EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105459/2022

Held in Glasgow on 27 and 28 March and 2 to 4 and 8 and 10 April 2024
Deliberations 11, 12 and 22 April 2024

Employment Judge D Hoey
Members J Burnett and L Grime

"Ms N"	**Claimant** **Represented by:** **Mr G Bathgate - Solicitor**
Greater Glasgow Health Board	**Respondent** **Represented by:** **Mr D James - Counsel** **[Instructed by CLO]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The sex discrimination complaint is dismissed upon its withdrawal.

2. The unanimous Judgment of the Employment Tribunal is the disability discrimination complaints are ill founded and are dismissed.

3. In relation to these proceedings, and pursuant to rule 50(3)(b) of the Employment Tribunal Rules of Procedure 2013, the identity of the claimant (namely, her name and address) shall not be disclosed to the public in any documents to be entered on the Register or otherwise forming part of the public record, and the claimant shall be known as "Ms N" or the claimant.

REASONS

1. The claimant had raised claims for sex and disability discrimination. There had been case management and some focussing of the complaints. The claimant chose to withdraw the sex discrimination claim after the last day of evidence (and that claim is dismissed).

Case management

2. Employment Judge Maclean issued an order under rule 50 of the Employment Tribunals (Constitution and Rules of Procedure) 10 Regulations 2013 that the claimant's name and address should be anonymised and it is therefore important that the claimant's name and address is kept anonymous. She is referred to a Ms N or the claimant.

3. At the start of the hearing, it was clear that the issues to be determined had been focussed and the parties were working on a list of the legal issues to be determined and a statement of agreed facts.

4. A timetable for the hearing of evidence was agreed and the parties worked together to assist the Tribunal in achieving the overriding objective, in dealing with matters justly and fairly taking account of the issues, cost and proportionality and ensuring the case was concluded within the allocated time.

Issues to be determined

5. The issues to be determined are as follows (which is based on the agreed list which has been revised).

Discrimination arising in consequence of disability

1.1 The respondent accepts that the claimant was disabled by reason of menopausal symptoms (in terms of physical impairment) between August 2017 and December 2021.

1.2 The respondent conceded it had knowledge of the claimant's disability at the relevant time.

1.3 It was conceded the decision on or around 29 April 2022 to demote the claimant and issue a First and Final Warning amount to unfavourable treatment of the claimant by the respondent.

1.4 Was the unfavourable treatment because of something arising in consequence of the claimant's disability? The claimant relies on the following

as the "something arising": She would appear angry and red faced and she would appear irritable.

1.5 If so, was that treatment by the respondent justified as a proportionate means of achieving the legitimate aims of managing workplace conduct appropriately, managing services appropriately and managing staffing levels and morale.

Failure to make reasonable adjustments

1.6 Did the respondent have actual or constructive knowledge of the claimant's disability at the relevant time?

1.7 If so, did the respondent apply a provision, criterion or practice ('PCP') to the claimant, namely the respondent's Workplace Conduct Policy?

1.8 Did that PCP place the claimant at substantial disadvantage compared with persons who are not disabled? The claimant asserts it did because she exhibited certain behaviours on account of the symptoms caused by the menopause, which may be perceived as behaviour demonstrative of misconduct.

1.9 If so, did the respondent know, or ought it reasonably to have known, that the claimant was likely to be subjected to the substantial disadvantage?

1.10 In the circumstances, the claimant asserts it was reasonable for the respondent to take the steps below:

(a) Ms Stocks ought to have informed the panel dealing with the grievance of the full extent of the claimant's health difficulties in or around January 2021.

(b) Those entrusted with the grievance ought to have supported the claimant in terms of the Menopause Policy by supporting her and dealing with the grievance through early resolution.

(c) *The grievance panel ought to have taken into account and applied weight to the claimant's menopausal symptoms in or around April 2022.*

(d) *The appeal panel ought to have taken into account the claimant's menopausal symptoms in or around December 2022.*

Did the respondent fail to take those steps?

1.11 Were those steps reasonable?

1.12 Would those steps have alleviated the substantial disadvantage?

1.13 Taking into account the matters above, did the respondent fail to take such steps are were reasonable to avoid the substantial disadvantage caused by the application of the PCP?

Remedy

1.16 What is the appropriate compensation to be awarded?

Evidence

6. The parties had agreed a bundle of some 2021 pages (which included a few pages that were added during the Hearing).

7. The Tribunal heard from the claimant, Mr McCormick (the claimant's line manager), Mr Connor (a former colleague of the claimant), Mr McDonald (who had responsibility for the services), Ms Kerr (the commissioning manager), Ms Mitchell (who carried out the investigation), Ms Egan (who chaired the conduct panel), Mr Culshaw (who chaired the appeal panel) and Ms Stocks (the claimant's professional lead). The witnesses each gave oral evidence and were asked relevant questions.

Facts

8. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are necessary to determine the issues before it (and not

in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). Where there was a conflict in evidence, the conflict was resolved by considering the entire evidence and making a decision as to what was more likely than not to be the case.

Background

9. The respondent is an NHS Health Board. The claimant was employed as a Band 8D Consultant Clinical Psychologist/Clinical Lead in the Glasgow Psychological Trauma Service (the "Anchor Service") from 10 June 2013 until her demotion on 2 September 2022.

10. From 2 September 2022 until 23 January 2023 the claimant was demoted and her terms and conditions were changed to that of a Band 8A Principal Clinical Psychologist role.

11. From 23 January 2023, the claimant was redeployed to a Band 8B Principal Clinical Psychologist role where she remains.

Relevant policy documents

12. The claimant's employment was subject to a number of relevant policy documents.

13. The **Conduct Policy** relates to behaviour that falls below the standard of behaviour or conduct required by the employer. A first and final written warning is a sanction where the matter is so serious that the actions had or are liable to have a serious or harmful impact on the organisation. Gross misconduct is deliberate wrongdoing or gross negligence which is so serious that it fundamentally undermines the employment relationship. Gross misconduct entitles the employer to dismiss without notice. The policy sets out the approach to be taken in event of allegations of misconduct. At the hearing and upon making a decision the sanction to be applied should take into account the seriousness of the allegation, the evidence presented and the mitigation. Available sanctions include warnings, alternatives to dismissal and dismissal.

14. The policy notes that where dismissal may be an appropriate outcome, mitigating circumstances may make it appropriate to consider alternatives to dismissal which should be based on equity and consistency with an appropriate warning. Alternatives can include retraining, permanent or temporary demotion and redeployment or relocation (if posts are available).

15. The **Bullying and Harassment Policy** provides a mechanism to address bullying and harassment in the workplace. A number of ways exist to seek to achieve an early resolution. The policy recognises that early resolution (such as mediation or supported discussions) are not appropriate in every case and where early resolution has been unsuccessful or the behaviour is significant or persistent in nature the formal procedure can be initiated.

Background

16. The claimant was appointed as a Trauma Consultant Clinical Psychologist on or about 10 June 2013. Prior to her demotion, she was a Band 8D Professional Lead.

17. At an earlier preliminary hearing the claimant had been found to be a disabled person between August 2017 and December 2021. That judgment noted sleep disturbance, sweating, anxiety, tiredness, low mood, nausea, hot flushes and a red complexion. It also refers to irritation and lack of tolerance.

18. In 2015/2016 the claimant worked with colleagues to form a new Trauma Service which brought together three different psychology teams, each working with asylum seekers, the victims of sexual offences and homelessness, the Anchor service. The service had a staff compliment of 25, made up of Clinical Psychologists, Art Psychotherapists, Nurses, Occupational Therapists and Administration Support Staff.

19. The claimant reported to Mr McCormack as the Head of Mental Health Services who was her line manager. He is not a Clinical Psychologist. The claimant's professional lead was Ms Stocks, who was responsible for advice and guidance in connection with professional issues.

20. In the period from its inception in 2015/2016 until the 2020, the Trauma Service grew in terms of numbers employed and services provided.

Collective grievance

21. On or around 24 November 2020, a group of 10 staff some of whom were working within the Anchor Service submitted a collective grievance, making 14 allegations of systematic bullying and harassment by the claimant and a colleague.

Investigation

22. The respondent commenced an investigation which involved speaking to those who had complained and identifying from the claimant her position and other relevant witnesses. The commissioning manager was Ms Kerr and after the initial investigating manager retired, Ms Mitchell took over.

23. In the claimant's written case framed in response to the statements presented to the Investigation Panel, the claimant stated "all the staff in my team are aware that I have severe hypertension. In addition to this, the female staff members and some of the males are well aware that I suffered a traumatic early menopause and have had to endure the associated symptoms (involving but not exclusively repeated (at its worst up to 10 significant flushes an hour), involuntary and severe hot flushes) of this health condition."

24. The investigation report was submitted on 7 November 2021 and the investigation recommended that the case be referred to a formal hearing under the respondent's Once for Scotland Workforce Conduct Policy.

25. The Investigation Report for the claimant runs to 87 pages with 29 appendices. Ms Mitchell investigated matters, having taken over from her predecessor who had retired. Statements were taken from witnesses. The claimant advised Ms Mitchell that "the personal nature of the complaints against her were particularly difficult for her and highlighted health reasons which may have contributed to reddening of her face etc".

26. Two separate witnesses to the investigation related very similar conversations which they said the claimant had had with them, about the claimant having a "direct" communication style.

