustments being identified that the Respondent might have been under a legal obligation to make. However, we do not find that the Respondent was culpable in any failure to identify adjustments or in the stress risk assessment process.

Did the Respondent fail to apply the adjustments as suggested by the Claimant (as referred to in a 20 December 2021 email (page 681-682))?

117. The Respondent did not fail to make any reasonable adjustments as alleged. We find as follows:

- **Working standard hours.** That the Claimant was not required to work outside standard hours (on his first day back or otherwise). On his first day back to work the Claimant spent time into the evening trying to resolve an issue in respect of his own pay. However, we find that he did not tell Miss Hamilton that he was doing so and we accept Ms Hamilton's evidence that, had the Claimant told Ms Hamilton that he had that problem then she would have offered to help resolve it for him (she had become aware in February 2022 of issues with an overpayment the Claimant had received the previous October and about whether the Claimant should be paid in accordance with the sick pay policy or treated as on medical suspension for a period before his brief return to work in March 2022). In any event that was not time spent in the performance of the Claimant's duties. We also consider that, even had the Claimant asked Ms Hamilton for allowance to spend time on that during his reduced hours on his first day back at work, the Respondent would not have been under an obligation to make that allowance for him on his first day because there were other priorities on that first day. We accept Ms Hamilton's evidence that the Claimant was not expected to work long hours. Ms Hamilton was trying to understand why the Claimant thought he would have to work long hours and refer to our findings of fact with respect to the demands placed on the Claimant and his approach to tasks.
- **Flexible working from home arrangements.** The Claimant argued that this was never formally reinstated but as we have explained in this judgment, the pre-pandemic arrangements for the Claimant to work from home were never rescinded and post COVID we accept that at the Respondent working from home became an accepted every-day arrangement. Had the Claimant returned to his role we find that on the balance of probabilities that it would have been with a flexible working arrangement in place.

- **Changes to the Claimant's duties or tasks (reduced workload, duties or reallocation of duties/tasks to a colleague).** We were not taken to the Claimant's job description and the Respondent's witnesses were not challenged on this in cross examination. We find that a primary aim of the Claimant's phased return to work was to establish what the Claimant thought he needed to do day to day and to identify which of those tasks were causing him stress and why. In this way the Respondent was trying to progress the stress risk assessment which it had not been possible to conclude on a paper basis. The Respondent could not conclude this review because the Claimant went on sick leave, never to return, at such an early stage in his phased return to work.
- **Providing additional equipment – provision of a seat cushion due to poor blood circulation.** In an email of 29 November 2021 from Matthew Hall (the Respondent's Head of Health and Safety) to the Claimant and copied to Ms Hamilton, Mr Hall [p658] referred to a previous call between him and the Claimant and said:

"[...] Cushion – The clinical team suggested a proper cushion to aid circulation but have not defined what this is. Given the chair has cushioning we would not normally recommend anything extra as I would be concerned it could make things worse. If you discuss with the clinical team or OH what might be appropriate. Though I hope that standing more frequently will help prevent problems also We discussed standing desks, at the moment you are not able to remain in one position long enough for this to be a useful option. But it is something that could be considered in future...."

We accepted Ms Hamilton's evidence in cross examination on this was that, as a manager, the Claimant could have ordered the seat cushion and claimed it through expenses and it would have been reimbursed to him. We also find that the Claimant, in an email to Ms Hamilton of 20 December 2021 (page 682), took responsibility for talking to the OH team about the provision of a cushion and there was no failure to make an adjustment.

- **Reduce the amount of work being escalated to him.** We accepted Ms Hamilton's evidence that the Claimant's subordinates were in fact escalating work not to the Claimant but to other managers. In any event, as we have explained, at the relevant time the Respondent, and Ms Hamilton in particular, were trying to understand what constituted the Claimant's workload. However, the Claimant returned to long term sickness absence and then took ill health retirement before the Respondent could reasonably have been expected to take any further steps.
- **To have regular 5 – 10 minute breaks every hour for circulation due to his disability/health condition.** We find that the Claimant had the autonomy in his role to ensure that he took the breaks that he needed and there was no evidence that the Respondent prevented him from doing so. Mr Hall made suggestions in his email to the Claimant of 29 November

2021 (copied to Ms Hamilton) with respect to how the Claimant could ensure that he took the breaks he needed.

