EMPLOYMENT TRIBUNALS

Claimant: Mr B Johnson-Brown

Respondent: Royal Free Hospital NHS Foundation Trust

HELD AT: **London Central**

ON: 26,27,28,29,30 June 2023,
3 & 4 July 2023,12 July 2023 (in Chambers)

BEFORE: Employment Judge Akhtar

Members: Mr D Schofield
Ms G Fleming

Representation:

For Claimant: In person

For Respondent: Mr A Ross, of Counsel

RESERVED JUDGMENT ON LIABILITY

The unanimous Judgment of the Tribunal is that:

1. The Respondent has not contravened s13 Equality Act 2010 in respect of direct disability and race discrimination. The Claimant's claims of race and sex discrimination are not upheld.

2. The Respondent has not contravened s26 Equality Act 2010 in respect of disability related harassment. The Claimant's claim of disability related harassment is not upheld.

3. The Respondent has not contravened s20 and s21 Equality Act 2010 in respect of a failure to make reasonable adjustments. The Claimant's claim of failure to make reasonable adjustments is not upheld.

4. The Respondent has not contravened s27 Equality Act 2010 in respect of victimisation The Claimant's claim of victimisation is not upheld.

CLAIMS AND ISSUES

1. The Claimant brings claims of direct disability and race discrimination, disability related harassment, victimisation and a failure to make reasonable adjustments. The issues were identified at a preliminary hearing on 31 August 2022, before Employment Judge Burns and are set out below.

2. The issue of whether the claims have been brought in time remains a live issue as the Respondent made clear in its amended ET3 response following the preliminary case management hearing on 31 August and as per Mr Ross' opening note at the commencement of this hearing. Time limits as well as date of knowledge of disability were therefore matters that required consideration and determination by the Tribunal.

3. The Respondent conceded that the Claimant was a disabled person by reason of dyslexia at all material times relating to these claims.

4. The Respondent contended that it did not know and could not reasonably have been expected to know that the Claimant was a disabled person by reason of dyslexia at all material times.

<u>LIST OF ISSUES</u>

DISABILITY

5. At the commencement of this hearing, it was noted that the Respondent admitted that the Claimant was disabled by way of dyslexia within the meaning of the Equality Act 2010 ("EqA 2010") at all material times. Therefore, the only remaining issue in dispute in respect of disability was the Respondent's date of knowledge.

DIRECT DISABILITY DISCRIMINATION

6. The Claimant says he has had Dyslexia from birth but has not had any medication or other medical treatment for it. He claims the following as less favourable treatment because of his dyslexia:

   (a) An email sent by Jemma Gilbert (JG) in March 2021 *"teaching the Claimant a lesson about writing"* unnecessarily copied to others;

   (b) Removal of 15 hours learning time and 2 hours one-to-one support (which was part of a study course being undertaken by Claimant) stopped in November 21 and replacement with 3.75 hrs study course;

   (c) Ignoring an Occupation Health Report received 16 July 2021;

   (d) Delay in carrying out further assessments from July 21 to January 22.

   (e) Failure to enact recommendations of a 2019 Educational Needs Assessment which had recommended a list of software for C's computer - part of which only was provided in April 22 only after ET1 issued

FAILURE TO MAKE REASONABLE ADJUSTMENTS

7. Was the Respondent obliged to make reasonable adjustments to accommodate the Claimant's alleged disability pursuant to section 20/21 Equality Act 2010?

8. The PCP the Claimant relies upon is the requirement to read and write and present information in the correct order in reports and other work, which the Claimant struggled with.

9. The specific alleged reasonable adjustments are as follows:

(a) Computer Software mentioned in Work Place Needs 2019 Assessment - should have been provided Feb 2020;

(b) A Support worker to help organise C's work for 2 hours 30 times a year - should have been continued from end of his study course in about November 2021 onwards;

(c) Additional time (25% to 50% more than a none dyslexic employee in that position would require) to allow him to absorb information - - should have been done from February 2020 - which is when C asked JG for more time;

(d) Providing notes of meetings with clear instructions and bullet points - should have been done from February 2020 - C referred JG in Feb 2020 to 2019 assessment;

HARASSMENT

10. Did the Respondent harass the Claimant by reason of his disability contrary to section 26 Equality Act 2010, namely:

(a) by Jemma Gilbert (JG) sending an email in March 2021 *"teaching the Claimant a lesson about writing"* unnecessarily copied to others;

(b) Jemma Gilbert trying to move the Claimant to a different team. In March 2021 a meeting was held with Daniel about this - but he was not moved;

(c) Jemma Gilbert sending the Claimant roles outside team on numerous dates between September 2020 to March 2021. E.g. in Autumn 2020 - she tried to use the Claimant for urgent and emergency care work.

DIRECT RACE DISCRIMINATION

11. The Claimant says he is Black British with Caribbean heritage, he relies on a hypothetical comparator and in his skeleton argument he set out the following comparators:
    (a) Rob Neaves – white male colleague on the EGA programme;
    (b) Jessica Drummond – white female colleague in Health & Inequalities team for whom Ms Gilbert enacted the acting up policy;

(c) The Unlearning Network for white colleagues sponsored by Ms Gilbert and others;
(d) Dominic Jones – white male colleague evaluated at band 8d without HR input.

12. The less favourable treatment because of his race he claims is:

(a) Non-communication of delays in investigating a grievance made in March 2021;

(b) James Moore viewing the Claimant's evidence in negative manner;

(c) Leaving the Claimant without a manager or a portfolio of work during grievance investigation process March 2021 to November 2021

VICTIMISATION

13. Did the Respondent victimise the Claimant contrary to section 27 Equality Act 2010?

14. The Claimant's protected acts are:

(a) Complaint in writing to Sean Danielli about race and disability discrimination in June and July 2020;

(b) Complaint in writing to Jemma Gilbert and Lorraine Taylor in July 2020;

(c) Grievance in March 2021;

(d) Report in Summer 2021 with experiences mostly negative and about discrimination of Ethnic Minority network - provided to Daniel Barret in September 2021.

15. The claimed detriments because of the protected acts are:

(a) Removal of study time in November 2021;

(b) The handling of the grievance;

(c) The grievance outcome in November 2021;

(d) Leaving C without a manager or a portfolio of work during investigation process March 2021 to November 2021.

Procedure, documents and evidence heard

16. The Tribunal heard evidence from the Claimant and on his behalf from Ms Ashley Phipps, academic study support practitioner for individuals with specific learning difficulties.

17. The Tribunal also heard the evidence of the following witnesses on behalf of the Respondent:

Ms Jemma Gilbert, Director of Transformation (Healthy London Partnership 'HLP') & Claimant's Line Manager from February to July 2020;
Mr David Groom, Quality Improvement Advisor (HLP) & Claimant's Line Manager from July 2020 to March 2021;
Ms Suman Barhaya, Assistant Director (North East London Healthcare Consulting 'NHC') & March 2021 grievance investigator;
Mr James Moore, Chief Operating Officer & March 2021 grievance commissioning officer;
Mr Oliver Bailey, Assistant Director, (NHC) & Claimant's Line Manager from April to 15 September 2021;
Mr Andrew Brown, Assistant Director, (NHC) & Claimant's Line Manager from 15 November 2021 to April 2022.

18. There was a tribunal bundle of approximately 2039 pages. Various additional documents were handed up during the course of the hearing. These pages were numbered and added to the bundle. The Tribunal informed the parties that unless it was taken to a document in the bundle it would not read it.

19. The Tribunal had the benefit of written submissions together with further oral submissions provided by the representatives. These submissions are not set out in detail in these reasons but both parties can be assured that the Tribunal has considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

20. At the start of the hearing the Claimant raised a preliminary application requesting that he be permitted to make an audio recording of the hearing as his disability made it difficult for him to make contemporaneous notes. The Respondent objected to the application and referred the Tribunal to the case of ***Heal v University of Oxford 2020 ICR 1294***. In response the Claimant referred to the case of ***Jandu v Marks & Spencer 2021 2200275,*** however, the Tribunal agreed with the Respondent's submission that as this is not an EAT or higher Court decision, this case was not binding on the Tribunal and it was a case that was also specific to the facts of that particular case.

21. Before any judgment was delivered by the Tribunal, the Claimant withdrew his application advising that whilst he felt he would be disadvantaged he did not want the Respondent to exploit this as grounds for unfairness. The Claimant advised that as a direct result of financial difficulties caused by the Respondent in respect of pay (matters separate to these proceedings) he did not have the financial means to pay for a note taker, however someone would be attending later in the week to assist him with taking notes.

22. The Tribunal suggested alternative adjustments that may assist the Claimant which included allowing the Claimant additional time post cross-examination of a witness to reflect and consider if there were any additional matters that he wanted to put to the witness. In addition, whilst the Claimant was giving evidence, allowing more regular breaks between topics. The Claimant appeared content and grateful for these suggested adjustments. The Claimant requested that a clock be placed somewhere where it was visible to the Claimant so that he could remain mindful of the time. This request was also accommodated.

<u>Application to Amend claim</u>

23. Whilst this matter was not raised as a preliminary issue, it is addressed at this point of the judgment as this matter was considered by the Tribunal before it went into deliberations. At approximately 4pm on 3 July 2023, the final day of the hearing after all evidence and the Respondent's submissions had been heard, the Claimant upon questioning by the Tribunal advised that he wished the Tribunal to consider amendments to his claim.

24. It had become apparent from the Claimant's written submissions that he was suggesting the Tribunal consider additional claims although this was not presented as a formal application or indeed even as an informal application, it was simply referenced

in the Claimant's submissions and skeleton argument that the Tribunal may wish to consider the following additional claims:

(1) Discrimination Arising from Disability: My disability was not adequately considered by JG in work allocation;
(2) Failure to Comply with the Duty to Make Adjustments: In Feb 22 despite a dedicated budget, funds were not authorised for a weekly support worker, and I was told to approach Access to Work. This suggests a failure to comply with the duty to make reasonable adjustments;
(3) Indirect Disability Discrimination: On March 21, when JG had restricted access to her calendar, this put me at a disadvantage in planning and scheduling, indicating indirect disability discrimination;
(4) Harassment Related to Disability: When JG heckled me online, this can be seen as harassment related to disability;
(5) Victimisation (Disability): The discriminatory investigation outcome negatively impacted my career and development prospects, indicating victimisation related to disability;
(6) Indirect Race Discrimination: When JG enacted the acting-up policy for Jess Drummond to 8c, this suggested a comparative criterion being used for its application, which indicated indirect race discrimination;
(7) Harassment Related to Race: At appeal, Helen Hughes, the chair advised on controlling my behaviour and made a remark about my eloquence, in the context, this falls under harassment and victimisation related to race;

25. The Judge questioned the Claimant as to why he did not present this application to amend at the start of the hearing, despite numerous reminders throughout about the issues that the Tribunal would be considering. The Claimant advised that it was referenced in his skeleton argument submitted as part of the bundle and that when he had tried to raise additional matters, he had been advised by the Judge that additional matters would not be considered.