Behaviour before 2019

27. A number of witnesses had stated that the behaviour they had seen by the claimant had been present before November 2019 which included behaviour at an Away Day, a Metro incident, and iMatter survey.

28. Ms Jackson, who had worked with the claimant since around 2009, said that she was "always aware, however, that there were issues around power. Sometimes [she] experienced it as almost a low-level emotional threat".

29. Ms Aziz, speaking of the period between 2013 and 2015, stated: "The unpredictability of [the claimant's] behaviour and mood has been a constant daily experience over the years. This dates back to my time at Trauma and Homelessness team, where I recall colleagues and I checking in with one another to determine [the claimant's] mood of the day".

30. Ms Slade talked about being aware in 2010/11 that colleagues had difficulties working with the claimant.

31. Ms MacMillan and Ms Hughes talked about the claimant's behaviour being an issue for them directly from 2015/16.

32. Ms Keenan and Ms Bonney spoke of awareness that the claimant's behaviour was an issue for colleagues before 2015.

Conduct hearing

33. A conduct hearing was held between 23 March 2022 and 21 April 2022 (and lasted for 5 days). In her statement of case, the claimant outlined various points under a heading "Influencing and Mitigating Context". Under that heading she said "adding context to the period of my leadership will provide additional information as to some of the operational and clinical decisions that may have caused some colleagues to feel upset, distressed or aggrieved. This is not intended to be an excuse or to avoid accountability but the context

is pertinent and important". She did not mention the menopause. She did note that her health deteriorated in November 2019 as she was signed off work with high blood pressure for work related stress. She said she had discussed this with her line manager and professional lead and it was agreed to reduce the workload.

34. The claimant said at the hearing that she went to get HRT "not because [her] behaviour had changed".

35. The trade union representative acting on behalf of the complainers stated that neither he nor any of the complainers would agree to enter into any mediation as it was believed that matters had one on for too long and the consequences were too severe.

Outcome of conduct hearing

36. The outcome letter was dated 29 April 2022. The conduct panel concluded that the allegations of systematic bullying of team members in the Anchor Service were established. The conduct panel concluded that the allegation of harassment was not established. The outcome letter ran to 15 pages. The outcome letter acknowledged the hearing was very challenging and complex and at times distressing for the claimant. 3 days had been set aside for the hearing but another 2 had been needed. The letter confirmed the management case had been presented by Ms Mitchell who had taken over the investigation and had compiled the final detailed investigation report (which included the witness statements).

37. The panel heard from 20 witnesses, 12 from management and 8 on behalf of the claimant. The witnesses presented by management had been accompanied by a trade union representative.

38. The management case was set out by Ms Mitchell and management witnesses gave evidence, with the claimant (and her trade union representative) being able to question the witnesses. The management case that was presented to the hearing was consistent with the investigation report and supported the collective grievance. The letter set out a summary of key

matters taken into account given the size and complexity of the case and volume of evidence presented. A minute had been taken of the meeting that could be referred to for specific exchanges.

39. The panel had concluded there were elements of the claimant's role in which she had excelled and she had worked very hard to build a positive reputation for the service. The issues that were being considered, however, related to interpersonal and operational interactions with staff within the team.

40. The claimant had asserted witnesses had been coerced into becoming involved but the panel concluded the management witnesses were "willing participants" and not coerced in any way. Their accounts were found to be credible, cohesive and consistent. Some had been very distressed but their evidence remained consistent internally and with each other. Many of the management witnesses spoke very highly of the claimant and praised the claimant in positive ways, having seen good elements of management and leadership and were distressed at having to participate in the process and often apologetic for standing up. Some had been angry given the behaviours that had been seen. Some witnesses were devastated by what had happened to them, which was important given the witnesses were experienced psychologists working in a trauma service well versed in understanding the impact of behaviour and trauma.

41. The panel highlighted 2 specific witnesses whose evidence was compelling. Ms Jackson had considered herself a friend of the claimant and had worked with the claimant for a lengthy period of time. She had sought to speak with the claimant about the impact of her behaviour in broad terms. She was entirely objective and had accepted she had not taken action before in relation to unacceptable behaviour she had seen due to her loyalty to the claimant. Her testimony had been corroborated by other witnesses.

42. Ms Stocks had been one of the claimant's witnesses but attended as a management witness and had appeared reluctant to become involved. She was the claimant's professional lead and had regular interaction with the claimant. She had said the claimant could at times come across as

domineering, feeling her job was more important than others and that she was better connected than others. When the claimant was under pressure, she became defensive and her behaviour could be inappropriate.

43. The panel noted the differing accounts presented of the claimant's behaviour at work. Management witnesses had given testimony of behaviour that was consistent with bullying. That was described by both management witnesses and other independent witnesses. The claimant's witnesses had, however, presented a different picture asserting they had seen no evidence of the bullying behaviour commented upon by others. The letter noted "this picture of a near perfect manager presented by your witnesses felt incongruous to the panel". Some issues had been known to exist with some team members and the panel concluded some colleagues did experience bullying or witness bullying behaviours.

44. One of the witnesses at the hearing had talked about how the claimant behaved. The claimant had shaken her arms in the witness's face. The panel had found the claimant to be angry, and visibly so (and not simply appearing to be so). The claimant had acted intentionally and in a considered way in terms of her interactions.

45. One of the issues the panel found was the unpredictable nature of the claimant's behaviour and the impact upon the team. There was significant corroboration of this element of the claimant's management style. Some staff were unsure on a day to day basis as to how they would be treated by the claimant which would depend on the claimant's mood each day. That created uncertainty and some felt dread when they saw the claimant's car in the car park. There was also evidence of unpredictability in interactions, seeing kindness and compassion and then harshness and criticism. The panel had formed the impression those staff were on tenterhooks at times struggling to work out what relationship they had with the claimant.

46. The investigation team had presented a position that there were essentially 3 camps – staff favoured by the claimant, a group who were not favoured and the remainder. The issue of favouritism had been suggested as a causal

factor in the unfair approached with staff. The panel had been influenced by several witnesses who described themselves as in the favoured group who knew they were favoured and in some cases tried to stay in the claimant's favour.

47. The panel took account of the fact the claimant had strongly refuted some of the statements and assertions. The context in which interactions occurred was examined.

48. One example given was an interaction with Dr Peterson during which the claimant accepted she had been defensive. The evidence supported the assertion that Dr Peterson had been "ignored and frozen out". It was the impact the claimant's behaviour had which was relevant.

49. Another example noted was an encounter with Ms Clancy. The claimant had admitted to having a difficult conversation with her but other witnesses had seen the impact the encounter had which included evidence of distress. The impact that interaction had was evident. The panel considered what Ms Clancy to have said to have been preferred and believed the claimant had acted inappropriately.

50. The investigation had found that Ms Clancy had initially accepted a job offer for a Band 7 post at the Anchor, but took a Band 8A role elsewhere. She and the claimant spoke about this. The investigation team preferred Ms Clancy's account, the claimant having made certain comments about how Ms Clancy could not legally hold a band 8A role, and how she knew individuals in Ms Clancy's future employer and in the university in which Ms Clancy was at that stage pursuing her doctorate. While the claimant denied that version of events, other witnesses confirmed aspects of it. Ms Stocks, for instance, confirmed to the investigation that the claimant was surprised to find out that a newly qualified psychologist holding a band 8A role was fairly common, lending credence to Ms Clancy's account.

51. The panel noted that the claimant's own evidence supported many of the witnesses since she had advised that "upon reflection she could see how her

behaviour had impacted upon the team and recognised she had not handled interactions well".

52. The claimant had been critical that no one had raised the issue sooner or with her directly or with her line manager or her professional lead. The letter noted that the affected staff had taken advice from their trade union who had advised the respondent that an informal resolution (such as mediation) would not be appropriate given the perceived seriousness of the matter, which is supported by the Bullying Policy.

53. The management case had noted that a number of staff were frightened of the claimant and fearful of speaking up as they had experience of raising views contrary to the claimant and the being shut down with the claimant not taking criticism well. There was also a perception that the claimant was well thought of by senior managers internally and externally and she had suggested a relationship with powerful and influential people. The claimant lived near to her manager and would, on occasion, drive him home after work and on occasion see him at social functions (but they were not direct friends).

54. The panel noted that staff had raised concerns with the claimant and the claimant had suggested they were isolated incidents and had "not joined the dots". The panel concluded staff had raised matters but the claimant had become personal and perceived them as personal attacks. Six examples were given as to when matters were raised with the claimant.

55. The panel believed that there were periods of time when the claimant had not been given appropriate support in her operational role which was taken into account.

56. The claimant had suggested the pandemic had been a reason why staff had raised concerns as they had been unhappy at decisions that had been taken, many of which were not the claimant's decisions. The panel found the pandemic was not the main reason staff decided to raise a collective complaint but the issues were "the straw that broke the camel's back".

57. The claimant acknowledged that operational people management was not her "forte" and least favourite part of the job with her focus on strategic work, at which the panel noted she excelled. The claimant felt she had not been doing a good job in this area and not handled people issues well over the last 8 years or so. The panel noted the claimant's willingness to change and seek help through mentoring, coaching and supervision. The self recognition and acknowledgment had a significant impact upon the outcome.