- **More support from management in the form of regular meetings.** Ms Hamilton was covering for the Claimant while he was on sick leave (which was a very substantial period of time) and we accept that she could not understand therefore what was causing the Claimant stress (albeit it was not disputed that the Claimant had difficulties with relationships with those he managed). A number of meetings were held by Ms Hamilton with the Claimant to discuss the stress risk assessment and the return to work process (short lived though it was) was an extension of that stress risk assessment and on the balance of probabilities we conclude that meetings would have continued to discuss the Claimant's work and what he needed had he not then gone back on long term sick leave and taken ill health retirement.
- **Provide support during times of high stress demands.** We do not accept that the Respondent failed to provide support to the Claimant in times of high stress demands. During the short period in which the Claimant was back in work on a phased return he was not being asked to carry out his normal duties and was not in a period of 'high stress demands'. The Claimant was principally asked to focus on identifying his training needs and the meeting between him and Ms Hamilton on 4 March 2022 was positive. Ms Hamilton did what she could reasonably have been expected to do to identify the stressors but the return to work did not get to the point at which she could reasonably be expected to understand the issues and take any action. It was clear that the Claimant did not want to be managed by Ms Hamilton, did not want to be managed under the Respondent's sickness absence policy, had poor relationships at that time with those who reported to him (and we note he did not attend team meetings as directed by Ms Hamilton on his return to work (Ms Hamilton having told the Claimant's team that he would be in – leading them to question why he was not at the meeting)). After he went on sick leave again the Claimant's focus was on ill health retirement.
- **Redeployment.** The Claimant argued that redeployment was considered by the Respondent, but only when the Claimant had already applied for ill-health retirement. He argued therefore that the Respondent's consideration of redeployment was not effective. We do not agree that there was any failure on the part of the Respondent in respect of considering redeployment. We accept the Respondent's findings on the Claimant's grievance [p112B] where they record:

The grievance submitted by GO, (Appendix 1) was done so in February 2022 requesting that he be offered redeployment opportunities before taking ill -health retirement as per the policy (s 8.19.) At the time that GO submitted his grievance he had not yet been invited to a Stage 3 hearing. This occurred on 22nd June 2022, and was chaired by Mark Pearse, Assistant Director of Finance. At this meeting, according to the outcome letter, (Appendix 33) the management report regarding GO's sickness absence was

presented by KH to confirm why GO's absence was at a stage 3 hearing.

GO attended this meeting and was accompanied by his TU Representative, Jim Mansfield. At the meeting GO provided reasons for his absence as being work related stress, that he had tried to return to work but after 4 days being back at work he returned to sickness absence as the reasonable adjustments required had not been implemented, and that this was the reason GO had engaged in ill-health retirement, and that until this point redeployment had not been considered. It was agreed at the meeting that redeployment would be considered on a permanent basis with the assistance of OH, it was agreed that this period would last for three months.

GO was made aware that if the redeployment process was unsuccessful, the Trust may reconvene a Stage 3 formal hearing to consider whether 'you are eligible for ill-health retirement and/or whether to bring your contract of employment to an end due to ill-health.' There then followed a period of possible redeployment, with recruiting managers contacted for possible suitable roles (Appendix 45,46,47), however GO was not successful for any roles he identified. The employee subsequently resigned from his position once his application for ill health retirement was approved. (Appendix 40).. A further ill health retirement meeting was held on 16th January 2023, where it was confirmed that GO had applied for ill health retirement and a termination date was agreed as being 16th January 2023, with 12 weeks' notice being paid in lieu with any outstanding accrued annual leave. (Appendix 44)

Based on a review of all available evidence, referred to in the investigation report above, the evidence provides that GO was provided with sufficient time and opportunity for redeployment before ill health retirement was confirmed, as per the policy. GO was invited to several meetings where is TU rep was also present and the process fully explained in outcome letters. There is also sufficient evidence that recruitment managers were contacted by ER and GO himself applied for roles during the redeployment process. Therefore, this part of the grievance is not upheld.

Harassment related to disability (Equality Act 2010 section 26)

Employee Relations not answering the Claimant's questions posed in emails dated 20 January 2022 (p.700 – 701) and 26 January 2022 (p. 707-708) (regarding s6.2.8 and s7.0 (s7.4 return to work interview/s must have taken place for each episode of sickness prior to the implementation of the sickness absence procedure)).

