EMPLOYMENT TRIBUNALS

Claimant: Dr S Mokhammad

Respondents: (1) Mersey and West Lancashire Teaching Hospitals NHS Trust (Formerly St Helens and Knowsley Teaching Hospitals) ("the first respondent" or "R1")
(2) NHS England (formerly Health Education England) ("the second respondent" or "R2")
(3) University Hospitals of Derby and Burton NHS Foundation Trust ("the third respondent" or "R3")

Heard at: Birmingham **On:** 13, 14, 16, 17, 20, 21, 22, 23, 24 November 2023 and 8 February 2024, with panel deliberations 14 and 18 March 2024

Before: Employment Judge Edmonds
Mrs E Shenton
Mr E Stanley

Representation
Claimant: In person
Respondents: Mr B Williams, counsel

RESERVED JUDGMENT

The unanimous decision of the Employment Tribunal is that:

1. The complaint of direct race discrimination is not well-founded and is dismissed.

2. The complaint of direct disability discrimination is not well-founded and is dismissed.

3. The complaint of harassment related to race is not well-founded and is dismissed.

4. The complaint of harassment related to disability is not well-founded and is dismissed.

5. The complaint of failure to make reasonable adjustments is not well-founded and is dismissed.

6. The complaint of victimisation is not well-founded and is dismissed.

7. The complaint of unauthorised deductions from wages is not well-founded and is dismissed.

REASONS

Introduction

1. During the period to which these proceedings relate, the claimant was a trainee GP employed by the first respondent. He is Afghan and a Pashtoon (we use the spelling "Pashtoon" rather than "Pashtun" throughout these Reasons because this is the spelling used by the claimant). He says that he has three disabilities: diabetes, anxiety and stress, and dyslexia and dyspraxia. The respondent accepts that he was disabled at the relevant time by reason of diabetes but not in relation to the other conditions. This claim is about the treatment of him during various stages of his GP training, and during various different placements with different host organisations, which he says amounted to race and disability discrimination, along with a claim for unauthorised deductions from wages relating to sick pay.

2. The claimant commenced ACAS early conciliation on 24 April 2022 with the certificate being issued on 4 June 2022 and claim 1303128/2022 being presented to the Midlands West Employment Tribunal on 1 July 2022. He commenced a second period of ACAS early conciliation on 25 July 2022, with the certificate being issued on 26 August 2022 and a second claim being presented to the Employment Tribunal on 24 September 2022, but this time to the Midlands East Employment Tribunal. Both claims were for race and disability discrimination and unpaid wages. The claim filed in the Midlands East Employment Tribunal was transferred to the Midlands West Employment Tribunal and on 19 December 2022 it was ordered that the claims be consolidated and heard together.

3. He brings his claim against his employer (R1), the NHS body responsible for co-ordinating GP training (R2) and one of the host organisations where he spent one of his placements (R3). Collectively in these Reasons they are referred to as the Respondents.

Claims and Issues

4. At a preliminary hearing on 12 January 2023, Employment Judge Algazy KC ordered the claimant to provide further information in relation to his claim and for the parties to then prepare a draft list of issues. At a further preliminary hearing before Employment Judge Meichen on 20 July 2023, a draft list of issues was prepared and the parties then used that to agree a final version (which contained some comments from the claimant in tracked changes). These issues are lengthy and therefore are set out in Annex A to these Reasons ("the List of Issues").

5. During the course of the hearing, on 21 November 2023, an issue arose as to whether the claimant's claim included a claim for unauthorised deductions from wages relating to his basic salary, in addition to in relation to sick pay. Having reviewed the agreed List of Issues, the Tribunal determined that the only issue relating to unauthorised deductions from wages was regarding the amount of sick pay that he was paid, and not regarding his basic salary more generally. His basic salary was however relevant to an allegation of direct race discrimination whereby the claimant alleged that the first respondent failed to recognise his previous NHS experience for the purposes of his salary from 1 August 2018 onwards.