58. The panel considered the motive of those who had raised the complaint. Their evidence had been credible, cohesive and consistent. There was no evidence of coercion. The claimant had not been able to suggest any motive underpinning those who had raised concerns.

59. The panel also noted that the claimant had been defensive during the investigation stage but acknowledged, having heard accounts of witnesses, that the claimant could be perceived as frightening, critical, intimidating, and that there were unspoken dynamics and a power imbalance.

60. The panel concluded the allegations of systematic bullying had been established but did not uphold the harassment allegation. The panel considered the evidence in its totality. Having considered the entire evidence and context the panel concluded the claimant was guilty of gross misconduct. With regard to sanctions, the panel considered summary dismissal, which was open to them given the severity of the allegations, but in light of the mitigation presented by the claimant decided to issue a first and final written warning to remain on file for 12 months. The claimant would be demoted to another role elsewhere, which is not to be a leadership or management role, no lower than band 8A, taking account of the findings and the need for a supportive period of recovery and support. A mentor should be identified.

61. The panel had taken account of the claimant's apology and acknowledgement, the challenging nature of the role, the challenges with regard to operational management and the claimant's inexperience in addressing people issues, that better support could have been offered to the

claimant, her service and her work and success in relation to her strategic achievements.

62. The panel were aware that the claimant had experienced some menopause symptoms. The claimant had noted that she had a red face on occasions as the menopause sometimes caused her to flush. That was fully taken into account by the panel.

Claimant's sickness absence

63. The claimant had commenced a period of sickness absence on 26 November 2019 which ended on 6 January 2020. On 26 November 2019 the claimant submitted a fit note for this period that said the claimant was unfit to attend work because of "stress". On 26 November 2019 the claimant sent an email to Ms Stokes saying she was continuing to undergo investigations and her GP signed her off until January. She had weak blood pressure and a break from work would help to "get on top of this".

64. The claimant commenced a period of sickness absence May to October 2022. The absence reason was stated as "anxiety and depression due to work related stress".

65. On 7 October 2022, Occupational Health confirmed that the claimant would be fit to return to work as of 24 October 2022.

Claimant appeals against the decision

66. On or around 17 June 2022, and while on long term sickness absence, the claimant appealed the decision of the conduct panel. She submitted a 32 page document with her 2 page appeal letter. She referred to her clean disciplinary record during her 22 year service with renowned clinical expertise, leadership and supervisory skills. She argued the outcome letter lacked substance with no real explanation as to why the allegations were upheld and that her behaviour had not been deliberate and as such did not amount to gross misconduct. She also noted reliance was placed on matters that had occurred some time ago. She also argued the outcome was excessively punitive which would ruin her professional reputation.

67. On 7 October 2022, as well as confirming that the claimant was fit to return to work, Occupational Health also confirmed that the claimant was fit to participate in an appeal hearing.

Appeal hearing

68. An appeal hearing was held on 10 and 11 November 2022 which considered the issues the claimant had raised. The appeal hearing was adjourned to allow for the claimant to be referred to Occupational Health which she did on 6 December 2022. The Consultant in Occupational Medicine stated that having persistent sleep disturbance was likely to lead to a degree of irritability and loss of tolerance.

69. The Occupational Health reported dated 8 December 2022 was unable to determine whether the claimant's symptoms of the menopause caused the behaviours that had been relied upon.

Outcome of appeal

70. By letter dated 21 December 2022, the claimant was informed that the appeal panel was upholding the decision of the conduct panel. The letter noted that the management witnesses had been Ms Mitchell (who had conducted the management case at the original hearing), Ms Kerr (who was the claimant's line manager's line manager), and Mr Britton (who had been the trade union representative of the colleagues who had complained about the claimant). The claimant's witnesses were her line manager, Mr McCormack and Ms Stocks. The panel noted that the claimant had made reference to symptoms of menopause and as a result an occupational health practitioner's opinion should be sought. The panel considered the opinion (which had stated that although the claimant's GP notes were being sought, he did not think any other medical input would answer any of the questions more confidently). The appeal panel were mindful of the impact the passage of time was having and did not want to delay issuing their decision but if material was received that altered the position they would reconsider.

71. The panel had considered whether there had been repeated and deliberate breaches of policy and process that led to the outcome. The panel was satisfied the process was fair and appropriate. While the claimant felt early resolution (such as mediation) ought to have been explored where the issues arising are serious, the policies allow a formal process to be initiated. The concerns in this case were significant and it was appropriate to progress to a conduct hearing.

72. The claimant had raised concerns as to the credibility of witnesses and that the investigation was “manipulated” but from consideration of the evidence and statements, there was no evidence to support that assertion.

73. The claimant argued there was a lack of evidence with no substance or facts. The panel considered all the evidence including those who presented to the appeal panel. The claimant had argued concerns were conflated due to wider system pressures and the pandemic which had been the result of robust management decisions and having to communicate unpopular decisions, She also felt concerns related to misunderstandings or individuals’ feelings being hurt. The panel reviewed all the evidence and concluded the extent of the evidence and examples provided spanned a long time period and the breadth of examples provided by multiple individuals satisfied the panel as to the quality of the evidence provided. The panel was also struck by the overall impact on individuals which was evidenced and significant in some cases.

74. The panel noted that the claimant had an excellent service history with positive acclaim and feedback which had been reflected by a number of witnesses (from both the claimant and the management side). That had been taken into account as had the distress individuals had felt at raising concerns about the claimant’s conduct and how they felt conflicted in doing so.

75. The panel also considered the outcome which was an alternative to dismissal given the seriousness of the conduct. The claimant had felt the outcome did not amount to gross misconduct but noted the accumulation of incidents and events and the impact on individuals was significant. Consideration was to be given to leadership and management training.

76. The panel noted the claimant had said she had been experiencing symptoms of menopause. She had said her medical condition had not been taken into account and she had been "given a sanction as a result of her medical condition".

77. The panel noted that aspects of the claimant's demeanour which related to the claimant's menopause were discounted, specifically comments as to having a red face and being intimidating. The claimant had not raised her symptoms as a mitigating factor either before or during the conduct hearing.

78. The panel took into account that the claimant was experiencing significant symptoms but also the impact upon employees who were negatively affected by the behaviours over a prolonged period of time. The appeal panel concluded that the behaviours cannot be significant mitigated by the menopausal symptoms. While some behaviours could have been partially related, the variety and number of examples provided combined with the claimant's lack of recognition of her behaviour and attempts to address it are relevant. The overall impact on individuals was significant and the mitigation raised by the claimant had been taken into account.

79. The claimant's appeal was accordingly unsuccessful.

80. The Occupational Health Physician provided a further Report on 16 February 2023 which the appeal panel considered. The physician had considered the claimant's GP records, the claimant having attended her GP for menopausal symptoms over the last 8 years. The first reference to impact upon her mental health was in March 2017 with a dip in mood but the impact was more significant in August 2017. There were no further presentations until November 2019. Stress at work had become a factor and she was signed as unfit for work from November 2019 until January 2020.

81. The physician concluded that the claimant had reported impact on her mental well bearing due to menopause from 2015 until 2020 but it is not possible to assess the severity and whether there was any impact on her behaviour at work. If there were such impacts, it was likely to have been from November 2019.

82. The appeal panel did not consider the report to provide anything that changed their view.

Claimant's current role

83. In January 2023, the claimant was offered a Band 8B Principal Clinical Psychologist post. The claimant accepted this and commenced in this post on 23 January 2023.

Claimant's claim

84. Acas received the claimant's early conciliation notification on 28 July 2022 and the Acas certificate was issued on 08 September 2022. The claimant submitted a claim dated 07 October 2022.

Observations on the evidence

85. We found each of the witnesses generally to be credible. They did their best to recollect the position.

86. The **claimant** genuinely believed that her disability had been a key factor in the treatment and this was firmly held. The Tribunal did not doubt that to be the claimant's position. However, the Tribunal found the respondent's agent's summary of her position to be accurate. The claimant had not relied upon her disability as a cause of her behaviour (or mitigation) until the appeal process. While the claimant believed she had referred to her disability and the effects, the Tribunal preferred the evidence of Ms Stocks (the only witness to whom the claimant said she had disclosed details). The Tribunal believed the claimant thought she had disclosed the information but it was more likely than not that she was mistaken in her belief. The claimant is an articulate and intelligent individual clearly able to present her position with clarity. The Tribunal considered that the claimant would have made her position clear at the time, as she did during the appeal process, had the matter in fact been raised. The information at the time and contemporaneous documents led the Tribunal to conclude that the claimant had not disclosed the information prior to the appeal process. The Tribunal considered that if Ms Stocks had known

of the information the claimant said she had disclosed, that information would have been set out at the time.

87. The Tribunal noted that the claimant had denied responsibility for the allegations and behaviour and had approached the investigation in a defensive way. She recognised that her behaviour had impacted upon her staff and was apologetic by the conduct hearing. She maintained, however, at the appeal hearing that she was not responsible for the allegations.

88. This was not an unfair dismissal case and the Tribunal was not required to assess the process that was undertaken nor the reasonableness of the outcome even if at points the evidence did focus on such matters. The Tribunal must focus on the issues to be determined in light of the claims. The Tribunal considered that the respondent had been fair and ensured the claimant was able to provide her response to the points that had arisen. Equally the respondent had to ensure it respected the claimant's colleagues who had raised the issues which were serious and clearly had substantial and in some cases lasting impact.