118. We find that the Respondent did fail to answer the questions posed by the Claimant but do not find that this amounted to unlawful harassment of him because, whilst it was no doubt annoying for him and he clearly did not want

to be managed under the attendance management policy, this failure to respond to his questions was not for the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, nor do we consider that it had that effect. We did not therefore consider in detail whether this could amount to unwanted conduct related to disability.

Employee Relations not supplying the Claimant with a copy of his employee/personnel file, and being passed around the houses. The Claimant says he first requested this on the 21 May 2021 (page 400) and many times since (the Claimant says that since then he has had no option but to escalate this to the Data Protection Officer (Kevin Winters) which he says he did on the 13th January 2022).

119. It is clear that the Respondent did not deal with the Claimant's requests well or in a timely manner. However, at the same time the Claimant was asking for some documents which he knew did not exist. We find that the Claimant in part made requests for documents that he knew did not exist (e.g. for copies of return to work meeting notes he knew did not exist) to highlight or strengthen his argument that he should not be managed at the stage of the attendance management policy that he had reached (e.g. because there were no return to work minutes as per the policy). Other documents that the Claimant was asking for probably did exist and should have been provided (e.g. management referral forms that had not been sent to him). He wanted the documents for the dual purposes of challenging the stage at which he was being managed in the attendance management policy and in support of a personal injury claim he was bringing following a fall at work (page 739).
120. However, whilst the Respondent's failure to respond was unwanted conduct it did not relate to disability (it related only to his challenge to the management of his sickness absence under the attendance management policy).
121. On the Claimant's evidence we find that at the most it might have been said to create a hostile environment but we nonetheless also considered the other relevant ways in which conduct can amount to unlawful harassment under the EqA. In doing so we found unanimously that this did not have the purpose or effect of violating the Claimant's dignity or creating an intimidating, degrading, humiliating or offensive environment for the Claimant (and would not have done so even if it had related to his disability).
122. As to whether it had the purpose or effect of creating a hostile environment for him we consider that circumstances could arise where a failure to deal with a request for documents or evidence could create a hostile environment related to an individual's protected characteristic. However, whilst the Respondent clearly did not handle the Claimant's request in a timely manner and did not in fact address his request properly at all and that caused the Claimant frustration, we do not in this case consider that it created a hostile environment for him as a disabled person taking into account our wider findings in the claim and the Claimant's own comments in his witness statement on this. There was a difference in opinions in the panel in

reaching this nonetheless unanimous conclusion which we explain in the next two paragraphs:

123. EJ Woodhead and Ms Brayson concluded that:
- the Respondent knew some documents did not exist and that the Claimant knew that they did not exist;
 - the Respondent thought (albeit mistakenly and without having given it proper consideration) that the Claimant had documents he wanted or would have had access to them; and
 - the Respondent's handling of the Claimant's request lacked competence and thought;
 - these failings on the part of the Respondent were not deliberate.
124. Mr Benson did think that the Respondent was being deliberately obstructive and that the Respondent could have provided the documents in accordance with their policies (as confirmed in email correspondence from Mr Winter (Associate Director of Information Governance, Information Governance Directorate) page 743). However, Mr Benson nonetheless did not consider that the Respondent's failings (i) had the purpose or effect of creating an hostile environment for the Claimant or (ii) sufficiently related to his disability to amount to unlawful harassment.
125. We went on to consider whether these failings combined with those relating to the questions posed by the Claimant in January 2022 together/cumulatively might amount to unlawful harassment but concluded that they did not.

The Claimant's flexible working arrangement which had been approved by his Director, Lubna Dharssi, in October 2019 (to allow him to work from home due to his disability/pains in his legs), was cancelled by Hameer Awan in January 2020, and the Respondent has consistently refused to reinstate it.

126. We find that this allegation of harassment was brought out of time. Even had it been brought in time it would have failed because do not find that the Respondent did in fact cancel the Claimant's flexible working arrangements in January 2020 as more fully explained in this judgment.

Employment Judge Woodhead

10 October 2023

Sent to the parties on:

07/12/2023

For the Tribunals Office

Appendix

LIST OF ISSUES

1. Direct disability discrimination – to be dismissed on withdrawal
2. Discrimination arising from disability (s.15) – to be dismissed on withdrawal
3. No claim for unfair dismissal as the Claimant took ill health retirement on 16 January 2023
4. Claim for general damages/PSLA and future loss (including loss of earnings) for personal injury arising out of the Respondent's failure to make reasonable adjustments.