26. The Judge responded that the Claimant was advised at the start of the hearing that his skeleton argument would be considered alongside submissions at the end of the evidence. The reason that was considered more appropriate, using the Claimant's own words in his accompanying cover email was that *"the Skeleton Argument sets out the legal basis for my claim and the key points that will be made at the hearing. It includes references to relevant legal authorities and explains how these apply to the*

facts of my case". On this basis, it was considered more appropriate and relevant to closing submissions. At no point did the Claimant seek to challenge this or point out that the document also contained an application to amend his claim, it was incumbent upon him to do so. With regard to additional matters not being permitted, this was in specific reference to the Claimant raising matters relating to deductions from pay and a case relating to this issue. The Judge had advised at that point that that matter was separate and not linked to the issues before the Tribunal and as such would not be considered.

27. With regard to why the Claimant had not made an application to amend at any point before the final hearing, the Claimant advised that he did not receive a copy of the hearing bundle until late in the proceedings and it was only at that point that he discovered matters that he was now seeking to include. He went on to state that based on his health and disability, his claims may not have been set out perfectly and that is why he wanted the Tribunal to consider additional matters.

28. The Respondent strongly objected to any amendment allowing additional claims and urged the Tribunal to reject the Claimant's application. Mr Ross submitted the following key objections:

(a) The Claimant did not have good reason for the delay in bringing these additional complaints;
(b) The full bundle was provided to the Claimant on 25 April 2023 and a paginated bundle was provided on 26 May 2023, there was plenty of time for the Claimant to make an application before now;
(c) These were all matters that were in the personal knowledge of the Claimant, they were predominantly separate factual matters requiring further evidence;
(d) Even at this late stage, the Claimant had not presented an application to amend, he had simply alluded to this in his submissions;
(e) Should the Claimant be allowed to amend his claim to bring in potentially 7 new claims, the proceedings would have to go for many further months, causing the Respondent significant cost and prejudice;
(f) It was unreasonable conduct on behalf of the Claimant and a waste of Tribunal resources;
(g) The Respondent was entitled to finality in litigation, the Claimant should have raised these matters alongside others at the Case Management hearing and he shouldn't be permitted to waste further time;

(h) The Tribunal must consider time limits, which was part of the reason for allowing amendments at the Case Management hearing;
(i) The Claimant had spent a considerable amount of time during the hearing in relation to additional documents but this was the first time he was raising amendments;
(j) In applying the Selkent principles, it was just and equitable for the Tribunal to reject the Claimant's applications.

29. Applying the well-known test in ***Selkent Bus Co Ltd v Moore 1996 ICR 836 EAT*** ("the Selkent test"), having regard to the interests of justice, the Tribunal considered the submissions of the parties and the relevant circumstances of the case. The Tribunal considered the relative injustice and hardship that would be caused to the parties by allowing or refusing the amendment application respectively. The following circumstances were relevant:

(a) The nature of the proposed amendment
(b) The applicability of time limits
(c) The timing and manner of the application
(d) Other considerations regarding the balance of injustice and hardship

30. Looking firstly at the nature of the amendments, the Tribunal considered each of the requested amendments separately, however for each matter a general conclusion that the Tribunal drew was that the amendments were inadequately particularised and that the Claimant was aware of and had personal knowledge of all these matters; they were not matters that came to his attention as he suggests following disclosure of the electronic hearing bundle which was provided to him on 25 April 2023. The Claimant has not pointed to any new evidence or documentary evidence from the Respondent that prompted him to reassess his claim.

31. In relation to amendments to 2 & 5, we find that these are already matters included in the claim before the Tribunal. Amendment 2 relates to a reasonable adjustments claim regarding the provision of a support worker, this is already included in the current claim. Amendment 5 is included in the current claim to the extent that it covers the grievance outcome. In relation to any detriment relating to career and development prospects, the conclusions we have reached below apply equally to the Tribunal refusing this amendment.

32. In relation to the remaining amendments 1,3,4,6 & 7, we find that these are separate factual matters requiring further evidence and as such any amendment would be adding new claims unconnected with the original claim; this would significantly widen the scope of the Tribunal's enquiry. All these claims are significantly out of time, all pre-date the submission of the original claim and all appear to be facts within the knowledge of the Claimant. The Claimant has provided no adequate explanation of the delay in presenting his application to amend any earlier or the manner in which he has presented his application.

33. At the Case Management hearing before Employment Judge Burns on 31 August 2022, it is noted that a significant amount of time was spent discussing the claims with the Claimant to ascertain what he had claimed and what he was claiming. Some amendments were allowed at that time and others raising new claims of indirect race discrimination and s.15 discrimination arising from were rejected. The Claimant did not raise these amendments at that hearing, despite these covering the same time periods to which his amendments at that time related.

34. The Tribunal noted the detailed submissions of the Respondent and accepted the significant injustice and hardship that would be caused to it should the Claimant be allowed to amend his claim; ultimately, the proceedings would have to go on for many further months, causing the Respondent significant cost and prejudice. In relation to the Claimant, the Tribunal accept injustice and hardship will be caused to him, in that if his claim to amend is not allowed he will be unable to progress these claims. We take into account his submission that his health and disability has meant his claims "may not have been set out perfectly", however, he has provided no evidence in this regard. We consider that the Claimant has had ample opportunity to clarify his claim given how much time has passed and ultimately, he has been unable to adequately explain the reasons for the significant delay. The Tribunal would have reached the same conclusion had the Claimant made his application at the start of the hearing as all the reasons highlighted above would have equally applied at that time.

35. For all the reasons set out above and in furtherance of the overriding objective to deal with cases justly, expeditiously and in a way which saves expense and undue delay, the Claimant's application to amend is refused. The decision was communicated to the parties on 4 July 2022 and they were advised that reasons would be provided in this judgment.

Findings of fact

36. Having considered all the evidence, both oral and documentary, The Tribunal made the following findings of fact. These findings are not intended to cover every point of evidence given but are a summary of the principal findings that the Tribunal made from which it drew its conclusions. The Tribunal have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may have been relevant to drawing inferences and conclusions.

37. The Claimant commenced employment with Guys and St Thomas' NHS Trust "GSTT" on 3 July 2017 as a Band 8A Project Manager, Social Prescribing. The Claimant's contract of employment was transferred under the TUPE regulations to the North East London Commissioning Support Unit "NELCSU" on 1 February 2020. While NELCSU existed, the NHS Business Services Authority "the BSA" was the contractual employer of all NELCSU staff. Since it ceased to exist, the BSA has been the contractual employer of NELCSU staff who did not transfer elsewhere. On 1 July 2022, the Claimant's employment transferred to the Respondent, under the TUPE regulations.

38. At all material times and since 3 July 2017, the Claimant was working with the Healthy London Partnership "HLP". The HLP is not a legal entity, it is a partnership of London's NHS, London Councils, Mayor of London and other organisations and individuals who work together with the aim to make London the World's healthiest city. HLP does not have a separate legal identity and since July 2022, HLP has been hosted by Royal Free London NHS Foundation Trust.

39. The Claimant has had 7 different line managers from 2018 – 2023. These line managers and relevant periods are as follows:

Amelia Howard – 2018 to January 2019
Nikki Lang – April 2019-February 2020
Jemma Gilbert - February 2020 – July 2020
David Groom – July 2020- March 2021
Oliver Bailey – April 2021 – 15 September 2021
Andrew Brown – 15 November 2021 – April 2022
Bylan Shah – April 2022 – to date

40. Save for the two month period between 15 September 2021 and 15 November 2021, the Claimant has had a line manager in place at all other times.

41. As well as a line manager who had overall oversight for appraisal, development and well-being, as a project manager the Claimant also had various assignment managers in place. The assignment managers were responsible for day to day allocation of work on specific projects.

Events of July 2020

42. At the relevant time the Claimant was a substantive member of staff in HLP and his work placement was within the Health Inequalities and Improvement Programme, under the leadership of Jemma Gilbert, Director of Transformation, with line management by David Groom, Innovation Lead. The Claimant's assignment manager at that time was Matthew Pike, Director, Social Fund London.

43. From March 2020, Ms Gilbert was voluntarily deployed to act as the Covid-19 Incident Director responsible for managing the homeless population in London. As a result, Mr Groom took over line management of the Claimant in July 2020 due to Ms Gilbert's limited capacity at that time. In cross-examination, the Claimant disagreed with the date that Mr Groom took over his line management and contended that this was sometime around his approach to ACAS, which by his own account would have been around 23 July 2020. By either account line management was taken over by Mr Groom in July 2020, however, the documentary evidence supports the conclusion that this happened in early July 2020, prior to any suggestion of ACAS involvement. On 10 July 2020, an email was sent by Mr Groom to Ms Gilbert copying in the Claimant stating *"The Claimant comes up on my workforce account as I am his line manager. Can I just check that the PDR session at 11 postponed? The Claimant and I also have a workplace assessment scheduled for this afternoon too."* At this time there was an outstanding PDR for the Claimant and Ms Gilbert having been the Claimant's line manager up to that point was keen to complete this.

44. On 16 July 2020, the Claimant sent Ms Gilbert an email seeking an update about *"the direction of travel on equal pay"*, this was in response to an email from Ms Gilbert in relation to arranging a PDR meeting. The Tribunal find that it is clear from the documentary evidence and email exchange between Ms Gilbert and the Claimant at

that time that this is the first time that Ms Gilbert became aware that the Claimant was concerned about an 'equal pay' issue. This is particularly evident from the email communications of 16 July 2020, when Ms Gilbert queries with the Claimant whether he is talking about equal funding and he responds to clarify that he is raising a separate issue with regards to equal pay.

45. On 17 July, Ms Gilbert sent the Claimant an email advising him that the equal pay issue will require a separate discussion to the PDR and they could perhaps discuss at the end of the PDR meeting.

46. As part of his victimisation complaint, the Claimant alleges that in July 2020 he made a complaint in writing to Ms Gilbert and Lorraine Taylor, Senior Programme Manager, and that this was a protected act. Ms Gilbert's evidence is that she was not sent such a complaint and the only issues the Claimant raised with her in July 2020 were in relation to what he had referenced as 'equal pay'. The Claimant was unable to produce a copy of any written complaint sent to Ms Gilbert and Ms Taylor. Without sight of any complaint in writing to Ms Gilbert and Ms Taylor on 20 July 2020, the Tribunal were unable to satisfy itself that such a complaint existed. In her evidence, Ms Gilbert stated that the only protected act she was aware of was the bullying and harassment complaint in March 2021. The Claimant put forward no evidence to challenge this and as such we accept Ms Gilbert's evidence.