89. The claimant's line manager, **Mr McCormack**, was emphatic that he had not seen any wrongdoing of the claimant. The respondent's observation that his approach was defensive was apposite. It was clear that Mr McCormack wanted to ensure the service for which he was responsible was protected and he was clearly concerned as to the respondent's actions and the impact upon the service. Mr McCormack was also emphatic that he was not friends with the claimant. The issue was not, however, that he was friends but rather the claimant had said to others she had strong and close working relationships with senior staff. The fact that she would drive Mr McCormack home on occasion and see him in social settings (via mutual friends) were important factors that could create a perception of closeness and it was for that reason the respondent sought to maintain boundaries in the process.

90. The Tribunal found that **Mr Connor** gave his evidence in a clear and candid way. His approach in dealing with the allegations was markedly different from

the claimant as was his responsibility which underlined the difference in the outcome, a position fully justified from the evidence before the respondent.

91. **Mr McDonald's** evidence was clear and accepted by the claimant (there being no cross examination).

92. **Ms Kerr** was the commissioning manager and managed the process. She was able to cogently explain why the outcomes were different in respect of the separate investigations that were undertaken and explain why the process in relation to the claimant proceeded as it did. She explained that the trade union representative for the complainants had made it clear that there was no point progressing with early resolution (including mediation) as the matter was too serious. That was a reasonable conclusion to reach given the circumstances and context and Ms Kerr was able to set out the approach taken. She also explained how the respondent had tried to accommodate the claimant in a fair way in relation to the outcome of the process, in a way that protected both the claimant and affected staff.

93. The claimant's agent argued that there were aspects of Ms Kerr's evidence which was inconsistent with other evidence. The Tribunal took that into account but did not find that Ms Kerr was not credible. She had done her best to recall matters.

94. **Ms Mitchell** was able to give clear evidence as to the investigation process and explained the enormity of the task given the number of people involved. She was clear in her approach and in seeking to ensure the facts were fully understood and that the process was fair to both the claimant and those affected. She was clear in having seen the impact of the claimant's behaviour and had invested a very large amount of time and effort into ensuring the outcome of the investigation was fairly set out. Ms Mitchell was clear that the claimant had mentioned having a red face and high blood pressure but the claimant had not suggested her disability was in any other way relevant to her conduct or behaviour at work. The claimant's agent identified some inconsistencies in her evidence which the Tribunal took into account. The

Tribunal found Ms Mitchell to have done her best in setting out the position as she understood it.

95. **Ms Egan** gave clear and powerful evidence as to how she managed the conduct hearing. She showed how the panel had been fair to the claimant and recognised many of the claimant's strengths and was able to fairly set out the unacceptable behaviours. There was no doubt that the panel had considered the large amount of information very carefully indeed and had invested a very large amount of time and effort into fairly assessing the evidence before them, which was challenging. Ms Egan's evidence showed fairness and compassion and insight into what had happened and the reasons for it. The Tribunal had no doubt that the conclusions the panel had reached were fair and reasonable from the information presented and the reasons given set out the position very clearly. There was no doubt the panel concluded that the claimant had been guilty of deliberate wrongdoing or at least gross negligence in terms of her behaviour and the panel was in no doubt the claimant's behaviour in light of evidence amounted to gross misconduct. That was a fair conclusion to reach from the clear evidence presented.

96. Ms Egan was fair in her assessment of the evidence presented and noted many of the positive aspects identified by many of the witnesses but also the behavioural issues that had been evidenced by many of the witnesses, some of whom were not complainants. There was very clearly a group of staff that the claimant had favoured (which were her witnesses) who clearly had a very different perception about and perception of the claimant and the working environment from the other staff. That explained the difference in evidence. It was noted that the claimant was so passionate about her role and the department and there was no doubt as to her clinical expertise.

97. Ms Egan was also able to note that some of the evidence relating to the claimant's behaviours and management approach had happened many years ago (in some cases prior to the onset of the menopause). This was an important factor since some of the witnesses had been clear that the claimant's approach to staff interaction was not something that had just occurred but was rather the approach she had taken for many years. The

behaviour that had been found was similar to the way the claimant had conducted herself prior to the impact of her disability.

98. Ms Egan emphasised that dismissal was a real possibility given the nature and seriousness of the conduct that had been established. Such an outcome may well have been a reasonable outcome. The panel took into account the apology the claimant had made and the insight the claimant had shown in relation to her behaviour and its impact. The claimant's excellent clinical skills and success in her role was taken into account. The panel wished to support the claimant particularly with regard to management and leadership which were clearly areas that required significant intervention. The Tribunal was in no doubt that the outcome reached was a considered and fair outcome.

99. **Mr Culshaw** gave evidence clearly and from a considered perspective. He fairly took into account the points the claimant raised and ensured appropriate medical input was secured. He was clear that the claimant's disability did not explain the behaviours that led to the outcome in this case, which was reached following a conclusion of all the evidence. He was clear that the symptoms of the claimant's disability were not a reason for the behaviours given the very clear evidence before him. The issues arose as a result of the claimant's management style and her approach to staff interactions. The behaviours were of such a seriousness and the impact so significant that the outcome was clearly fair and reasonable. He emphasised that dismissal was a realistic option in this case but the panel had carefully assessed the evidence and issued an outcome that was fair and reasonable.

100. Mr Culshaw emphasised that even if the disability had caused in part the behaviours, a senior manager required to have the insight to address the issues (rather than remain in post and allow staff to suffer the consequences). He also fairly recognised there would be a duty on the employer to support the individual if the issues were raised.

101. Ms Stocks was clear, fair and candid in her evidence. The Tribunal preferred her evidence to that of the claimant where there were disputes. Ms Stocks did her best to recall matters and gave an honest account of what had occurred.

She was not the claimant's line manager and was not responsible for the claimant on a day to day basis. Ms Stocks had identified certain issues in terms of the support the claimant had been given and she was fair to the claimant in her assessment.

102. There were few material factual conflicts that we required to resolve for the purposes of determining the issues but the first issue was whether or not the claimant correct in her recollection that she had raised the impact of her disability with her professional lead, Ms Stocks. The claimant asserted she told Ms Stocks about her medical condition including her symptoms of the menopause, namely sleep disturbance, sweating, anxiety, tiredness, low mood, nausea, hot flushes and a red complexion and irritation and lack of tolerance. It was alleged this was communicated during 2019 or at the latest on 8 January 2020. Ms Stocks could not recollect such a discussion and believed the first occasion she learned of the effect of the impairment was in relation to the Tribunal claim.

103. Having assessed the evidence and the contemporaneous documents, the Tribunal found it more likely than not that Ms Stocks had not known about the specific symptoms or consequences of the claimant's impairment. Ms Stocks was not the claimant's line manager but was her professional lead. Mr McCormick was the claimant's line manager. The Tribunal found Ms Stocks to be more credible than the claimant in relation to this evidential dispute. The Tribunal found the respondent's agent's submissions as to why Ms Stocks was more likely than not to have recollected matters more accurately.

104. The claimant clearly believed that her disability had been fully communicated to the respondent by the time of the Hearing. She was clear in her evidence. However, at the time of the relevant issues, the claimant had not raised the issues in the way that she had presented in her evidence. The Tribunal found the claimant to be highly intelligent and articulate. Had the claimant believed the position at the time, the claimant would have raised the matters and put the issue beyond doubt in her communications with the respondent. She had not done so. It was more likely than not that the matter had not been raised

with Ms Stocks and her recollection was accurate and the she had not been advised as to the position.

Law

105. The relevant legal principles can be summarised as follows.

Discrimination arising from disability

10 Section 39(2)(c) of the Equality Act 2010 prohibits discrimination against an employee by dismissing him. Section 15 of the Act reads as follows:

"(1) a person (A) discriminates against a disabled person (B) if –

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

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

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

106. Paragraph 5.6 of the Code provides that when considering discrimination arising from disability there is no need to compare a disabled person's treatment with than of another person. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability.

107. In order for the claimant to succeed in his claims under section 15, the following must be made out:

(a) there must be unfavourable treatment (which the Code interprets widely saying it means that the disabled person 'must have been put at a disadvantage' (see para 5.7)).

(b) there must be something that arises in consequence of the claimant's disability;

(c) the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability; and

(d) the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

108. Useful guidance on the proper approach was provided by Mrs Justice Simler in the well-known case of **Pnaiser v NHS England** 2016 IRLR 170:

"A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises. The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it."

109. Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and the respondent's motive in acting as he or she did is simply irrelevant.

110. There are two causation issues. Firstly, the unfavourable treatment must be "because of something" which gives rise to the same considerations as in direct discrimination with the focus on the alleged discriminator's reasons for the treatment (**Dunn v Secretary of State** 2019 IRLR 298). The Tribunal must identify what the reason was, the reason being a substantial or effective reason, not necessarily the sole or intended reason.

111. Secondly the "something" must more than trivially influence the treatment but it need not be the sole or principal cause (**Hall v Chief Constable** 2015 IRLR

893 and **Pnaiser** above). It is enough if the unfavourable treatment is the cause of the something (irrespective of whether the respondent knew the something arose as a consequence of the disability – **City of York v Grosset** 2018 EWCA Civ 1105). This is a matter of objective fact decided in light of the evidence (**Sheikholeslami v University of Edinburgh** 2018 IRLR 1090 and **Risby v London Borough of Waltham** UKEAT/0318/15/DM) and there may be a number of links in the chain and more than one relevant consequence may need consideration.