6. The claimant asserted that this issue was relevant because it was referred to in his witness statement. The Tribunal explained to the claimant that it was not his witness statement which defined the issues in this case, and noted that the claimant had commented against some of the List of Issues and had therefore clearly reviewed and considered it. He had not however asked for any allegation to be added to it that the alleged failure to recognise previous service was a wages claim (in addition to race discrimination which is where it was listed in the List of Issues). The Case Management Orders following the second preliminary hearing had specifically required the parties to suggest any amendments within a specific time period and noted that the agreed List of Issues it would be treated as final unless the Tribunal decided otherwise. The respondents' position was that this was not part of the claimant's pleaded claim, that an amendment application would be required, and that the claim would be out of time.

7. Having heard submissions from both parties about the matter, the Tribunal noted that in his second claim form the claimant had said that he had been paid less than his NHS experience, however the agreed List of Issues listed that issue as one of race discrimination (paragraph 3.1.1 of Annex A) and the only issue in relation to unauthorised deductions from wages was in relation to sick pay (paragraph 10.1 of Annex A). The claimant had not objected to or sought to amend that List of Issues (despite having made other comments on it). On that basis, the Tribunal found that the claimant's pleaded claim was that the issue about previous service not being recognised was being pleaded as an act of race discrimination, and not an unauthorised deduction from wages. The Tribunal determined that a formal amendment application would be required if the claimant wished to pursue it as an unauthorised deductions from wages claim and it was explained to him that if he wished to do that he would need to set out in writing what amendment he wanted to make to his claim, and it would be considered at that point. The claimant did not do so. As will be apparent from our later conclusions in relation to race discrimination below, the Tribunal did not in any case find that the basic salary paid to the claimant was less than it should have been: therefore this claim would have failed had it been brought.

Procedure, Documents and Evidence Heard

Procedure

8. This case was originally listed to be heard over 9 days, from 13 November 2023 to 24 November 2023, with a non-sitting day on 15 November 2023 due to a Tribunal training day. However, a number of issues arose during the hearing (to which we turn below) which meant that it was not possible to complete the evidence and submissions in the time allocated. An additional day was therefore listed for 8 February 2024 in order to complete the evidence, and separate additional days were then spent by the Tribunal at a later date deliberating in order to reach our decision.

9. The claimant requested that he be given a period of two weeks in order to prepare written submissions, in light of his health. The Tribunal agreed to this and the respondent agreed that in the circumstances it would also rely on written submissions rather than oral ones. Therefore, it was agreed that the respondent would provide written submissions within one week of the final day of evidence and the claimant would provide his written submissions within two weeks thereafter. Both parties complied with that timetable and both sets of written submissions were taken into account by the Tribunal when reaching our decision.

10. It is worth noting that, within his written submissions, the claimant asserted that the Tribunal had bullied him, facilitated "*open intimidation and discrimination*" and exposed him to prejudice and harm. The claimant also accused the Tribunal (in particular Employment Judge Edmonds) of being biased against him. For the avoidance of doubt, the Tribunal strongly deny any accusation of bias and if we had considered that there was bias, or that the fair-minded observer might consider there to be a real possibility of bias, we would have recused ourselves. We consider that the claimant made this allegation because he did not agree with the Tribunal's decisions regarding his postponement applications. The Tribunal made a number of adjustments for the claimant throughout the hearing, and allowed him time to visit a doctor again when his medical evidence was insufficient to justify postponing the hearing, even though this meant that the hearing was delayed. The claimant was allowed to record the hearing, he was offered additional breaks, he was offered the opportunity to conduct the hearing by video. At the end of each day of evidence it was clearly explained to him which witnesses would be giving evidence the next day and the Tribunal reminded him of the importance of him reading those statements and considering the questions he wanted to ask. The Tribunal also encouraged him to bring a friend or family member to accompany him at the hearing.