5. **Disability**

- 5.1 The Respondent accepts that at all material times the Claimant's leg ulcer condition was a physical impairment that amounted to a disability under section 6 of the Equality Act 2010
- 5.2 However, the Respondent disputes the Claimant's assertion that (i) there was workplace stress and (ii) that workplace stress exacerbated his leg ulcers. In this regard the note of the preliminary hearing (**the PH Record** at pages 130-136) states as follows but the Respondent says that this is not a representation of what the Respondent accepts to be the case:

The claim essentially boils down to this. When the claimant feels extreme stress, it exacerbates an underlying condition of pressure leg ulcers. The claimant was subjected to such stress by his new line manager and new director who started in late 2019/early 2020. The stress was caused by their management style, e.g. telling the claimant he was not tough enough with his team; repeatedly telling him his team was not good enough; telling him he could not question any instruction; sometimes shouting at him in front of others; although being pleasant some of the time, attacking the claimant viciously as soon as he said something which they did not like.

- 5.3 Did workplace stress exacerbate the Claimant's disability (i.e make his leg ulcers worse) and, if so:
 - 5.3.1 did the Respondent have knowledge of that alleged effect of stress; or
 - 5.3.2 would it have been reasonable for them to have known that stress had that effect?
- 5.4 The parties agree that it is the disability impact statement at pages 140 – 142 that sets out the alleged impact of the Claimant's leg ulcer condition on the Claimant's ability to carry out normal day to day activities.

6. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**
 - 6.1 The material time for the reasonable adjustments claim is as follows:
 - 6.1.1 Adjustment 1 (see 10.4.1 of the PH Record page 132) – early Jan 2020 (outside time limit)
 - 6.1.2 Adjustments 2-4 (see 10.4.2 – 10.4.4 of the PH Record p 132): February 2022 to March 2022 (which the Claimant says was the last attempt to come back to work with reasonable adjustments)
 - 6.2 The Respondent accepts that it knew that the claimant had the disability during the material periods.
 - 6.3 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs (references to 10.4.1 – 10.4.4 are to the PH Record at p132):
 - 6.3.1 (re 10.4.1) – not having a flexible working policy allowing home working between Jan 2020 – mid-March 2020 (before COVID lockdowns came into force) (page 33 para 25)
 - 6.3.2 (re 10.4.2) –not having a policy of allowing those who return to work on a phased basis to do so with more limited duties.
 - 6.3.3 (re 10.4.3) – not having a policy to follow the recommendations of its occupational health team.
 - 6.3.4 (re 10.4.4) –either of not:
 - 6.3.4.1 Not having a policy for carrying out adequate stress risk assessments; or
 - 6.3.4.2 Not having a policy for applying the outcomes of stress risk assessments undertaken with its staff.
 - 6.3.5 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that:
 - 6.3.5.1 (re 10.4.1) **Substantial disadvantage:** The Claimant’s physical health was impacted in that the Claimant’s pressure ulcers worsened. (The Claimant asserts that the PCP is not having a flexible working policy allowing home working between Jan 2020 – mid-March 2020 (before COVID lockdowns came into force) (page 33 para 25))
 - 6.3.5.2 (re 10.4.2) – **Substantial disadvantage:** The Claimant says that this caused him stress which then impacted his physical health in that the Claimant’s pressure ulcers worsened. (The Claimant asserts that the PCP is not having a policy of allowing those who return to work on a phased basis to do so with more limited duties.)