112. Paragraph 5.8 of the Code notes that "there must be a connection between whatever led to the unfavourable treatment and the disability".

113. The fundamental matter for the tribunal to determine is therefore the reason for the impugned treatment (see **Cummins Ltd v Mohammed** UKEAT/39/20). We have applied the reasoning of HHJ Tayler in this aspect of the claim.

114. As to justification, in paragraph 4.27 the Code considers the phrase "a proportionate means of achieving a legitimate aim" (albeit in the context of justification of indirect discrimination) and suggested that the question should be approached in two stages:

- is the aim legal and non-discriminatory, and one that represents a real, objective consideration?
- if so, is the means of achieving it proportionate – that is, appropriate and necessary in all the circumstances?

115. As to that second question, the Code goes on in paragraphs 4.30 to 4.32 to explain that this involves a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts. It goes on to say the following at paragraph 4.31:

"although not defined by the Act, the term "proportionate" is taken from EU directives and its meaning has been clarified by decisions of the CJEU (formerly the ECJ). EU law views treatment as proportionate if it is an "appropriate and necessary" means of achieving a legitimate aim. But

"necessary" does not mean that the [unfavourable treatment] is the only possible way of achieving a legitimate aim; it is sufficient that the same aim could not be achieved by less discriminatory means."

116. The Code at paragraph 4.26 states that "it is for the employer to justify the provision, criterion or practice. So it is up to the employer to produce evidence to support their assertion that it is justified. Generalisations will not be sufficient to provide justification. It is not necessary for that justification to have been fully set out at the time the provision criterion or practice was applied. If challenged, the employer can set out the justification to the Employment Tribunal."

117. In ***Chief Constable v Homer*** 2012 ICR 704 Baroness Hale stated that to be proportionate a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so. She approved earlier authorities which emphasised the objective must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. It is necessary to weigh the need against the seriousness of the detriment.

118. The question is whether the action is, objectively assessed, a proportionate means to achieve a legitimate end. The employer has to show (and the onus is on the employer to show) that the treatment is a proportionate means of achieving a legitimate aim. The Tribunal can take account of the reasonable needs of the respondent's business but the Tribunal must make its own judgment as to whether the measure is reasonably necessary. There is no room for the range of reasonable response test.

119. The Tribunal is required to critically evaluate, in other words intensely analyse, the justification set out by the employer. The assessment is at the time the measure is applied and on the basis of information known at the time (even if the employer did not specifically advert to the justification position at that point). Flaws in the employer's decision-making process are irrelevant since what matters is the outcome and now how the decision is made.

120. There must firstly be a legitimate aim being pursued (which corresponds to a real need of the respondent), the measure must be capable of achieving that aim (ie it needs to be appropriate and reasonably necessary to achieve the aim and actually contribute to pursuit of the aim) and finally it must be proportionate. The discriminatory effect needs to be balanced against the legitimate aim considering the qualitative and quantitative effect and whether any lesser form of action could achieve the legitimate aim.

121. Chapter 5 of the Code contains useful guidance in applying the law in this area and we have had regard to that guidance.

Reasonable adjustments

122. Section 39(5) of the Equality Act 2010 provides that a duty to make reasonable adjustments applies to an employer. Further provisions about that duty appear in section 20, section 21 and schedule 8. This is considered in chapter 6 of the Equality and Human Rights Commission Code of Practice. That paragraph states: “A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know, … that a person has a disability and is likely to be placed at the disadvantage”.

123. Therefore the duty does not apply if the employer did not know, and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the disadvantage in question by the PCP (Schedule 8 paragraph 20) (for which see **Wilcox v Birmingham CAB** 2011 EqLR 810).

124. An employer will be taken to know of the disability if it is aware of the impairment and the consequences. There is no need to be aware of the specific diagnosis. If an employer has no actual knowledge of the disability, the Tribunal must consider whether there was constructive knowledge, namely, whether the employer ought to have known of the disability from the facts before the employer at the time (**McCubbin v Perth** UKEATS/25/13).

125. If the employer did not know of the disability (or ought not reasonably to have known) the duty to make reasonable adjustments it not engaged. The same

applies if the employer did not know, or could not reasonably have known, of the alleged substantial disadvantage.

126. The Court of Appeal in **Gallop v Newport City Council** 2014 IRLR 211 said that it is essential for a reasonable employer to consider whether an employee is disabled, and form their own judgment. In that case the employer relied on advice from Occupational Health that the claimant was not 'covered' by the Equality Act 2010, and had then unquestioningly adopted that unreasoned opinion. Whilst ordinarily an employer will be able to rely on suitable expert advice, this cannot displace their own duty to consider whether their employee is disabled, and it is impermissible simply to rubber stamp a proffered opinion.

127. In **Donelien v Liberata UK Ltd** 2018 IRLR 535, Underhill LJ emphasised that an unquestioning reliance on an unreasoned report will not prevent a finding of constructive knowledge.

128. The Employment Appeal Tribunal considered this issue in **Kelly v Royal Mail Group Ltd** UKEAT/0262/18 which emphasised that it is not sufficient for an employer merely to rubber-stamp in that case the medical advisors' report and that it must make his own factual judgment as to whether the employee is disabled. The respondent in that case gave independent consideration to the matter rather than unquestioningly following Occupational Health reports. It was relevant to note that from the information available to the employer from the claimant, there had been no suggestion from the claimant that there was any adverse effect on his day-to-day activities and there was nothing to alert the claimant's managers to the need to look behind the conclusions of the information they had obtained. In light of all the information available to the employer, this is not a case where it could be said that they had knowledge that the claimant has a disability. Particular consideration was given to the lack of any evidence that the claimant's condition was likely to be long-term and/or that it had an adverse effect on his day-to-day activities.

129. When **Gallop** was remitted to the Tribunal it was unsuccessful because the decision maker did not in fact have knowledge of disability and that was

upheld by the Employment Appeal Tribunal in **Gallop v Newport City Council (No 2)** 2016 IRLR 395.

130. The question of whether an employer could reasonably be expected to know of a person's disability is a question of fact for the Tribunal (**Jennings v Barts and The London NHS Trust** UKEAT/0056/12*)*. In that case the Employment Appeal Tribunal suggested that an employer should concentrate on the impact of the impairment, not on any particular diagnosis.

131. Langstaff P in **Donelien v Liberata UK Ltd** UKEAT/0297/14 *(*affirmed by the Court of Appeal 2018 IRLR 535) warned that when considering whether a respondent to a claim 'could reasonably be expected to know' of a disability, it is best practice to use the statutory words rather than a shorthand such as 'constructive knowledge' as this might imply an erroneous test. The burden is on the employer to show it was unreasonable to have the required knowledge.

132. The importance of a Tribunal going through each of the constituent parts of section 20 was emphasised by the Employment Appeal Tribunal in **Environment Agency v Rowan** 2008 ICR 218 and reinforced in **Royal Bank of Scotland v Ashton** 2011 ICR 632.

133. As to whether a “provision, criterion or practice” (“PCP”) can be identified, the Commission Code of practice paragraph 6.10 says the phrase is not defined by the Act but “should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions”. The question of what will amount to a PCP was considered by the Employment Appeal Tribunal in **Nottingham City Transport Limited v Harvey** UKEAT/0032/12 in which the President Mr Justice Langstaff (dealing with a case under the Disability Discrimination Act 1995 and the Disability Rights Commission’s Code of Practice from 2004, both now superseded by the provisions summarised above) said of the phrase “provision, criterion or practice” in paragraph 18: “Although those words are to be construed liberally, bearing in mind that the purpose of the statute is to eliminate discrimination against those who suffer from a disability, absent provision or criterion there still has to be something that can qualify as a

practice. "Practice" has something of the element of repetition about it. It is, if it relates to a procedure, something that is applicable to others than the person suffering the disability. Indeed, if that were not the case, it would be difficult to see where the disadvantage comes in, because disadvantage has to be by reference to a comparator, and the comparator must be someone to whom either in reality or in theory the alleged practice would also apply. These points are to be emphasised by the wording of the 1995 Act itself in its original form, where certain steps had been identified as falling within the scope to make reasonable adjustment, all of which, so far as practice might be concerned, would relate to matters of more general application than simply to the individual person concerned."

134. This was applied in **Ishola v Transport for London** [2020] EWCA Civ 11, LJ Simler, whose reasoning we have applied. It is possible for a PCP to be a "one off" provided it has the character of a PCP, in other words it could be something the employer might well adopt as a PCP. Just because it has not been applied before does not, by itself, mean it is not a PCP.

135. For the duty to arise, the employee must be subjected to "substantial disadvantage in comparison to a person who is not disabled" and with reference to whether a disadvantage resulting from a provision, criterion or practice is substantial, section 212(1) defines "substantial" as being "more than minor or trivial". The question is whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison to those who do not have the disability *(***Sheikholeslami v University of Edinburgh,** 2018 IRLR 1090*).*

136. The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is one in respect of which the Code provides considerable assistance, not least the passages beginning at paragraph 6.23 onwards. A list of factors which might be taken into account appears at paragraph 6.28 and includes the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources and the type and size of the employer.