47. In cross-examination, it was suggested by the Claimant that the protected act he complains of was set out in an email he sent to Ms Gilbert on 17 July at 15:38 stating, *"I think its something that can't be avoided any further, its not been great for my health since I raised this. Yes, Ops will need to be involved, you might want to check in with Dan and Sultana because I believe a decision is needed ahead of any PDR discussions. Things are taking shape across the board work wise, and more partnership opportunities springing up too, but obviously this ongoing issue is unpleasant*." This email was a continuing chain relating to the equal pay issue he had raised with Ms Gilbert on 16 July.

48. The PDR meeting between Ms Gilbert and the Claimant took place on 23 July 2020. At this meeting, the Claimant shared a slide deck with Ms Gilbert and raised concerns about various issues including, amongst other things, that he had previously been discouraged from applying for an internal post by a different manager and about his responsibilities and contribution to the team at the time, which he felt was greater than

that expected of a Band 8a and not being recognised by Ms Gilbert or Mr Groom. The Tribunal find that the equal pay issue mentioned in the email chain prior to the PDR related to the issue of the Claimant's pay banding, which he considered was not appropriate to the level of his responsibilities. In terms of how this matter was dealt with from this point onwards, it is clear this is how Ms Gilbert and Mr Groom also understood the equal pay issue.

49. The slide deck was shared on screen with Ms Gilbert and referred to the Claimant having *'a long term condition'* although no detail was provided in relation to this. Ms Gilbert's evidence is that the Claimant did not make her aware of any condition including dyslexia at this time and at the time she had not seen the reference on one of the slides to the Claimant living with a long term condition. In support of this assertion, she states that she had taken the call on her mobile phone in her garden, she had assumed that it was a catch up call and was not expecting to be presented with a slide deck. As a result she was viewing the slide deck on a very small screen at the same time as talking to the Claimant. Ms Gilbert also states that the slide deck was not shared with her by email at any point.

50. The Claimant's evidence is that he did refer to his condition at this time. In cross-examination he stated he could not remember whether he used the word long term condition but he states it is more than likely that he did. He went on to state that he used the word dyslexia but did not refer to disability discrimination. The Claimant disagreed with Ms Gilbert that she was in her garden and using her smartphone and specifically recalled that she was in her kitchen.

51. The documentary evidence does not include any emails where the slide deck was shared with Ms Gilbert. All the communications around this time concerned the 'equal pay' issue. The Claimant later referred to Dominic Jones, Senior Advisor, HLP as a comparator, there was no reference to this being a comparator in relation to disability or indeed any other protected characteristic. The comparison was around the role and responsibilities of an 8a role and an 8d role, which we refer to later in our findings. In light of these findings, Ms Gilbert's evidence is preferred as it is supported by the documentary evidence, to a large extent. We find that Ms Gilbert was not made aware of the Claimant's disability at this time.

52. Shortly after the meeting, the Claimant sent Ms Gilbert a copy of a national role profile for business administration and projects that he had sent to Shaun Danielli, Managing

Director, HLP, in June 2020. This was sent as a comparison to the role that the Claimant felt he was carrying out at HLP. He also sent a further email detailing his skills and achievements, equating to the 8c/8d skillset. In her written evidence Ms Gilbert states that the comparison provided by the Claimant was very different to what would be required for an internal role comparison and job evaluation. She also stated that Mr Jones was someone who was employed due to his specialist skillset and knowledge and was almost 4 pay grades above the Claimant.

53. Following his further communications, Ms Gilbert advised the Claimant that she would speak to HR and would try to respond to him by 24 July 2020. The Tribunal accepts Ms Gilbert's evidence that she was unable to do so and cites her role in responding to COVID-19 emergencies and other pressures as the reason for this.

54. On 31 July 2020, the Claimant emailed Ms Gilbert to advise that he had sought external support as she had not responded to him within time. The Claimant was referring to contacting ACAS. Within this email, the Claimant also refers to suffering mental and physical harm as a result of the ongoing situation.

55. On 3 August 2020, Ms Gilbert sent an email to the Claimant apologising for the delay in responding and setting out the next steps she felt were necessary, following the meeting on 23 July 2020. The steps included involving HR to review the internal role application, reviewing any new band 8b internal vacancies which the Claimant could apply for and carrying out an independent review of the Claimant's current objectives to decide whether or not his role required regrading. Ms Gilbert also suggested identifying an external career coach for the Claimant and referring the Claimant to Occupational Health. We find the reference to the referral to Occupational Health was in relation to the Claimant advising that he was suffering mental and physical harm as a result of the ongoing situation.

56. On 10 August 2020, the Claimant sent an email to Ms Gilbert stating that there had been a 'matrix of factual events resulting in harm' which he perceived to be direct discrimination. The Claimant also sought disclosure of various information and documents. Marielza Bradshaw, HR & OD Business Partner, responded to the Claimant advising that if he was raising a formal grievance/complaint, this would need to be submitted in line with the GSTT policies.

57. The Claimant confirmed to Ms Bradshaw that he had approached ACAS on 23 July 2020 to seek external support to help resolve the dispute and that the early conciliation

period had commenced. On 7 September 2020, the Respondent received an ACAS early conciliation certificate. The Respondent did not subsequently receive any notice of claim from the Tribunal in respect of this dispute. The Tribunal note that the specific complaints currently before the Tribunal do not include matters relating to equal pay.

58. Following up Ms Gilbert's email in August to the Claimant regarding a job evaluation, on 8 September 2020, Ms Bradshaw sent the Claimant a copy of the Respondent's Job Evaluation Policy and set out the regrading process. This process involved Mr Groom and the Claimant reviewing his job description and person specification and agreeing whether it needed to be amended or not in line with the requirements of his role.

59. On 17 September Mr Groom sent an email to the Claimant following up Ms Bradshaw's email. Mr Groom offered to support the Claimant through the process and set out what was required from the Claimant. The Claimant appeared to be engaged with the process, however, he ultimately did not complete the relevant questionnaire to progress the job evaluation. In his evidence Mr Groom states that the Claimant verbally advised him that he did not wish to follow the process anymore, this is denied by the Claimant. The documentary evidence supports the conclusion that the process came to an end at that time. There were no follow up emails by the Claimant to Mr Groom querying what had happened and why the process was not continuing. As such, the Tribunal find that the Claimant decided not to continue with the process.

60. As part of his victimisation complaint, the Claimant alleges that in June and July 2020 he made a complaint in writing to Mr Danielli about race and disability discrimination and that this was a protected act. Ms Gilbert's evidence is that she was not sent such a complaint and the only issues the Claimant raised with her in July 2020 were in relation to what he had referenced as 'equal pay'. When asked by the Tribunal to clarify, the Claimant was unclear which specific document was the alleged complaint in writing to Mr Danielli. At various points, the Claimant suggested the following 3 emails were the written complaint:

(a) Email sent to Mr Danielli on 9 June 2020 following a meeting on race an equality. The Tribunal find that this email does not set out any complaint about race and disability discrimination, it simply references general actions that the Claimant suggests should be undertaken in relation to race and inequality matters.

(b) During the course of the hearing, the Claimant produced an email sent to Mr Danielli on 13 June 2020, with a subject heading of 'Help'. In this email, the Claimant asks Mr Danielli to assist him in being recognised for his work and includes reference to the equal pay issue. These are the matters that the Claimant subsequently raises with Ms Gilbert in his meeting with her in July 2020. For the same reasons as set out above relating to the equal pay issue, the Tribunal find that this email does not set out any complaint about race and disability discrimination.

(c) Email sent to Mr Danielli on 24 June 2020 about pay inequality, attaching a national role profile, this is a follow up to the email sent on 13 June 202. The Tribunal find that this email does not set out any complaint about race and disability discrimination.

New Assignment – October 2020

61. The programme which the Claimant was working on was due to come to an end in March 2021. In or around October 2020, it was becoming more evident that the programme would be coming to an end in March 2021, as no additional income for funding had been secured. Whilst the Tribunal did not have sight of the Claimant's contract as neither party had a copy of this, it was accepted that the Claimant had a permanent contract. His role was described as rotational, although there was dispute on the precise terms of the rotational role and without the employment contract the Tribunal were unable to reconcile this issue. That said, for the purposes of the issues before the Tribunal, a finding on this issue was not considered necessary.

62. In their evidence to the Tribunal, Ms Gilbert and Mr Groom accepted that they were actively trying to find the Claimant a role which he could be assigned to once the current assignment came to an end. Ms Gilbert stated in her evidence that she had told peers within the senior management team that the Claimant was unlikely to have an assignment post March 2021 so they could see if they had anything appropriate.

63. Ms Gilbert was aware that the Claimant wanted to move up to a higher band and as there were no vacant 8b posts in her team at that time, she along with Mr Groom began to send the Claimant internal Band 8b job vacancies which he could apply for. Ms Gilbert had previously advised the Claimant that other than the job evaluation process

the only other way for someone to move up a band would be to apply for a higher-grade role either internally or externally.

64. On 13 October 2020, Mr Groom alerted the Claimant to a Band 8b internal vacancy for which he could apply. Similarly, on 12 November 2020, Ms Gilbert asked Mr Groom to flag another Band 8b internal vacancy to the Claimant.

65. All job vacancies are sent directly to all staff via a corporate alert so the Claimant would have received these in any event. In her written evidence, Ms Gilbert states that she specifically sent the Claimant vacancies as she was trying to support him by making him aware of Band 8b roles. She further states that she would have done this for any of her staff who were displaying ongoing dissatisfaction with their employment contract. The Claimant claims that Ms Gilbert was harassing him by sending these vacancies to him and that the reason she was sending these was due to his disability. The documentary evidence does not support the Claimant's case that either Ms Gilbert or Mr Groom were aware of his disability at this time. The Tribunal find that the reasons presented by Ms Gilbert and Mr Groom for sending out vacancy details were genuine and apparent on the facts.

66. On 18 December 2020, the Claimant informed Ms Gilbert and Mr Groom that he felt changes were required following Mr Jones' departure in November, including recognition of him acting up in the Senior Advisor post and then back filling his existing post.

67. On 22 January 2021, Mr Groom confirmed his understanding to be that the Claimant had never been asked to act up into Mr Jones' role and that Mr Pike had been covering the roles and responsibilities appropriate to his grade and delegating work to the Claimant which was appropriate for a Band 8a. Mr Groom explained that if the Claimant felt any roles and responsibilities he had been given were significantly above his grade, then he could list them and obtain advice from HR on the correct procedures to follow.