- 6.3.5.3 (re 10.4.3) – **Substantial disadvantage:** The Claimant says that this caused him stress which then impacted his physical health in that the Claimant's pressure ulcers worsened. (The Claimant asserts the PCP that the Respondent did not have a policy to follow the recommendations of its occupational health team).
- 6.3.5.4 (re 10.4.4) – **Substantial disadvantage:** The Claimant says that this caused him stress which then impacted his physical health in that the Claimant's pressure ulcers worsened. (The Claimant says that the PCP is that the Respondent either (i) did not have a policy for carrying out adequate stress risk assessments; or did not have a policy for applying the outcomes of stress risk assessments undertaken with its staff.)
- 6.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage? This is disputed by the respondent (page 55).
- 6.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 6.5.1 (10.4.1) Allowing him to working from home when needed, from about 3 January 2020 to when COVID lockdowns came into force in mid-March 2020.
 - 6.5.2 (10.4.2) The Respondent should have reduced the claimant's duties along with his reduced hours during his phased return starting 1 March 2022 and for the following three weeks during which the Claimant was asked to do 50% of full time hours in first week and then 75% for the two following weeks before starting full time hours in the fourth week. (para 23 of the particulars of claim, p33)
 - 6.5.3 (10.4.3) The Respondent should have followed the recommendations of its occupational health team of 17 February 2022 (p908 para – recommendations) which suggested:
 - 6.5.3.1 50% of his working hours for the first week;
 - 6.5.3.2 75% for further 2 weeks
 - 6.5.3.3 Return to full hours for week 4 onwards
 - 6.5.3.4 Flexibility of working remotely during the return to work period (weeks 1-3)
 - 6.5.3.5 Regular meeting with his line manager for support and monitoring (beyond the initial return to work period).

6.5.3.6 Stress risk assessment should be completed (as had been previously recommended)

6.5.3.7 During flare ups he may need occasional sick leave.

6.5.4 (10.4.4) the Respondent should either have (C says on his return to work February – March 2022):

6.5.4.1 carried out an adequate stress risk assessment; or

6.5.4.2 applied the provisions suggested as an alternative by the Claimant (as referred to in a 20 December 2021 email p681-682):

6.5.4.2.1 To work standard hours.

6.5.4.2.2 Have flexible working and better work-life balance e.g. allow him to work from home.

6.5.4.2.3 Make changes to tasks, duties or responsibilities (reduced workload, duties or reallocation of duties/tasks to a colleague).

6.5.4.2.4 Providing additional equipment – provision of a seat cushion due to poor blood circulation.

6.5.4.2.5 Reduce the amount of work being escalated to him.

6.5.4.2.6 To have regular 5 – 10 minute breaks every hour for circulation due to his disability/health condition.

6.5.4.2.7 More support from management in the form of regular meetings.

6.5.4.2.8 Provide support during times of high stress demands.

6.5.4.2.9 Redeployment.

6.6 Was it reasonable for the respondent to have to take those steps and when?

6.7 Did the respondent fail to take those steps?

7. Harassment related to disability (Equality Act 2010 section 26) p34

7.1 Did the respondent do/not do the following things:

7.1.1 Employee Relations not answering the Claimant's questions posed in emails dated 20 January 2022 (p.700 – 701) and 26 January 2022 (p. 707-708) (regarding s6.2.8 and s7.0 (s7.4 return to work interview/s must have taken place for each episode of sickness prior to the implementation of the sickness absence procedure)).

7.1.2 Employee Relations not supplying the Claimant with a copy of his employee/personnel file, and being passed around the houses. The Claimant says he first requested this on the 21 May 2021 (p400) and many times since (the Claimant says that since then he has had no option but to escalate this to the Data Protection Officer (Kevin Winters) which he says he did on the 13th January 2022).

7.1.3 The Claimant's flexible working arrangement which had been approved by his Director, Lubna Dharssi, in October 2019 (to allow him to work from home due to his disability/pains in his legs), was cancelled by Hameer Awan in January 2020, and the Respondent has consistently refused to reinstate it.

7.2 If so, was that unwanted conduct?

7.3 Did it relate to disability etc?

7.4 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?

7.5 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.

8. Time limits

8.1 Given

8.1.1 Date of receipt by Acas of the EC notification - 03 May 2022

8.1.2 Date of issue by Acas of this Certificate - 13 June 2022 (method of issue – Email)

8.1.3 Date of receipt of ET1 - 13 July 2022 any complaint about something that happened before 4 February 2022 may not have been brought in time (paragraph 51 page 170).

8.2 Was the alleged discrimination within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

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

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

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

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

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

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

9. Remedy for discrimination

- 9.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 9.2 What financial losses has the discrimination caused the claimant?
- 9.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 9.4 If not, for what period of loss should the claimant be compensated?
- 9.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 9.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 9.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 9.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 9.9 Did the respondent or the claimant unreasonably fail to comply with it?
- 9.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
 - 9.10.1 By what proportion, up to 25%?
- 9.11 Should interest be awarded? How much?