137. Paragraph 6.29 makes clear that ultimately the test of the reasonableness of any step is an objective one depending on the circumstances of the case. Examples of reasonable adjustments in practice appear from paragraph 6.32.

Submissions

138. Both parties provided detailed submissions which were supplemented by oral submissions (and reference to each other's submissions), which were fully taken into account.

Decision and discussion

139. The Tribunal spent a considerable period of time considering the evidence that had been led and the submissions made by both parties which were fully taken into account. Having considered the evidence led, the Tribunal was able to reach a unanimous view. We shall deal with each relevant issue in turn.

Discrimination arising in consequence of disability

Knowledge of disability

140. The respondent accepts that it was aware of the fact of the claimant's disability at the relevant time for the purposes of this complaint.

Unfavourable treatment

141. It was not disputed that the decision to demote the claimant and issue a First and Final Warning amounted to unfavourable treatment.

Did the something arise as a consequence of disability

142. The first issue is to determine whether or not the "something", the perception of the claimant's behaviour, arose as a consequence of the claimant's disability. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

143. It is important to focus on the pleaded claim. In this case the ”something” which is said to arise as a consequence of the claimant’s disability is that the claimant “would appear angry and red faced” and “she would appear irritable”. The claimant’s agent confirmed that the case was not the claimant was angry, red faced or irritable but (only) that she would appear to be so. That was an important issue and something which had been carefully considered by the claimant and the Tribunal considers the complaint on that basis.

144. The Tribunal was satisfied from the evidence that the claimant appearing to be red faced was something which arose from her disability. This was something that had been raised by the claimant at the time and was known to be a consequence of the menopause.

145. The Tribunal next considered whether the disability was in some sense linked to her “appearing angry”. It is understood that the way in which the claimant is said to have appeared to be angry is having a red face (and nothing else as such. It is notable that the claimant is not asserting her disability led to her actually being angry (which was something the claimant denied). Given the claimant did have a red face as a result of the disability, the Tribunal was prepared to accept the red face did make her look angry and both were as a consequence of the disability.

146. The final “something” relied upon in the pleaded case was “appearing irritable”. Again the pleaded case is that the claimant appeared to be irritable (not that she was irritable). It was quite clear from the evidence that the claimant was extremely anxious as a result of the disability. The Tribunal found that being anxious and sleep deprivation (which both stem from the disability) did lead to the claimant appearing to be irritable.

147. The parties’ submissions were not precisely focussed on the pleaded case and on this particular issue. Having carefully considered the evidence before the Tribunal (including the judgment following the preliminary hearing on disability status) the Tribunal concluded that appearing to be red faced and angry and appearing to be irritable was something arising in consequence of disability.

148. The respondent's agent noted that while the claimant may have had symptoms of the menopause from an earlier date, she was legally disabled between August 2017 and December 2021. Any behaviour arising prior to August 2017 cannot have been something arising in consequence of a disability. The Tribunal considered that to be meritorious.

149. The respondent had argued none of the "things", assessed objectively, truly arose in consequence of the disability. The medical evidence before the Tribunal is unclear as to whether the cause of any of the claimant's behaviours was symptoms of the menopause. While that may have been so, it was clear to the Tribunal that given the pleaded case was appearing to be red faced and angry and appearing to be irritable, it was more likely than not that such appearances arose as a consequence from the disability (from November 2019 which was when the medical evidence suggested was more likely).

150. The respondent's agent noted the investigation had disclosed evidence that showed that a substantial amount of the behaviours covered in the investigation and the disciplinary process occurred before November 2019. While that was correct, as set out below, the treatment that occurred was not because the claimant appeared to have the characteristics relied upon but because the claimant had in fact acted in a way that was inappropriate (expressly not taking account of the fact the claimant had appeared to have a red face).

151. The Tribunal concluded that the evidence showed that it was more likely than not that the claimant's disability had led to her appearing red faced, angry and irritable.

Was the treatment because of the something arising?

152. The Tribunal must consider the case that has been presented before it. In this regard the next issue arising is whether or not the treatment relied upon was because of the "something". In other words, did the claimant's appearing to have a red face and be angry and appearing to be irritable lead (in some way) to the outcome of the conduct hearing (the issuing of the warning and

demotion). The "something" must more than trivially influence the treatment but it need not be the sole or principal cause

153. The claimant's agent argued this issue is made difficult by the fact that the respondent did not set out which incidents of behaviour falling within the generic allegations set out in the grievance and the Investigation Report have been established. The only support for particular findings is in respect of the incidents that are set out in the outcome letter involving 2 individuals and looking however at the behaviour in the round, it was argued there is a causal link between the symptoms of the menopause as set out in her evidence and in the Judgment following the Preliminary Hearing, namely that she would appear angry, red faced and irritable which caused her to interact in a way with her colleagues which caused them, in turn, eventually, to initiate the collective grievance.

154. It was also submitted that the appeal officer "touched upon" the symptoms of the menopause impacting on the claimant's behaviour in his evidence. The behaviour exhibited to her colleagues was therefore "something" arising from her disability of the menopausal symptoms.

155. The respondent's agent provided detailed submissions noting that matters relating to the claimant's red face were explicitly discounted by the disciplinary panel. Even if the claimant did get a red face because of the menopause, it did not form a reason for the unfavourable treatment in any respect. The Tribunal was satisfied the claimant having a red face (and thereby appearing angry) was expressly discounted by the panel and not in any sense a reason for the treatment relied upon.

156. The respondent's agent noted that the only other matters said to arise in consequence of the disability are appearing to be angry or irritable, rather than actually being so. The claimant appearing angry or irritable was not in any way an operative factor on the minds of the disciplinary panel. It was the claimant actually indulging in a campaign of systemic bullying; her actually being angry, manipulative, and aggressive towards her subordinates, undermining and humiliating them, leaving them in a state of constant and

continuous fear, that led the disciplinary panel to impose a sanction on her. The Tribunal found that to be a sound proposition.

157. The claimant's agent had accepted in submissions that if the respondent had found the claimant to have actually been guilty of the behaviour (rather than upon a perception) the claim would not succeed since the claimant's case was based upon her assertion that she was not guilty of the behaviour and it was the perception of the behaviour that had led to the actions. The Tribunal was satisfied the treatment was not in any sense (that is in no more than a minor or trivial way) connected to the claimant appearing to have a red face and be angry or appearing to be irritable.

158. The Tribunal considered the evidence carefully. The respondent found the claimant had been responsible for the behaviour which was because of how she had actually conducted herself. It was not related to the claimant appearing angry, irritable or red faced. The incident with Ms Clancy provided a cogent example. The claimant had deliberately and calmly made an implied threat to curtail Ms Clancy's career. It was that intentionality that in part caused the disciplinary panel to issue a sanction. The treatment was entirely unconnected to the consequences of the claimant's disability.

159. The respondent's agent noted that Dr Egan also spoke of, and demonstrated for the Tribunal, a witness to the disciplinary panel talking about how the claimant behaved - shaking her arms. The panel considered that the claimant was angry, and visibly so, rather than simply appearing to be so. The reason for the sanction was not the claimant appearing, but her actually being, angry. The Tribunal found this to have merit and underlined the fact the treatment was not in any sense related to anything arising from the claimant's disability (but instead was solely related to the claimant's management style and approach to interacting with her staff).

160. The respondent's agent noted the witnesses who gave evidence on behalf of the respondent talked about the significant human impact of the claimant's actions. That clearly was a major part of the disciplinary panel's reasoning for imposing the sanction it did. This was not because the claimant appeared to

be angry or irritable. The claimant was angry, aggressive, abusive, and critical of those she did not favour. She undermined and humiliated them and created a culture of fear. Those were the reasons the sanction was imposed. It had nothing to do with her appearing, but not actually being, angry or irritable.

161. The Tribunal found that the respondent's submissions had merit. The reason for the treatment was because the respondent genuinely believed the claimant had engaged in a repeated pattern of behaviour towards her colleagues. That was plainly evidenced from the testimony provided at the investigation and conduct panel stages.

162. The panel expressly excluded any behaviour that related to the symptoms the claimant had told the respondent stemmed from her disability. The outcome was solely because the respondent genuinely and honestly believed the claimant had been guilty of the behaviours alleged and had seen evidence of it from a number of different people, some of whom were not management witnesses. The evidence supported the conclusion that was reached. While the outcome letter had not set out each individual interaction that had been considered, the panel was clear as to its reasons and in not having taken into account the fact the claimant appeared to be red faced (and thereby angry). It was clear that appearing to be red faced and angry and appearing to be irritable did not feature at all in the reasoning of the panel.

163. The Tribunal took into account that the claimant's witnesses suggested they had never seen her behave inappropriately, but that was because the claimant's witnesses were in the "favoured" group and said they never witnessed such behaviour because they were treated well by the claimant and could not square the complainers' perception of her with their own. That did not support the assertion that the treatment was in some sense linked to the disability. It was the claimant making clear decisions as to how she treated her staff – not at all because she appeared to be angry or irritable.

164. The claimant was able to pick and choose who she behaved poorly around, treating some people well and some less well. That was redolent of a conscious choice to behave poorly. It is not indicative of uncontrollable

symptoms leading to poor behaviour. That demonstrated that the treatment was not because of the symptoms or consequences of the disability.

165. The Tribunal took a step back to assess the evidence carefully. The Tribunal was satisfied that the treatment was in no sense whatsoever related to (or caused by in any way that was more than minor or trivial) the fact the claimant appeared to be red faced or angry or appeared to be irritable.