68. These conversations continued into March 2021 and Mr Groom confirmed again on 10 March 2021 that his view was that the Claimant had not been asked to work at a level above a Band 8a. Ms Gilbert also confirmed that any movement to a different grade band would require either a re-evaluation of the Claimant's existing post, which had been previously initiated, or a job application to a confirmed post of a different grade band. Ms Gilbert again flagged that there had been various adverts for internal Band 8b roles and queried whether the Claimant had applied to any.

69. On 9 March 2021, Dan Heller, Senior Programme Manager, Out of Hospital Cell, contacted the Claimant about an opportunity for a role on his programme with a strong digital focus, as he was aware that the Claimant's programme was coming to an end. Ms Gilbert and Mr Groom encouraged the Claimant to discuss this further with Mr Heller, however, in an email dated 11 March 2021, the Claimant stated that it was not the right time for him to learn a new area.

70. Within this email, the Claimant also referred to not receiving support with access to work. Mr Groom queried what help he needed with this and assumed that this related to the Claimant working from home. Mr Groom's evidence was that following the start of the pandemic, the Respondent had carried out risk assessments for all staff and the Claimant was aware that he could purchase equipment to assist with working from home.

71. On 12 March, Mr Groom asked the Claimant to confirm that he had everything he needed and that there was no "gap" to bridge. The Claimant responded on 16 March stating that he did not know if he had all he needed and that there was a new way of working. The Claimant did not mention dyslexia or requiring any adjustments as a result of this. The Tribunal find that Mr Groom's understanding at the time was that the Claimant was referring to working from home arrangements. The Claimant had not mentioned on any of the risk assessment forms that he had a disability and/or that he required adjustments as a result.

72. Mr Groom's evidence was that the Claimant never mentioned any disability to him or that he had dyslexia. He also states that the Claimant never sent him any assessment or report in relation to his disability or communicated the contents of any such report. He only became aware of the Claimant's disability during the bullying and harassment investigation process, when he was also shown a copy of the DSA Report from June 2019. In light of our findings above, we find that Mr Groom was not aware of the Claimant's disability and did not see the DSA report until he was made aware of this during the bullying and harassment investigation.

73. In his evidence Mr Groom stated that the only protected act he was aware of was the bullying and harassment complaint in March 2021. The Claimant presented no evidence to challenge this assertion, as such we accept Mr Groom's evidence in this regard.

November 2020 meeting/Study leave

74. On 20 November 2020 the Claimant attended a meeting with Ms Gilbert. During this meeting the Claimant mentioned that there had been some bereavements in his family. In response Ms Gilbert queried what support the Respondent could provide him with and suggested an Occupational Health referral. Ms Gilbert accepts that the Claimant also mentioned wanting to use the Access to Work scheme although her evidence is that the Claimant did not clarify why he wanted to use the scheme. Ms Gilbert also stated that she had never heard of the Access to Work Scheme and she had no reason to suspect that it was related to disability as she was unaware of the Claimant's disability at that time. In light of our findings earlier in relation to Ms Gilbert's knowledge of the Claimant's disability, we accept that she was unaware of the Access to Work Scheme.

75. During this meeting, the Claimant also mentioned that he had been using 2.5 days per week as study time for a course he was completing, the Elizabeth Garrett Anderson programme ("EGA"). Ms Gilbert was aware that the Claimant had commenced this programme in 2019 but was unaware that the Claimant had been spending 2.5 days from his working week on study leave.

76. The EGA programme is a two-year programme leading to an NHS Leadership Academy Award in Senior Healthcare Leadership and a Masters in Healthcare Leadership. The Claimant commenced this course in February 2019 and finished substantive work on it in November 2021, with the course formally ending in January 2022. The Claimant successfully completed the course.

77. During the meeting, the Claimant advised that the EGA programme required 15 hours of study leave per week and that this this had been adjusted by an additional 25% for him by his previous line manager, Amelia Howard, who had since the left organisation. Later as part of the bullying and harassment investigation the Claimant advised that study time had not been agreed with Ms Howard and that there was no evidence to support any such agreement. The documentary evidence shows that neither dyslexia or additional study leave was mentioned in the handover to Ms Gilbert from Ms Howard and the Claimant's own notes of the November meeting do not reference him mentioning anything about dyslexia or the reason for additional time. Based on these findings, we conclude that the Claimant did not advise Ms Gilbert at this time why his study time had been adjusted by 25%.

78. During the course of the hearing, the Claimant produced a referee form, relating to his admission on the EGA programme. The form appears to be signed by Ms Howard and is dated 17 October 2018. The form contains no reference to study time or to the Claimant's disability.

79. We find that the Claimant had not provided this form to any of his line managers post Ms Howard. The Claimant claimed the referee form had been attached to a particular email to Ms Barhaya containing numerous documents, however, following checks carried out during the course of the hearing, it was confirmed that the form had not been attached. The Claimant did not produce any evidence to the contrary. The documentary evidence supports the fact that the referee form was not disclosed during the course of the bullying and harassment investigation.

80. In their evidence to the Tribunal, most of the Respondent's witnesses expressed their surprise with the amount of study leave the Claimant stated that he required. In his evidence Mr Groom stated that he has never come across anyone in 28 years of NHS service who had 2.5 days a week of paid study leave. Ms Gilbert's enquiries with HR at the time revealed that no one else in the organisation had been authorised that amount of study time. As part of the bullying and harassment investigation, 2 other people were identified as undertaking the programme at that time and neither had taken any study leave. The Claimant refers to Rob Neave, a white male colleague on the EGA programme as a comparator, however, he has provided no detail or produced any evidence as to the amount of leave Mr Neave was taking and why he states he was treated less favourably than him.

81. Ms Gilbert had advised the Claimant in the meeting on 20 November 2020 that she would look into matters regarding study leave and revert to the Claimant, this position is also reflected in the Claimant's own notes of the meeting. On 12 March 2021, Ms Gilbert sent an email to the Claimant advising that any personal development, training and volunteering activities should be limited to 0.1—0.2 WTE. There is no evidence of study time being removed from the Claimant previously and we find that the removal of study time was effected from 12 March 2021.

82. The Claimant's position in terms of how much study leave was required for the EGA programme shifted during the hearing. In his evidence to the Tribunal, he suggested that he never had 15 hours study leave because much of work involved the practical

application in work of new theoretical principles. We accept the Respondent's submissions that this is inconsistent with the Claimant's position in the List of Issues as well as Ms Phipps' evidence that the Claimant had told her that he had 15 hours per week of study time and that this had been reduced by the Respondent in November or December 2020.

Email of 11 March 2021

83. In March 2021 the Claimant was assigned to a digital project and was working with Mr Groom and Jess Drummond (senior programme manager). On 11 March 2021, the Claimant copied Ms Gilbert and Deodita Fernandez into an email he had sent Mr Groom, which set out what appeared to be a draft of an email he had sent to the external client. Ms Gilberts was not aware at the time that the Claimant had already sent the email to the external client and responded to the Claimant on the same day, stating the following:

"Your role is not advisory – you are employed and assigned in the role of project manager. This was offered as a great development opportunity for you to build on your recent digital leadership training. It is gaining more practical experience of digital project management and delivery. You will need to secure end to end delivery for the client working with David. Is that ok?

I think you probably meant that anyway it may just be the way it was worded. The message could be clearer overall. An external client might not understand expressions like 'piece of portfolio activity' and 'talking to the forces'. I'm also concerned that we won't have an output to look at tomorrow so that the governing body can also shape the direction"

84. Ms Gilbert continued in the email highlighting sections of the Claimant's response and providing alternative wording suggestions. The Claimant contends that the email was sent to *"teach him a lesson".* He perceived this email as a deliberate attempt to undermine and embarrass him based on his disability and that this amounted to direct disability discrimination and harassment. Ms Gilbert denies this and in her evidence to the Tribunal stated that the quality of communications with clients is key and that she sent the email to provide feedback on the content of the email and make suggested amendments providing clarity to the client. Ms Gilberts stated that the email was copied to Mr Groom and Deodita Fernandez, Programme Manager, as they were

included in the original email chain although she accepted that in hindsight she should not have copied in Ms Fernandez as she was providing personal feedback to the Claimant.

85. The Claimant responded to Ms Gilbert on the same date stating that her "critique was unreasonable". Within these emails, the Claimant did not reference his dyslexia or point to Ms Gilbert's knowledge of the same.

Bullying and harassment complaint March 2021 and outcome November 2021

86. The Claimant lodged a formal complaint on 29 March 2021 citing bullying and harassment by Ms Gilbert and Mr Groom. James Moore, Chief Operating Officer commissioned the investigation and Suman Barhaya, Assistant Director was appointed to investigate the complaint.

87. Specifically, the Claimant alleged that he has:

a) received "excessive and harsh criticism" of his abilities and "aggressive public critique" from Ms Gilbert which he considers as harassment;
b) been treated unfairly by Ms Gilbert in relation to his work on the Health Inequalities and Inclusion programme, and this is evidenced by a failure to recognise "factual information" provided as well as a broader dismissal of his contribution which he considers as bullying;

c) received unfair and unequal treatment from Ms Gilbert, Mr Groom, and Mr Pike, as outlined in the policy, specifically:

- Inconsistent application of the 'acting up' policy by all
- Subjective decision-making not in line with policy or wider feedback by Ms Gilbert and Mr Groom
- A failure or refusal to share objectives by Ms Gilbert and Mr Pike for a role which directly related to the role he was undertaking

88. Ms Barhaya held an investigation meeting with the Claimant on 30 April 2021 and within this meeting the Claimant mentioned that mentioned that he had a learning disability, in the form of dyslexia and that this was known to his line-managers, Ms

Gilbert and Mr Groom. In a further meeting on 6 May 2021, the Claimant also disclosed the 2019 DSA report and stated that this had also been disclosed to his line managers.

89. The investigation commenced in April 2021 and ended in November 2021. Typically, the Respondent's aim was to complete investigations within 12 weeks, however, in this case the Respondent accepts that it took a lot longer citing a number of reasons for this, which included the following:

a) the fact that there was provision of numerous documents and emails which required consideration
b) amendment to the notes of all of the interviews following discovery that the note taker was dyslexic
c) Ms Barhaya's role within the organisation, at the time she was leading the Respondent's recruitment drive;
d) the impact of the pandemic and Ms Barhaya's role as Head of Inclusion responsible for welfare of approximately 250 staff;
e) the organisation's move to the new host Royal Free London NHS Foundation Trust
f) Ms Barhaya's absence from work throughout August and September 2021 dealing with a personal bereavement

90. Ms Barhaya's evidence to the Tribunal was that prior to and during the investigation, there had not been a clear discussion or agreement on who would be updating the Claimant throughout the investigation process. Ms Barhaya assumed this would be HR, however, she acknowledges that she should have checked with HR and that this was an oversight on her part. Whilst she accepts that there was a failure to communicate the delays to the Claimant, she states that this was in no way related to his race. Other than the bullying and harassment complaint in March 2021, Ms Barhaya states that she was not aware of any other protected act. The Claimant presented no evidence to challenge this assertion, as such we accept Ms Barhaya's evidence in this regard.