Evidence Heard

11. We heard evidence from the claimant on his own behalf, and from the following witnesses on behalf of the respondents:

    a. Dr Jayne Greening – Consultant Psychiatrist and Head of West Midlands Post Graduate School of Psychiatry at the second respondent. She is responsible for overseeing the post-graduate training of all Doctors in Training in Psychiatry in the West Midlands, and the Training Programme Directors report to her.
    b. Jane Thomas – Head of People Services Advisory Team at the third respondent.

c. Professor Kay Mohanna (often referred to as Dr Mohanna in the documentation) – a Partner at Darwin Medical Practice, and the claimant's educational supervisor for most of the relevant period in this claim.
d. Dr Russell Smith (whose statement was written as Professor Smith because he was at that time a Professor) – a Consultant Cardiologist who was employed by the second respondent as Postgraduate Dean for the West Midlands during the relevant period. He was the "responsible officer" for the claimant.
e. Professor Andrew Rowland – Lead Employer Medical Director at the first respondent.
f. Mr Matthew Russell – HR Business Partner at the first respondent
g. Mr Geoff Neild – Associate Programme Director, employed by the third respondent but seconded to Derbyshire Healthcare NHS Foundation Trust since 1 April 2021.
h. Dr Bhaskar Mukherjee – Clinical Director at the third respondent, and the claimant's clinical supervisor between 3 April 2019 and early August 2019.
i. Dr Dominic Muogbo – Consultant Paediatrician at the third respondent and the claimant's clinical supervisor between 1 August 2018 and 4 December 2018.
j. Mrs Chelsea Houghton – Head of HR Business Partnering at the first respondent.

12. Each of them had provided a written witness statement. For the avoidance of doubt, the version of the claimant's statement which the Tribunal used was the one provided electronically, rather than the one in the witness statement bundle, which was agreed by the parties to be the latest version and the correct one to use. Each witness also gave oral evidence to the Tribunal. We were also provided with a witness statement from Dr Fiona Kameen, former Area Director at the second respondent and Medical Director for Quality Manager of Training Standards at the Royal College of General Practitioners, as part of which she would quality assure the Annual Review of Competence Progress (ARCP). However she did not attend the Tribunal hearing on the basis that she had retired. In the circumstances, the Tribunal read her statement and has not entirely disregarded it, however the weight that we have attached to it is limited given that she was not present at the hearing to be cross-examined on her evidence.

13. An initial timetable for hearing was discussed at the outset of the hearing. However, in the end, it was not possible to stick to that timetable because of the volume of issues that arose during the hearing (which we address below). The timetable was therefore adjusted as the hearing progressed, and at the end of each day it was explained to the claimant who was likely to be called the following day and in what order. The Tribunal did raise concerns with the respondent during the course of the hearing about the respondents' witnesses' availability to give evidence: the respondents said on a number of occasions that certain witnesses would only be available at very limited times due to the nature of their work for the respondents. Whilst the Tribunal accepts that the nature of the work and the importance of providing medical care to patients provides a valid basis for the respondents' submission that it was not practicable for their witnesses to all

be available for the totality of the hearing, the Tribunal did inform the respondents that it was concerned that some of their witnesses had provided extremely limited availability (including in one case the witness only being available on a date by which stage evidence should in reality have concluded – although in the event due to the various delays it had not). This did present difficulties for the timetabling of the hearing. Ultimately we were able to work around this without any prejudice being caused to either party (not least because the timetable had to be adapted in any case due to the various issues relating to the claimant). However, this did also mean interposing certain witnesses to ensure that everyone who wanted to give oral evidence was able to do so. This was however preferable to being left without the oral evidence of any witness.

14. During the hearing, the claimant raised a concern that he felt that it was unfair that he would be cross-examined by the respondent for around two days, but he was not going to be allowed that length of time to cross-examine each of the respondent's witnesses. It was explained to the claimant that it is not necessary for each witness to have the same amount of time as each other, as the amount of time required for each witness would depend on how many issues that witness is giving evidence about. It was explained to the claimant that, as he was the only witness for his claim, he would therefore need to give evidence about all of the issues, whereas the respondent had a number of witnesses and therefore different issues would be relevant to each one. The Tribunal confirmed to the claimant that the intention was that the respondents' evidence overall would take longer than the claimant's.