166. It was relevant in considering whether the consequences of the disability led to the behaviours relied upon that the behaviour had been exhibited by the claimant for a number of years before the impact of the claimant's disability. In other words it appeared that the way in which the claimant conducted herself at work in relation to staff interactions predated the onset of the disability. The same themes and types of behaviour had remained relatively constant prior to the impairment on which the claimant relies. If the behaviour was demonstrated before the impairments took effect it would be unlikely the impairments caused the behaviour and management style, given such behaviour and management style was already in existence. There was no evidence that the disability exacerbated or in some way changed how the claimant dealt with people. It was the way she conducted herself at work.

167. The Tribunal appreciated the huge challenges the disability presented for the claimant, not least as evidenced in the judgment following the preliminary hearing. But the issue for this Tribunal was whether the consequences of the disability in some way led to the treatment complained of.

168. The behaviour relied upon was consistent in terms of being displayed to the same group of staff. Had the impairment affected the claimant's behaviour, it was more likely than not to have affected the claimant in each of her interactions. In other words it was more likely than not that the behaviours would have been displayed to all staff at different stages, rather than only those staff who were considered to be "out of favour". That supports the fact the behaviours were the result of a conscious choice rather than caused by the disability. Absent any medical evidence that assists the Tribunal in this

question, the Tribunal can only proceed on the balance of probabilities from the evidence it had.

169. The nature of the behaviour exhibited by the claimant (which was the behaviour that led to the outcome) was redolent of a particular style of management and leadership. This was the part of the claimant's job she liked least and one in respect of which she had not been properly supported or trained. She had limited ways of understanding how her interactions should be, irrespective of the positive results she was securing. The fact she was excelling in her role clearly affected how the claimant perceived the acceptability of her behaviour, particularly where it went unchallenged. It was more likely than not that the claimant's disability was not in any sense a cause of her management and leadership style which was how the claimant had conducted herself, having achieved positive outcomes.

170. Having assessed all the evidence carefully, the Tribunal did not find, on the balance of probabilities, that the treatment was (in any sense whatsoever) because of the claimant appearing to be red faced or angry or irritable (the something that arose in consequence of disability).

171. On that basis the section 15 claim is ill founded.

Objective justification

172. Even if the treatment had been a result of something arising in consequence of disability, the Tribunal would have had found the treatment to be a proportionate means of achieving legitimate aims.

173. The aims relied upon were managing workplace conduct appropriately, managing services appropriately and managing staffing levels and morale. These were clearly legitimate aims (and not disputed to be otherwise).

174. The real issue was whether the outcome was a proportionate means of achieving those aims. The claimant's agent argued that there were less discriminatory ways in which the respondent could have treated the claimant. In particular, the Harassment Policy outlined a process for early resolution.

175. The claimant's agent emphasised that an important part of the evidence in this section is the assertion by the claimant that she was not found guilty of any behaviour that would warrant a finding of gross misconduct. It was submitted that a less discriminatory approach would be the holistic approach that early resolution would have resulted in the claimant being able to remain in the service or not be subject to a disciplinary sanction.

176. The respondent's agent submitted that the aims are not "hermetically sealed; factors can be relevant to more than one". Thus the impact on staff, staff leaving due to the claimant's behaviours, and staff being unwilling to work with the claimant any longer, for instance, are relevant to all of the legitimate aims.

177. With regard to the first aim relied upon, **managing workplace conduct appropriately**, the respondent genuinely believed the claimant had committed gross misconduct. The respondent believed the claimant had acted deliberately, and had been negligent. The claimant had engaged in systemic bullying of colleagues which is gross negligence in a managerial position. The outcome was proportionate means of managing workplace conduct appropriately.

178. The claimant argued a more proportionate means would have been to have entered mediation or had a lesser sanction. It was clear that this had been considered and the trade union representative of the complainants had made it clear that the complainants were not prepared to proceed with that given the time that had passed and the seriousness of the behaviour. The policy permitted proceeding as the respondent did in light of that.

179. It is relevant that the claimant accepted in cross examination that, by that stage, it was not appropriate for her to be in a management position, agreeing when the point was put to her that she "needed time". The fact the claimant continued to lack some insight into the significance of her behaviour was also relevant.

180. Given the seriousness of the allegations, the strength of feeling on the part of the complainers, and the fact that some of them were still working in the Anchor, it was not possible for the claimant to remain there or in her post and

the outcome was a proportionate means of managing workplace conduct. The outcome had already been adjusted form dismissal which was a distinct possibility given the importance and seriousness. Dismissal may well have been a proportionate means of achieving the aims in this case on the facts.

181. The Tribunal considered that having no disciplinary sanction (as was suggested by the claimant) would not have achieved the legitimate aim since it would not have enabled the respondent to appropriately manage workplace conduct. The respondent's submission that having a disability does not excuse someone from any consequences for any behaviour is well made.

182. The Tribunal considered that a disciplinary sanction was both appropriate and inevitable. Given the scale and gravity of the misconduct, some form of sanction had to be issued. The respondent's submission that the respondent weighed up the various mitigating factors, and issued a measured outcome is sound. The written warning was a necessary marker of the significance of the claimant's conduct, and has now expired. The claimant can apply again for promoted posts, having completed the Supported Improvement Plan. She has a job. She was not dismissed, when she might well have been. The respondent balanced the discriminatory impact on the claimant against the legitimate aim, and came to the correct, proportionate response. The Tribunal balanced the discriminatory effect upon the claimant with the impact upon the respondent. The outcome a proportionate means of achieving the aim.

183. With regard to the second aim, **managing services appropriately**, the Tribunal accepted that the respondent has a duty of care towards its employees and cannot place individuals in a situation where they will suffer from systemic bullying. That is a core component of appropriately managing a service. The claimant had engaged in systemic bullying of staff over several years. Demoting her and moving her was a proportionate way of achieving that aim. Doing so was the least intrusive available option. It was proportionate having balanced the discriminatory effect upon the claimant with the impact upon the respondent.

184. Finally, with regard to **managing staffing levels and morale**, staff had left because of the claimant's actions and had been seriously affected. Demoting the claimant and removing her from a leadership position was a proportionate way to address that concern.

Taking a step back

185. The Tribunal carried out the intensive analysis required in assessing proportionality, bearing in mind the onus is on the respondent and the Tribunal makes it decision from the evidence before it. The Tribunal carefully balanced the impact upon the claimant with the impact upon the respondent in light of the specific legitimate aims relied upon. The Tribunal was satisfied the claimant had been guilty of conduct that could reasonably be considered to amount to gross misconduct. The evidence before the respondent was clear and compelling. The respondent had a duty not just to the claimant but to all its staff. The impact upon the respondent was extreme given how staff had been affected by the claimant's behaviours, with some of whom still at the service. The impact was intense and long lasting.

186. The Tribunal was satisfied there was no less discriminatory approach the respondent could have taken given the context. The balance the respondent undertook was fair to the claimant. Dismissal was seriously considered but the respondent chose an alternative that was intended to allow the claimant time to acquire the skills and knowledge to allow her to return to roles with management and leadership responsibilities. The claimant is able to progress her career given the measures that were put in place and support given.

187. The Tribunal balanced the impact upon the claimant and the effect upon the respondent and intensely analysed the evidence. The key point in assessing justification, in carrying out the critical analysis, is for the Tribunal to assess what the impact upon the respondent was and balance that against the impact upon the claimant. From the facts found, the treatment was a proportionate means of achieving the respondent's legitimate aims. In reaching this decision the Tribunal examined the evidence and intensely analysed the impact upon the claimant as against the respondent from the evidence presented to the

Tribunal. Having intensely analysed the measure the Tribunal is satisfied that the treatment was objectively justified from the evidence presented. Had it been necessary to do so, the Tribunal would have found the treatment to be a proportionate means of achieving the legitimate aims relied upon.

188. For the above reasons, the section 15 claim is ill founded.

Failure to comply with the duty to make reasonable adjustments

Knowledge of disability

189. The first issue to determine was whether or not the respondent knew of the disability.

190. The respondent accepts that the claimant was disabled by reason of menopausal symptoms (in terms of physical impairment) between August 2017 and December 2021 but disputed actual or constructive knowledge of the disability at the relevant time. The respondent's agent submitted that the respondent became aware of the fact of the claimant suffering from the menopause by the time of her response at the end of January 2021 and did not know about the fact of disability before that point.

191. The claimant asserted she told Ms Stocks about her medical condition including her symptoms of the menopause, namely sleep disturbance, sweating, anxiety, tiredness, low mood, nausea, hot flushes and a red complexion and irritation and lack of tolerance when she met with her during 2019 and at the very latest she told her of the impact of her menopausal symptoms at the one-to-one meeting that she had with her on 8 January 2020 and so the respondent had actual knowledge in 2019.

192. In the alternative the claimant argued the respondent ought to have known in 2019 that the claimant was suffering from symptoms relative to the menopause. While the fit note submitted by the claimant made no mention of symptoms of menopause, it referred to work related stress and high blood pressure which it was said ought to have alerted the respondent to symptoms of the menopause and conduct further enquiry.

193. The respondent's agent argued that the position advanced by the claimant at the time, that she was suffering work related stress and high blood pressure, did not put the respondent on notice as to symptoms of the menopause. Any employer in such a situation would reasonably assume the symptoms were a consequence of the high workload and stressful work environment.