91. The Claimant alleges that Mr Moore viewed his evidence in a negative manner and that this constituted race discrimination. No further detail or evidence was provided to the Tribunal clarifying the basis of these complaints.

92. In his evidence to the Tribunal Mr Moore advised that the Claimant did not provide any information or evidence during the outcome meeting to make him challenge Ms

Barhaya's findings. The Claimant did not raise race as an issue at any point during the investigation process, investigation outcome meeting or the subsequent appeal. Mr Moore stated that prior to commissioning the investigation into the Claimant's complaint, he had minimal involvement with the Claimant. They attended the same staff briefings and the Claimant had previously assisted Mr Moore with a piece of work in November 2020 which involved a few phone calls and emails that were exchanged between them.

93. In relation to protected acts, Mr Moore informed the Tribunal that the only protected act he was aware of, was the bullying and harassment complaint and this did not influence how he handled the complaint or the outcome he reached. The Claimant presented no evidence to challenge this assertion as such we accept Mr Moore's evidence in this regard.

94. The appeal hearing took place on 14 January 2022 and was chaired by Helen Hughes (Director of Business, Clinical & Corporate Services), The appeal hearing considered whether there had been an insufficient investigation, the delays in the investigation and the new evidence presented by The Claimant. The Claimant's appeal was not upheld.

Line Manager March 2021 – November 2021/ Ignoring OHU Report July 2021

95. Following the bullying and harassment complaint against Ms Gilbert and Mr Groom, Oliver Bailey (Assistant Director, NHC) was appointed as line manager for the Claimant.

96. On 22 April 2021, Mr Moore sent an email to the Claimant to tell him that his line-management would temporarily move to Mr Bailey. Mr Bailey remained the Claimant's line manager until he left the organisation on 15 September 2021. In November 2021, the Claimant contacted Mr Moore for an update on the complaint investigation and advised him that he was without a line manager. As a result, Andrew Brown, Assistant Director, Business Development was appointed as his new line manager. Mr Moore acknowledges there was a gap between 15 September and 15 November 2021, where the Claimant did not have an identified line manager, however in his evidence to the Tribunal he stated that this was due to an oversight and not because of the Claimant's race or any protected act.

97. The Claimant was off sick from work from April until 30 June 2021 and was then on a phased return to work carrying out amended duties/hours, he resumed full duties from August 2021.

98. Mr Bailey was informed of the bullying and harassment complaint, however he denies being aware of any of the other protected acts alleged by the Claimant. The Claimant presented no evidence to challenge this assertion, as such we accept Mr Bailey's evidence in this regard.

99. In his written evidence to the Tribunal, Mr Bailey states that once the Claimant was on a phased return to work he had multiple conversations with him about the exciting digital work being carried out and the various roles and opportunities within those projects which the Claimant could help with. However, he states that the Claimant, appeared to be reluctant to pick up any tasks or projects as he stated he was focusing on his EGA course and he wanted to first conclude the ongoing investigation process.

100. In July 2021, Mr Bailey made a referral for the Claimant for an Occupational Health assessment as he had been on long-term sickness absence due to stress.

101. In Mr Bailey's evidence to the Tribunal he advised that having reviewed the hearing bundle, he could see that an Occupational Health report dated 16 July 2021 addressed to him, recommended that the Claimant should undertake a stress risk assessment and a dyslexia workplace needs assessment. Mr Bailey stated that the first time he had seen this report was in preparation of these Tribunal proceedings. At the time, Mr Bailey was working out his notice period and was due to leave the organisation on 15 September 2021. His evidence was that this was an exceptionally busy period of time for him as the Respondent was delivering multiple digital health projects in response to the pandemic, which he had been leading on. He stated that whilst he does not remember what happened he did not wilfully ignore the report.

102. Mr Bailey acknowledges that due to his oversight in relation to receipt of the Occupational Health report, this did cause a delay in the carrying out further assessments from July 2021 to September 2021, however, this was not because of the Claimant's dyslexia.

Reasonable adjustments

103. In November 2021, Andrew Brown was asked by Mr Moore to take over line management of the Claimant, following the departure of Mr Bailey on 15 September 2021. Mr Moore emailed the Claimant on 15 November 2021 to confirm the new line-management arrangements and met with him shortly after.

104. At this meeting the Claimant mentioned attending an Occupational Health appointment in July 2021, commissioned by Mr Bailey. Mr Brown contacted HR on 2 December 2021 to request a copy of the OH report, this was provided and shared with the Claimant in a meeting on 7 December 2021.

105. The OH report recommended further assessments including a stress risk assessment and a dyslexia workplace needs assessment. On 14 December 2021, Mr Brown made the required referrals and an Occupational Health appointment was scheduled to take place with the Claimant on 11 January 2022.

106. The OH report also referred to reasonable adjustments set out in an educational assessment for dyslexia. Mr Brown asked the Claimant to provide him a copy of this and he subsequently sent this.

107. Mr Brown asked the Claimant what adjustments he currently had in place from the assessment, and in particular, whether he still had access to the specific software and hardware referred to. The Claimant confirmed that he had access to all of the software but there was just a RAM issue which meant the system was slow. Mr Brown's evidence to the Tribunal was that he understood from the Claimant's email that he had all of the necessary reasonable adjustments in place and all that was necessary was to refer him to Occupational Health for the further assessments to see if he required any further adjustments.

108. At the time, Mr Brown had incorrectly understood that the Claimant had been using equipment from the organisation for the purpose of the course and that the software adjustments referred to within the DSA report had been available to him on his work laptop rather than his personal laptop, provided by the EGA course provider. Mr Brown later became aware that the Claimant had been using his personal laptop for work purposes and the RAM issue referred to by the Claimant was due to the software and programmes which were taking up a lot of memory and space, which meant the system was slow overall. The Claimant had not made it clear to Mr Brown that he had been

using his personal laptop and we accept Mr Brown's evidence that if he had known this earlier, he would have accelerated the process of obtaining this software on his work laptop.

109. In his evidence to the Tribunal Mr Brown clarified that the process for obtaining workplace adjustments required specific input from Occupational Health to confirm what adjustments an employee required, specific to their role, the DSA assessment was specific to study so until the Occupational Health workplace assessment was provided the specific software adjustments required by the Claimant could not be confirmed.

110. On 13 January 2022, Mr Brown received the Occupational Health report, this appeared to be the same as the last report from July 2021 and did not include details of any stress risk assessment and a workplace needs assessment. The Claimant continued to have access to the recommended DSA software on his personal laptop until he was provided with a work laptop with relevant software.

111. Mr Brown received a copy of the Workplace Needs Assessment Report on 14 February 2022, this recommended the provision of software and other adjustments including a support worker for 1 hour per week.

112. In May 2022, the Claimant received a work laptop with the software uploaded and on 17 June 2022 all of the necessary software had been installed to the Claimant's laptop. We accept Mr Brown's evidence that procuring this amount of software and equipment within the NHS is a lengthy process and at that time the procurement process was complicated further due to the fact that the organisation was preparing to move hosts from NELCSU to Royal Free London NHS Foundation Trust.

113. With regard to a support worker, the Claimant was advised that he would need to apply for this himself through the DWP, however, the organisation would continue to provide support with this process.

114. Mr Brown's evidence to the Tribunal was that he understood that a support worker is available but the Claimant has been on long-term sickness absence since September 2022.

115. In his evidence to the Tribunal, Mr Brown acknowledged that there were delays between November 2021 and January 2022 in the process primarily due to Occupational Health carrying out the incorrect assessment and the lengthy procurement process, he denied that the delay was in any way because of the Claimant's disability.

116. Mr Brown's evidence to the Tribunal was that the only protected act he was aware of was the bullying and harassment complaint in March 2021. The Claimant presented no evidence to challenge this assertion, as such we accept Mr Brown's evidence in this regard.

Knowledge of disability

117. On 9 February 2020, Jemma Gilbert, Director of Transformation assumed the Claimant's direct line management. Whilst we have seen no documentary evidence in relation to a meeting, Ms Gilbert accepts that she met with the Claimant around the time she assumed his direct line management. It is at this meeting that the Claimant states that he shared with Ms Gilbert a Disabled Students Allowances Needs Assessment Report 'DSA', of 17 May 2019.

118. The Claimant completed a Disabled Students Allowances Needs Assessment Report 'DSA' on 17 May 2019. This assessment is carried out through Student Finance and as in the Claimant's case it does not generally involve the student's employer. The assessment recommended various support measures, including the provision of hardware, software and 1-1 study skills support.

119. The Claimant states that he had previously made Ms Gilbert aware of his disability when he had spoken to her about the EGA course that he was attending. Ms Gilbert denies that the Claimant had ever made her aware of his disability or that he had ever disclosed any report to her relating to his disability including the DSA report.

120. As part of the grievance investigation in March 2021, the Claimant provided a copy of his 2019 DSA report. Ms Gilbert and Mr Groom confirmed that they had never received a copy of it, until the investigation process. There is no documentary evidence that the report was ever shared with any of the Claimant's line managers or indeed the Respondent's staff. This combined with the lack of any mention of dyslexia or disability in email communications with Ms Gilbert and Mr Groom leads to our conclusion that

prior to sharing the report with Ms Barhaya in or around 6 May 2021, the Claimant had not shared this report with anyone at the Respondent's organisation.

121. In his written evidence to the Tribunal, the Claimant states that at the meeting in February 2020, he told Ms Gilbert that he required reasonable adjustments to manage new tasks with dyslexia and requested Access to Work support. He states that Ms Gilbert instructed him to contact the Operational team regarding occupational health and Access to work information. Ms Gilbert denies any discussion took place regarding reasonable adjustments, dyslexia or Access to work. With regard to Occupational Health, whilst she cannot recall specifically, in her written evidence she states that any conversation around occupational health would have most likely taken place following sickness absence and around well-being.

122. On 3 February 2020, the Claimant sent an email to Pascale Monteil, Project Manager, the subject reads "HLP contact for Occupational Health Assessment". The Claimant states that *"Jemma suggested that I get a occupational health assessment, and I need some simple information to initiate the process…….the name of a workplace contact who can authorise your Access to Work payments".* Mr Monteil requests clarification and the Claimant then sends a further email with a link to Access to Work. After looking at this, Mr Monteil then responds to the Claimant stating *"The link you sent looks like a grant for things like specialist equipment……".* There are no further emails in relation to this matter and the Claimant was unable to clarify what happened in respect of his enquiry.