194. The Tribunal preferred the respondent's position given the facts. There was no basis upon which a reasonable employer would be placed on notice that the claimant was suffering from the symptoms now relied upon from the information presented to the respondent at the time until January 2021. Given the stressful workload the claimant was managing and the issues arising at work, the symptoms set out by the claimant in her email to Ms Stocks – high blood pressure and stress - were suggestive of stress at work and did not reasonably support the position advanced by the claimant.

195. The respondent accordingly knew of the disability in January 2021 which was when the respondent first reasonably could have known about it.

Knowledge of substantial disadvantage

196. The respondent's agent submitted that the respondent was not aware of any purported substantial disadvantage until shortly before the appeal hearing. The extent of the respondent's knowledge as to any symptoms the claimant might suffer from was limited to the matters she included in her submission, namely flushes and a red face. There was no suggestion that the claimant suffered from any symptoms that might make her liable to demonstrate behaviours that might be perceived as misconduct.

197. The claimant argued Ms Stocks knew about the symptoms but this was not accurate as she only learned that the claimant was suffering from symptoms of the menopause after the disciplinary hearing, when she spoke to a solicitor acting for the respondent.

198. The respondent did not know of any substantial disadvantage until after the disciplinary hearing and so the steps relied upon that pre date the appeal

hearing (proposed steps 1, 2 and 3) are not well founded as the duty was not engaged until the respondent knew of the substantial disadvantage.

199. The Tribunal found the respondent did not know (and could not reasonably have known) about the substantial disadvantage relied upon after until after the disciplinary hearing. The reasonable adjustments that pre date the appeal hearing are therefore ill founded.

The PCP

200. It was not disputed that the respondent applied a provision, criterion or practice ('PCP') to the claimant, namely the Workplace Conduct Policy. The key issue is whether that PCP placed the claimant at substantial disadvantage compared with persons who were not disabled.

201. The claimant asserted it did because she exhibited certain behaviours on account of the symptoms caused by the menopause, which may be perceived as behaviour demonstrative of misconduct. The claimant's agent submitted that because of the claimant's disability, and the symptoms she exhibited, she would be placed at a disadvantage in being able to successfully respond to the allegations of the behaviour set out in the grievance and the Policy. That disadvantage is that her behaviour was likely to have been perceived by those she was interacting with as being hostile or confrontational which made it more likely that she would be found guilty of behaviour set out under the Policy which would fall under the umbrella of bullying.

202. The claimant's agent emphasised that care is needed as the claimant did not concede that she was guilty of deliberate behaviour which could be classified as gross misconduct. She gave an apology to the Conduct Hearing, which was reiterated at the Appeal Hearing, to the effect that she was sorry for any upset and stress that she might have caused her colleagues in the way in which she presented herself when suffering from menopausal symptoms. What she did not apologise for is conduct that she did not commit.

203. The respondent's agent argued the claimant was not placed at any comparative substantial disadvantage. No behaviours were caused in part or

at all by the menopause or symptoms arising from the menopause. The appropriate comparative exercise is therefore with a non-disabled person who also systemically bullied their subordinates. The claimant was no more likely to be the subject of conduct proceedings than such an individual. All of the reasonable adjustments claims ought to be dismissed.

204. The Tribunal concluded that the claimant was not placed at any comparative disadvantage as a result of the PCP which was applied to her. The claimant's submission that the claimant was more likely to exhibit symptoms that could be perceived as misconduct had not been established on the facts. The Tribunal found on the balance of probabilities that the behaviours that led to the disciplinary sanction (on which this complaint was based) were not caused (or influenced) at all by the disability. As set out above, the disability did not have any connection with the behaviours that led to the disciplinary action. The respondent found the claimant had in fact been guilty of the behaviour (which was chosen acts of the claimant, her normal management and leadership style and how she chose to interact with her colleagues). The respondent's submissions have merit. The complaint that the respondent failed to comply with the duty to make reasonable adjustments is ill founded.

Steps to be taken

205. If the Tribunal was wrong in its conclusion, the Tribunal considered whether the steps relied upon by the claimant would have been reasonable.

Proposed step 1 - Early resolution

206. The claimant's agent argued the disadvantage could have been removed by a reasonable adjustment whereby the respondent moved to deal with the grievance in a way which supported the claimant and allowed her to remain in her role all as set out in the Bullying and Harassment Policy providing a constructive resolution to what was an upsetting situation for both sides.

207. The respondent's agent noted that the policy allows for this in certain circumstances but the trade union representative acting on behalf of the complainers stated that neither he nor any of the complainers would agree to

enter into any mediation and so it would not have been reasonable for the respondent to force individuals to engage against their will particularly given the behaviours were serious, and occurred over a significant period of time.

208. The Tribunal did not consider that would have been reasonable to proceed to early resolution when none of the complainers would agree to it and given the nature of the conduct alleged. The Tribunal would also have upheld the respondent's assertion that the proposed step would not have alleviated the substantial disadvantage. No complainer would have agreed to early resolution. The impact upon the affected staff was long standing and ongoing. The Tribunal would not have found that early resolution would have changed the position and the claimant would still have suffered from the disadvantage.

209. The step relied upon would not have been a reasonable step to have taken.

Proposed adjustment 2 - Ms Stocks telling the investigation about the claimant's menopausal symptoms in January 2021

210. As the respondent's agent pointed out, Ms Stocks could not have told the investigation about the symptoms as she did not know about them. The Tribunal would also have upheld the respondent's agent's submission that this step would not have been reasonable. The claimant had a trade union representative. That was her advocate. The claimant was able to tell the investigation about the menopause, and did so. She was able to present her case to the disciplinary hearing. She chose not to advance any case based on the menopause. It would not have been reasonable to expect Ms Stocks, acting outwith the claimant's instructions or wishes, as a separate third party, to disclose sensitive medical information to the investigation panel which went well beyond that which the claimant herself had chosen to disclose.

211. It is correct for the respondent's agent to note that the claimant was able, with advice and support from her trade union, to make her case. It was not Ms Stocks' role to second-guess or circumvent that. Indeed, viewed from another angle, Ms Stocks doing so would have been a serious breach of confidence.

212. Ms Stocks was not the claimant's advocate and had to remain impartial. She was professional lead for the psychology department as a whole. It was her job to ensure professional support was available to everyone. She could not intervene in any kind of management investigation.

213. Finally as the respondent's agent submitted, the proposed step would not have alleviated any substantial disadvantage. The chairs of the conduct and appeal panel made it clear that, even if the claimant's behaviours were caused in part by the menopause, they remained wholly unacceptable. If the menopause was having such a significant impact on her ability to even speak with people, she ought to have recognised that and done something about it. Her failure to do so demonstrates a significant lack of insight. She would still have received a disciplinary sanction.

214. The second step relied upon would not have been a reasonable step.

Proposed adjustment 3 - Disciplinary panel not considering claimant's symptoms

215. The panel considered the symptoms they were aware of. On that basis, the step relied upon was in fact taken. The Tribunal would also have upheld the respondent's agent's submission that insofar as the claimant suggests that the panel ought to have taken into account additional symptoms, the proposed adjustment would not have been reasonable. The claimant was able to present her case. She drafted lengthy written documents for the conduct hearing. She had advice from her trade union. She did not, at any time, mention the menopause in anything other than passing. She did not rely on it as a potentially mitigatory factor having relied upon other factors, all of which were taken into account.

216. At the conduct hearing the claimant did not present her disability as anything other than a side issue. She did not rely on it as a cause of any behaviours, and did not present it as mitigation at any stage. It would not have been reasonable to expect the panel to consider something that was not before it and could not reasonably have been foreseen. The claimant, who was represented and had taken advice, gave the panel relevant information that she thought supported her case. The panel were entitled to rely on that.

217. The proposed step would not have alleviated the substantial disadvantage. The claimant would have been subject to a disciplinary sanction even if the menopause was considered to the extent the claimant suggests it ought to have been. The claimant ought to have had the insight to raise the impact her behaviour had upon to ensure staff were not placed in that environment. The step was not therefore a reasonable step to have taken.

Proposed adjustment 4 - The appeal panel not considering the claimant's symptoms

218. The appeal panel was cognisant of the claimant's symptoms. They requested advice from an occupational physician and took that into account together with the points the claimant had raised. The proposed step relied upon was taken. The panel considered the claimant's symptoms and decided that they did not provide significant mitigation (which was a reasonable conclusion to reach on the facts).

219. The proposed step would not have alleviated the substantial disadvantage. Demotion would still have occurred given the impact upon staff and the consequences. The proposed step would have made no difference.

220. In all the circumstances the respondent did all that was reasonable on the facts to remove any substantial disadvantage.

Summary as to duty to make reasonable adjustments

221. The Tribunal is satisfied, taking a step back, that there was no breach of the duty to make reasonable adjustments pursuant to section 20. The claim in relation to section 20 is therefore ill founded.

Time bar issues do not arise

222. The Tribunal also considered that as the complaints had no merit, issues as to time bar did not require to be considered given it is only acts that had been found to be unlawful can form an act extending over a period (**South West Ambulance v King** 2020 IRLR 168).

D Hoey

Employment Judge

22 April 2024

Date

Date sent to parties 24 April 2024