123. In a new starter form for GSTT dated 18 June 2017, under whether or not he has a disability, the Claimant has selected *"prefer not to say".*

124. During the grievance investigation process, following a search on HR systems for any previous disclosure in relation to the Claimant's disability, on a system to which only HR has access, it is recorded that in February 2020, the Claimant disclosed that he has a learning disability/difficulty. The Claimant led no evidence before the Tribunal as to what he said and to whom.

125. In an email dated 25 October 2019, to Steven Solasta and Matthew Pike, Director Social Fund London the Claimant refers to *"using his personal laptop to benefit from specialist software for work and study"*. The Claimant does not state the nature of the software or the reasons he is using this and no other emails in response have been provided to the Tribunal.

126. On 14 January 2020, the Claimant sent an email to an IT contact he had been referred to by Mr Monteil about a query around “assistive software” stating that he already used this software on his laptop for work tasks and felt this is what he would need on a new laptop. The nature of the software is set out in this email, however, there is no mention of disability and no line managers are copied into this email. There are again no other emails in response which have been provided to the Tribunal.

127. The only reference to dyslexia in an email to any manager is a fleeting reference in an email of 23 January 2020 sent to Nikki Lang, Senior Programme Manager and the Claimant’s line manager at that time. In this email, the Claimant actually refers to dyslexia “having never been a problem”. The Tribunal conclude that this comment to Nikki Lang would suggest to anyone becoming aware of it that dyslexia in these circumstances did not amount to a disability.

Time Limits

128. The Claimant contacted ACAS on 21 February 2022 and the Early Conciliation period ended on 3 March 2022. The Claimant submitted his Claim Form to the Tribunal on 14 March 2022. The Respondent therefore avers that any alleged act or omission occurring before 22 November 2021 is prima facie out of time. This includes all of the concerns raised by the Claimant to ACAS on or around 23 July 2020, and his grievance submitted on 29 March 2021.

129. The Respondent does not accept that any of the pleaded allegations occurring before 22 November 2021 were part of any continuing act or series of acts, or that it would be just and equitable to permit the Claimant to pursue his claim in relation to those allegations. The Respondent therefore submits that the majority of this claim is out of time, and should be struck out. The Claimant has provided no explanation for the late submission of the aspects of the claim that took place before 22 November 2021 and offers no suggestion as to why it might now be just and equitable to extend time.

Relevant Law

Direct discrimination

130. Section 13 of the Equality Act 2010 provides as follows;

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

Race and disability are protected characteristics as per section 4 of the Equality Act 2010.

Burden of Proof

131. Section 136 of the Equality Act 2010 provides**;**

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

132. In ***Islington Borough Council v Ladele [2009] ICR 387*** Mr Justice Elias explained the essence of direct discrimination as follows: *"The concept of direct discrimination is fundamentally a simple one. The Claimant suffers some form of detriment (using that term very broadly) and the reason for that detriment or treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited reason, the Claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic."*

133. ***Burrett v West Birmingham Health Authority 1994 IRLR 7, EAT*** is an example of the proposition that it is for the tribunal to decide as a matter of fact what is less favourable treatment and the test posed by the legislation is an objective one. The fact that a Claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment, although the Claimant's perception of the effect of treatment is likely to be relevant as to whether, objectively, that treatment was less favourable.

134. In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to *“detriment”.* However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, ***Shamoon v Chief Constable of RUC [2003] UKHL 11****.*

135. ***Igen v Wong and Others [2005] IRLR 258*** *and* ***Madarassy v Nomura International PLC [2007] IRLR 246****.* The employment tribunal should go through a two-stage process, the first stage of which requires the Claimant to prove facts which could establish that the Respondent has committed an act of discrimination, after which, and only if the Claimant has proved such facts, the Respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the Claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the Respondent and the Claimant.

136. ***Madarrassy v Nomura International Ltd 2007 ICR 867*** - the bare facts of the difference in protected characteristic and less favourable treatment is not “without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the Respondent” committed an act of unlawful discrimination”. There must be “something more”.

137. ***Nagarajan v London Regional Transport [1999] IRLR 572, HL,***-“The crucial question in every case was, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'”

138. ***Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL,*** - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for …'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

<u>Harassment</u>

139. Section 26 of the Equality Act 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."

140. ***Richmond Pharmacology V Miss A Dhaliwal [2009] ICR 724.*** There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the Respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so.

141. ***Grant v HM Land Registry & EHRC [2011] IRLR 748 CA*** emphasised the importance of giving full weight to the words of the section when deciding whether the Claimant's dignity was violated or whether a hostile, degrading, humiliating or offensive environment was created: "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

142. ***Pemberton v Inwood [2018] EWCA Civ 564*****.** Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

<u>Duty to make adjustments</u>

143. Sections 20 & 21 of the Equality Act 2010 provides;

Section 20 – Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature 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.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

<u>Section 21 Failure to comply with duty</u>

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

144. 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'.

145. 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'.

146. 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.

147. Schedule 8 EQA 2010 pt. 3 para 20 states that A is not subject to the duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at a disadvantage. Accordingly, the additional element on knowledge for S20/21 claims is that A must also be reasonably expected to know the disabled person is likely to be placed at the disadvantage.

Victimisation

148. Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because-- (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act - (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

149. In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in ***Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830:-*** "*The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".* The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

150. To get protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says "Detriment does not ... include conduct which amounts to harassment". The judgment in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285*** is applicable.

151. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see ***South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09.***

152. Once the tribunal has been able to identify the existence of the protected act and the detriment the tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. In the case of ***St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540*** the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see ***R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136.***

153. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, see ***Nagarajan*** above.

154. In ***Owen and Briggs v James [1982] IRLR 502*** Knox J said:- *"Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."*

155. In ***O' Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615*** the Court of Appeal said that, if there was more than one motive, it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Time limits

156. Section 123 of the Equality Act 2010 provides as follows;

(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of— (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. (3) For the purposes of this section— (a) conduct extending over a period is to be treated as done at the end of the period; (b) failure to do something is to be treated as occurring when the person in question decided on it.

157. ***British Coal Corporation v Keeble [1997] IRLR 336***, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'

158. ***(Southwark London Borough v Afolabi [2003] IRLR 220). Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA*** - there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

159. ***Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640*** - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the Respondent".

160. The Court of Appeal made it clear in ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686***, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a *'continuing discriminatory state of affairs'*. The focus of the enquiry should be on whether there was an *"ongoing situation or continuing state of affairs" as oppose to "a succession of unconnected or isolated specific acts".* It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

161. ***South Western Ambulance service NHS Foundation Trust v King 2020 IRLR 168*** *"non-discriminatory acts alleged to be part of a course of conduct extending over a period cannot form part of a continuing act".*

DISCUSSION & CONCLUSIONS

162. In terms of approach, Mr Ross invited us to determine if there had been breaches of the Equality Act before moving on to determine the time limits question(s). Mr Ross submitted the dicta in ***South Western Ambulance service NHS Foundation Trust v***

King 2020 IRLR 168 prohibited non-discriminatory acts from being part of a "conduct extending over a period" of time. We agreed with Mr Ross' submissions in this regard and concluded that this would be a sensible approach to our determinations.

163. We started with the issue of the Respondent's knowledge of disability as this would have a bearing on the disability discrimination, reasonable adjustments and harassment claims. We then moved on to consider and determine each head of claim and the individual claims in a chronological date order.

164. At the outset, we considered it important to set out our conclusions in relation to a general matter in respect of the Claimant's evidence and submissions. In his evidence and submissions to the Tribunal, the Claimant referenced a number of theories, theoretical principles and survey data, however, he failed to provide any details as to why such matters have any significance in relation to his claims. In light of this, we were unable to find any relevance of this evidence and/or related submissions, to any of the issues he complains about.

Knowledge of disability

165. Prior to this hearing, the Respondent had conceded that the Claimant was a disabled person by reason of dyslexia at all material times relating to these claims.

166. The Respondent contended that it did not know and could not reasonably have been expected to know that the Claimant was a disabled person by reason of dyslexia at all material times. We find that the earliest date of knowledge of disability that could be ascribed to the Respondent is on or around 6 May 2021, when the DSA report was provided to Ms Barhaya during the bullying and harassment investigation. It is from this point that it can be said that the Respondent knew or atleast ought to have known that the Claimant had dyslexia which amounted to a disability.

167. The emails of 25 October 2019 to Mr Solasta and Mr Pike refer simply to specialist software for work and study and do not provide any details relating to the nature of that software. Similarly, the email to the IT contact in January 2020 refers to "assistive software", which the Claimant stated that he used on his personal laptop daily for work tasks. There is no documentary evidence provided showing any replies to this email or any earlier emails on this subject. There is no evidence that the Claimant made his managers aware of this correspondence. In respect of these emails, the Tribunal

conclude there is simply insufficient evidence from which anyone could know or ought to know that the claimant had dyslexia which amounted to a disability.

168. We agree with the Respondent's submission that the only reference to dyslexia in an email to any manager is in a fleeting reference in an email to Ms Lang on 23 January 2020, where the Claimant actually refers to dyslexia "having never been a problem". The Tribunal conclude that this comment to Ms Lang would actually suggest that dyslexia in these circumstances did not amount to a disability.

169. The only other relevant evidence in respect of organisational knowledge is the Claimant's 2017 new starter form which states "prefer not to say" under disability and the record on a system to which only HR had access recording that the Claimant disclosed in February 2020 that he has a learning disability/difficulty. In his written evidence the Claimant stated that he provided this information in transition forms when the organisation moved to a new host. He states that explained reasonable adjustments to ways of working due to his dyslexia agreed with his former manager Amelia Howard, which was primarily working from home to complete specific tasks. There is no other contemporaneous documentary evidence in relation to this and the Claimant led no evidence to clarify what was said and to whom. Based on the evidence before the Tribunal there is insufficient evidence to conclude that this information alone as recorded on the Respondent's system would lead to organisational knowledge of disability.

170. In terms of individual knowledge of disability, this varies from individual to individual, however, the Tribunal conclude that the earliest date of knowledge for disability for any of the individual alleged discriminators would be after 6 May 2021 when Ms Barhaya was provided a copy of the DSA report from 2019, this report was then shared with Ms Gilbert, Mr Groom and Mr Moore. We will deal with those individuals who feature in this claim as alleged discriminators in turn starting with Ms Gilbert, as she is named in a number of claims.

171. The Claimant contends that he made Ms Gilbert aware of his disability in February 2020 at which point he also contends that he shared his DSA 2019 report with her. Other than the Claimant's own evidence in relation to this, which is disputed by Ms Gilbert, there are no emails or other documentary evidence which we have been referred to which would suggest that the Claimant made Ms Gilbert aware of his disability and the difficulty he has in reading, writing and presenting information in the

correct order in reports and other works. This lack of documentary evidence supports Ms Gilbert's assertion that the first time she became aware of the Claimant's disability was when Ms Barhaya made her aware of this on 11 May 2021. The Tribunal therefore concluded that Ms Gilbert's date of knowledge of disability was post 11 May 2021.

172. The same applies to Mr Groom albeit we find, there is even less detail in respect of what the Claimant alleges to have told Mr Groom and when. The Claimant simply asserts that he made Mr Groom aware of his disability. Again, there is no documentary evidence which we have been referred to which would suggest that the Claimant made Mr Groom aware of his disability and the difficulty he has in reading, writing and presenting information in the correct order in reports and other works. In the very least, we would have expected to see something in the Claimant's risk assessment documentation that was provided to Mr Groom relating to staff working from home, particularly when this was queried in October 2020, when Mr Groom sought clarification from the Claimant that he had all the equipment he needed. This lack of documentary evidence supports Mr Groom's assertion that the first time he became aware of the Claimant's disability was when Ms Barhaya made him aware of this on 11 May 2021. The Tribunal therefore concluded that Mr Groom's date of knowledge of disability was post 11 May 2021.

173. In respect of Mr Bailey, we accept his evidence that he did not see the Occupational Health Report in July and only became aware of the contents of the report when he became aware of this in the hearing bundle.

174. Mr Pike has left the Respondent organisation and we have not heard any evidence from him. However, other than the email regarding software to which he was copied into above we have seen or heard no other evidence relating to his knowledge of the Claimant's disability. In light of our findings above with regard to the software email, we conclude that Mr Pike did not have any knowledge of the Claimant's disability at any material time. Mr Moore became aware of the Claimant's disability during the investigation process and Mr Brown became aware of this when he took over the Claimant's line management in November 2021.

175. With regard to knowledge of any substantial disadvantage by the requirement to read, write and present information in the correct order in reports and other work, we conclude that the Respondent's knowledge of this arose on 14 February 2022 when

the Workplace needs assessment was provided. There are no emails or other documentary evidence that the Claimant was chasing reasonable adjustments other than one email to IT in January 2020, which disclosed no detail in relation to disability and where no replies or follow up chaser emails have been disclosed.

176. In light of these findings, the Tribunal conclude that in respect of all claims predating 6 May 2021, the Respondent and alleged individual discriminators did not have relevant knowledge of either disability or substantial disadvantage at that time. This includes the following:

(1) All of the harassment allegations, as these relate to March 2021;
(2) All of the direct disability discrimination claims including the ignoring of the Occupational Health report of 16 July 2021 as Oliver Bailey did not have knowledge of disability until he was made aware of the same during the course of these proceedings. The only direct disability discrimination claim not wholly affected by the date of knowledge findings is that relating to the delay in carrying out further assessments from July 21 to January 2022.
(3) All of the failure to make reasonable adjustments claims.

177. For these reasons the claims set out above must fail as the Respondent and alleged individual discriminators did not have knowledge of the Claimant's disability nor of the substantial disadvantage in respect of the failure to make reasonable adjustments claim. However, even if there had been knowledge we consider the claims would not have succeeded in any event. We consider it appropriate, for the sake of completeness to set out our reasons as follows in this judgment.

Direct Disability discrimination

Email sent by Jemma Gilbert in March 2021

178. The allegation is that Ms Gilbert sent the email to the Claimant to "teach him a lesson" and humiliate him. The Tribunal accept Ms Gilbert's evidence in that the email was sent to the Claimant to provide him feedback and ensure that messages were being properly communicated to the external client including the fact that the Claimant had been assigned as a project Manager not as a digital advisor.

179. We conclude as a senior manager, it was entirely appropriate for Ms Gilbert to provide feedback in an area where she had concerns about communications to a client. We find the tone of the email was firm but polite, perhaps understandably so in the context of Ms Gilbert's concerns about inaccurate information being provided to a client as well as missing information. We accept the content of the feedback was not focused on writing style rather it was about conveying certain information to the client and the accuracy of that information. There was no mention of or reference to disability anywhere in the email and we conclude that the email was sent as feedback rather than to teach the claimant a lesson as alleged by the Claimant.

180. The Claimant's response to Ms Gilbert that her critique was unreasonable did not include any reference to his dyslexia despite his contention that she was aware of this at the time, neither did it include any objection to Mr Groom or Ms Frances being copied in. With hindsight Ms Gilbert accepts she should not have copied Ms Frances in as she was providing personal feedback to the Claimant. However, we also accept Ms Gilbert's explanation in that she copied Ms Frances in at the time as she was the project business manager and it was usual for her to do so. She did not copy Ms Frances or Mr Groom in to humiliate the Claimant.

181. The Tribunal therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred. We agree with the Respondent's submissions that the claimant has in this claim, as elsewhere, based his claim exclusively on his perception and interpretation of events. Whilst we accept he may have felt humiliated, we find that in all of the circumstances this was unreasonable. We also find that the email did not relate to the Claimant's dyslexia. In light of these findings, the Claimant's harassment claim relating to the email of 11 March 2021 must also fail.

182. Had the Tribunal not concluded that Ms Gilbert did not have knowledge of disability at this time, it would have dismissed both the direct disability discrimination claim and harassment claim relating to this issue, for these reasons.

Removal of study time and one to one support - November 2020

183. We agree with the Respondent's submissions that the Claimant's position has shifted throughout the proceedings in relation to study time. The list of issues also appears to have confused matters as this indicates the removal of study time in November 2021,

when the Course had in effect come to an end. It was apparent that the time period being referred to was November 2020 as the documentary evidence confirms that this was the time that matters in relation to study leave were first raised between Ms Gilbert and the Claimant.

184. The Claimant's case as per the list of issues and indeed what he told Ms Phipps was that he had 15 hours of study time, which had been reduced to three hours per week in November or December 2020. During the course of giving evidence, the Claimant appeared to be saying that he never had 15 hours of study time because much of the work was the practical application in work, of new theoretical principles.

185. It is clear from the documentary evidence that nothing happened between November and 12 March in respect of the Claimant's study time. The Claimant's own notes of the meeting in November 2020 do not mention any reduction of study time. We conclude that Ms Gilbert's email of 12 March 2021 was the first occasion that she addressed with the Claimant how much time he should be spending on personal development, training and volunteering activities. Ms Gilbert advised the Claimant that this should be no more than 0.1-0.2 WTE (half a day to a day per week). There is no documentary evidence to show any more time than this was agreed with any manager.

186. The Claimant's belated production of the referee form during the course of the proceedings does not assist him here as it does not set out any detail in respect of study time. Amelia Hall failed to mention this in any handover provided to Ms Gilbert and no process was followed in respect of approval per policy in respect of study time. We conclude that no prior agreement was obtained from any manager.

187. We accept the evidence of the Respondent's witnesses, in particular Mr Groom that he had never come across anyone in 28 years who had 2.5 days a week of paid study leave. Ms Gilbert had made enquiries following the meeting in November 2020 and at that time 2 people on the EGA course at that time confirmed they had taken zero hours study leave.

188. We conclude that Ms Gilbert's decision to reduce the Claimant's study time on 12 March 2021 was not a detriment. We agree with the Respondent's submissions that the reduction from an unsustainable level of paid time off to a generous level of paid time off is not capable of being a detriment. There is nothing to suggest that the decision to reduce time was because of the Claimant's dyslexia.

189. In respect of the removal of one to one support, the Claimant's EGA course ended in November 2021 leading to the adjustments provided as part of his study support also coming to an end. A workplace needs assessment was not provided until 14 February 2022 recommending a support worker for the Claimant at his workplace and steps were taken to assist the Claimant in procuring a support worker through the Access to Work scheme.

190. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred in respect of these claims.

191. Had we not concluded that Ms Gilbert did not have knowledge of disability at this time, we would have dismissed this claim for these reasons.

Ignoring Occupational Health report - 16 July 2021

192. The Respondent accepts that an OH report was produced on 16 July 2021 and appears to have been sent to Mr Bailey. Mr Bailey in his evidence to the Tribunal stated that he does not recall receiving this, his explanation for this oversight was that he was busy and his employment was coming to an end with the Respondent. There is no evidence to suggest that Mr Bailey's omission was because of the Claimant's dyslexia.

193. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred.

194. Had we not concluded that Mr Bailey did not have knowledge of disability at this time, we would have dismissed this claim for these reasons.

Delay in carrying out further assessments from July 2021 to January 2022

195. The delay from July 2021 to 15 November 2021 unfortunately rests with Mr Bailey's inaction in respect of the OH report and for the same reasons as set out above we find there is no evidence to suggest that Mr Bailey's inaction was because of the Claimant's dsylexia. We find that once Mr Brown became involved from 15 November 2021, he progressed matters as quickly as he could and in any event there is no evidence to suggest any delay was because of the Claimant's dyslexia.

196. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred.

197. Had we not concluded that Mr Bailey and Mr Brown did not have knowledge of disability at this time, we would have dismissed this claim for these reasons.

Failure to enact recommendations of 2019 DSA report in relation to computer software

198. In our earlier findings we concluded that the Claimant did not provide the 2019 DSA report to anyone until it was provided to Ms Barhaya in May 2021 as part of the bullying and harassment complaint. We agree with the Respondent's submissions that a failure to enact recommendations in a report that no one has seen is not capable of being a detriment.

199. The 2019 DSA report was produced for the specific purpose of study not for adjustments required in the workplace. Once the Workplace Needs Assessment report was provided on 14 February 2022, Mr Brown took all reasonable steps to ensure the recommended adjustments were provided.

200. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we would have dismissed this claim for these reasons.

Harassment

Email of 11 March 2021

201. This claim is dismissed, our conclusions in respect of this claim are set out in paragraphs 175-179 above.

Ms Gilbert trying to move Claimant/sending him roles outside of the team

202. The Tribunal deal with these 2 harassment claims together as they concern the same set of facts and there is commonality in our reasons as to why we would have dismissed these claims.

203. The Respondent's witnesses accepted that that they were trying to find the Claimant a new role as his project was coming to an end due to lack of funding. Both Ms Gilbert and Mr Groom accepted that they pro-actively sent the Claimant relevant vacancies, which they thought he may be interested in. Ms Gilbert pro-actively spoke to her management team to make them aware that the Claimant's project was coming to an end. We accept her evidence that she was doing this in a supportive context, particularly in her considering areas of work that she felt the Claimant may be interested in as well as looking at roles which were at 8b grade as she was aware the Claimant aspired to a higher grade than he was currently working. Mr Groom, similarly as line manager also sent the Claimant different roles in a supportive and helpful manner trying to assist the Claimant to find a new role.

204. The role offer from Daniel Heller's team was explained to the Claimant as having a strong digital focus and it is apparent that this was something that Ms Gilbert had considered as being particularly suited to the Claimant's digital leadership training. This role was in a different team, however it was clear that the reason it was highlighted to the Claimant was due to its strong digital focus. The Claimant's evidence in respect of his response to Mr Heller's email was that he "expressed his shock" to Mr Groom and Ms Gilbert. We find if the Claimant did feel like that at the time, he certainly did not convey this to Mr Groom or Ms Gilbert. The Claimant sought the views of both Ms Gilbert and Mr Groom and both encouraged him to get in touch with Mr Heller. It was the Claimant who chose not to do so as he felt that was not the time for him to be learning a new area.

205. Once again we find the Claimant has based this claim exclusively on his perception and interpretation of events. We do not find that he was shocked and even if he was, we find that in all of the circumstances this was unreasonable. We also find that there is no evidence linking these matters to the Claimant's dyslexia. In light of these findings, the Claimant's harassment claim relating to these matters must also fail.

Failure to make reasonable adjustments

Computer software mentioned in DSA 2019 report/ Providing notes of meetings from February 2020/ Providing additional time to allow C to absorb information from February 2020

206. We address these three claims together as there is commonality in our reasons as to why we would have dismissed these claims. All three claims are about things that should have happened in February 2020. In our findings earlier we concluded that neither Ms Gilbert, Mr Groom, Mr Pike or indeed any other individual was made aware of the 2019 DSA assessment. The Claimant has produced no evidence that he had disclosed to anyone at work, that he had any difficulties, reading, writing or presenting information in the correct order in reports. Infact, in the email to Ms Lang on 23 January 2020, he refers to his dyslexia as never having been a problem. There are no emails or records of the Claimant chasing adjustments other than one email to IT in January 2020 about 'supportive software'.

207. With regard to knowledge of any substantial disadvantage by the requirement to read, write and present information in the correct order in reports and other work, we concluded earlier that the Respondent's knowledge of this arose on 14 February 2022 when the Workplace needs assessment was provided.

208. Had we not concluded that the Respondent did not have knowledge of disability in February 2020, we would have dismissed these claims for these reasons.

Support worker to help organise C's work from November 2021 onwards

209. The Claimant contends that upon the completion of his course in November 2021, he should have been provided a support worker. We accept the Respondent's evidence that after Mr Brown took over the process in November 2021 a reasonable process was followed to obtain a support worker. It was not unreasonable for this to be part-funded through Access to Work rather than wholly funded by the Respondent. This claim is therefore, dismissed for these reasons.

Direct race discrimination

Non-communication of delays in investigating grievance of March 2021

210. The Claimant does not name a discriminator in respect of this allegation. The Respondent accepts that the investigation was delayed, and the Claimant was not kept updated. The investigation commenced in April 2021 and the outcome was provided in November 2021. Both Ms Barhaya and Mr Moore were under the impression that HR would provide the Claimant with updates, unfortunately this did not happen. The

Claimant did not raise race discrimination as a complaint in his Appeal either in respect of this allegation or indeed in respect of any of the race discrimination allegations he has raised in these proceedings.

211. We find that this is a bare allegation of race discrimination, the Claimant presented no evidence to shift the burden of proof, accordingly this claim is dismissed.

James Moore viewing C's evidence in negative manner

212. This was another allegation where the Claimant presented no evidence in support of his allegation that Mr Moore viewed his evidence in a negative manner. We find Mr Moore carefully considered both the documentary and oral evidence presented to him before reaching his decision and it was on that basis alone that he did not uphold the Claimant's allegations of bullying and harassment.

213. We find that this is a bare allegation of race discrimination, the Claimant presented no evidence to shift the burden of proof, accordingly this claim is dismissed.

Leaving C without manager or portfolio of work March-November 2021

214. Based on our findings earlier, we conclude that the Claimant was left without a line manager or portfolio of work from 15 September 2021 to 15 November 2021, which was the period directly after Mr Bailey's departure. The Claimant had a line manager in place at all other material times. The Claimant did not raise this issue with anyone until November and when he did it was swiftly dealt with by Mr Moore and Mr Brown was allocated as his line manager.

215. With regard to the Claimant's portfolio of work, we find he was himself responsible for not having any portfolio as he had told his managers that he did not want to take on additional work because he wanted to focus on his EGA programme and his bullying and harassment complaint.

216. We find that this is another bare allegation of race discrimination, the Claimant did not name a discriminator and presented no evidence to shift the burden of proof, accordingly this claim is dismissed.

Victimisation

Protected Acts

217. The Claimant raises 4 protected acts:

(1) Complaint in writing to Shaun Danielli about race and disability discrimination in June and July 2020;

(2) Complaint in writing to Jemma Gilbert and Lorraine Taylor in July 2020;

(3) Grievance in March 2021;

(4) Report in Summer 2021 with experiences mostly negative and about discrimination of Ethnic Minority network - provided to Daniel Barret in September 2021.

218. With regard to the first alleged protected act, we have concluded earlier in paragraph 60 above that none of the emails in June and July 2020 to Mr Danielli amounted to a complaint about race and disability discrimination as such we conclude that these emails do not amount to a protected act.

219. The complaint in writing to Ms Gilbert and Ms Taylor of July 2020 was never produced by the Claimant, he instead during the course of the proceedings sought to rely on the slide deck that he presented to Ms Gilbert in his meeting with her of June/July 2020. The slides deck and the emails the Claimant had sent Ms Gilbert prior to the meeting were to do with 'equal pay'. The Claimant felt he was working at a higher grade and that he should be remunerated accordingly. We conclude that the equal pay matter related to regrading and job evaluation rather than an Equality Act complaint. There is nothing in the emails or slide deck that expressly or implicitly raise Equality Act complaints, as such, we do not accept that these slides or emails amount to a protected act.

220. With regard to the third protected act, whilst the Claimant did not raise equality act complaints in his original investigation, we accept matters relating to disability discrimination were subsequently raised by the Claimant within the grievance investigation and as such this amounts to a protected act.

221. With regard to the fourth and final protected act we were not provided with the Ethnic Minority Network report that this related to or any documentation surrounding the survey itself. There is nothing in the survey results that expressly or implicitly raise Equality Act complaints, as such, we do not accept that the Ethnic Minority baseline survey data results amount to a complaint under the Equality Act.

222. If we are wrong about any of the above being protected acts, we went on to consider each of the detriments and the causal link to any of the alleged protected acts.

Removal of study time in November 2020

223. As per our earlier conclusions, we agree with the Respondent's submission that a reduction to one day a week for development, volunteering and study time is incapable of being a detriment. We conclude that the only protected act that Ms Gilbert was aware of was the March 2021 grievance. In respect of the removal of study time her conversation with the Claimant commenced in November 2020 when her concerns about excessive study were initially raised and her email to the Claimant was sent on 12 March 2021, before she became aware of the bullying and harassment complaint in or around 29 March 2021.

224. We conclude that the Claimant has provided no evidence to shift the burden of proof with respect to a causal link with any of the alleged protected acts, for this reason this claim is dismissed.

Handling of grievance/ Grievance outcome in November 2021

225. We dealt with these two complaints together as there is commonality in our findings. The Claimant does not name a victimiser in relation to either of these complaints, nevertheless, we considered these complaints as potentially relating to Ms Barhaya and Mr Moore. We accept that neither of them were aware of any of the alleged protected acts other than the grievance of March 2021. The Claimant has not set out any detail in relation to the detriment he states that he has suffered and has provided no detail evidencing any causal link with any of the alleged protected acts, for this reason, these claims are dismissed.

Leaving C without a line manager between March – November 2021

226. As per our previous conclusions, this complaint is inaccurate, the Claimant was only left without a manager between 15 September and 15 November 2021. No victimiser is named and the Claimant has provided no detail evidencing any causal link with any of the alleged protected acts, for this reason this claim is dismissed.

Time Limits

227. As we have concluded that none of the claims were discriminatory acts, there can be no continuing course of conduct, as such all claims prior to 22 November 2021 are also out of time.

228. We reminded ourselves that the discretion to extend time should only be exercised in exceptional circumstances. The Claimant has provided no explanation for the late submission of the aspects of his claim that took place before 22 November 2021 and offers no explanation as to why it might now be just and equitable to extend time. We considered the evidence specifically in respect of matters which may be relevant to the issue of extending time and note that the Claimant had contacted ACAS on or around 23 July 2020 as well as submitting a grievance on 29 March 2021, referencing many of the matters subject of this claim. We found no evidence suggesting that the Claimant was prevented in any way or otherwise struggled to bring his claim within the time limits. The majority of the claims are many months out of time, in some cases almost 12 months.

229. In light of all these factors, had we not dismissed all claims that took place before 22 November 2021, we conclude that it would not have been just and equitable to extend time.

Costs/Preparation Time Order

230. At the start of the hearing, the Claimant made an application for costs citing the unreasonable conduct of the Respondent throughout the proceedings, which included; creating an additional burden on the Claimant by strike out orders, breaching the Preliminary Case Management Order of 31 August 2022 and providing late disclosures on 23 June 2021. We asked the Respondent to include a response to this application

in their written submissions and we would consider the costs application as part of our deliberations at the end of case.

231. In its written submissions, the Respondent advised that they had provided the Claimant with a copy of the electronic bundle on 25 April 2023 for his agreement. The reason a paginated bundle was not provided until 26 May 2023 was due to the fact that both parties continued to disclose new documents to each other and were still in the process of agreeing the final hearing bundle. The Respondent submits that the Claimant sent imprecise and repeated requests for specific disclosure which caused a delay in preparation of the hearing bundle.

232. The Respondent accepts that there has been some late disclosure but this included both parties and the volume of such late disclosure has been minimal. In respect of witness statements, the Respondent does accept there was a one day delay in exchanging statements but it does not accept its actions in relation to disclosure, the preparation of the hearing bundle and the witness statements has been unreasonable.

233. Rule 76(1) of the Employment Tribunals Rules of Procedure 2013 provides:

A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that:

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

234. The Tribunal rules impose a two stage test when a Tribunal considers an application for a preparation time order. First the Tribunal must ask whether a party's conduct falls within rule 76(1)(a) or (b). If so, the Tribunal must then go on to ask whether it is appropriate to exercise the discretion in favour of awarding costs against that party.

235. Having considered the submissions of both parties, we conclude that the Respondent's actions have not been not been unreasonable in relation to its conduct of proceedings. We accept there has been some delays and late disclosure but this has been equally

the case for both parties. In the circumstances, the Claimant's application for a preparation time order is refused.

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Employment Judge Akhtar

30 November 2023

Sent to the parties on:

06/12/2023

For the Tribunal Office:

Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.