15. It is also relevant to note that, during Mrs Houghton's evidence, there was a discussion about timetabling and how long her evidence might last (as it was just after 4pm and the Tribunal wanted to consider how much longer to continue that day). The claimant said that he had a lot of questions for her but then said that he would finish immediately. It was explained to the claimant that the Tribunal was not telling him that he had to stop his questions, but was merely trying to understand how many more questions he had left. He was informed that, before deciding to stop, he should look at his questions and make sure that he had asked everything important. The claimant then asked one more question but then said that he had no more questions. The Tribunal checked this with him, reminding him that he had said that he had more questions. The claimant said that he was not feeling well at that point, and the Tribunal again asked him whether he had asked all the key questions he wanted to ask. The claimant confirmed that he had.

Credibility

16. There are significant disputes of fact in this case, and also issues arose during the hearing which directly impacted the credibility of the claimant, therefore we consider it important to comment on this as a general point. We found the claimant to lack credibility in a number of respects.

17. As can be seen from our findings of fact below, we have found the claimant to have lied in his evidence, in relation to the position on night shifts and in relation to his assertion that the document at page 345 is fake (see our

detailed findings of fact below). In addition, as a general theme, we found that the claimant will automatically argue that he has been discriminated against when anything happens to him that he does not agree with, regardless of whether he has any real basis for that assertion or not. In evidence he commented that, if a white person is shouting at a black or ethnic minority person, then anyone would think of discrimination. A further example is that, on 25 July 2018, before his employment had commenced and before receiving the outcome of a transfer request that he had made, he said that he would appeal any decision that was (in future) made on the basis of discrimination (page 333).

18. The claimant also accused the respondents of faking documents which we have found was not the case (the document at page 345 and his rota submitted during the hearing which he said showed that he did not work night shifts). We address this further in our findings of fact, however we find that this was a serious (and unwarranted) allegation to make.

19. We found the claimant's conduct during the hearing particularly unprofessional for a regulated professional (and for the avoidance of doubt we do not believe that he behaved in the way he did because of his mental health condition). We sometimes found the manner in which the claimant corresponds with people (both during his employment and during these proceedings) to be disrespectful (see our various comments on tone throughout these Reasons), however the claimant does not appear to have self-awareness that this is the case. We also find a rigid determination on his part to believe that everything that he has done or said is correct, even when there is evidence to show that this is not the case. He is not receptive to feedback. We also noted that there were occasions where the claimant refused to provide information to the Tribunal, for example refusing to expand on an assertion that he had a family emergency on 19 July 2019 on the basis that he felt it was private.

20. The claimant has submitted that several of the respondents' witnesses have lied in their evidence, and that fake / fabricated documents were submitted by the respondents to the Tribunal (addressed further in our findings of fact below). However, we found all of the respondents' witnesses to be professional and truthful in the evidence that they gave to the Tribunal, both in their written witness statements and in their oral evidence. We found nothing to support the claimant's allegations that they had lied (as detailed further in our findings of fact below), and we noted that the witnesses were ready to accept in evidence when there was a point that they could not recall or explain, which we found to be a reflection of their honesty. As outlined in more detail against the individual points below, we also found no evidence whatsoever to support the claimant's assertion that any documents were fake and we considered this to be a serious allegation that the claimant made without basis.

21. Therefore, generally, where the evidence of one of the respondents' witnesses contradicted the claimant's evidence, unless there was documentary or other evidence to support the claimant's position, we generally preferred the evidence of the respondents' witnesses. In addition, even where the respondent did not have specific evidence to rebut an

allegation made by the claimant, we did not necessarily accept what the claimant given the inaccurate comments we have found he made on other matters and the lack of detail often provided by the claimant. For the avoidance of doubt, and as detailed further in our findings of facts, we have not found that the respondents in any way forged documents or that any documents they provided for the bundle were fake (as the claimant has alleged).

Documents

22. The Tribunal was presented with a file for hearing ("the Bundle") amounting to 2738 pages, along with a separate Index amounting to 61 pages, and a witness statement bundle of 165 pages. Page references in these Reasons are to pages in the Bundle. The Tribunal was also provided with a cast list and chronology, both in original form and another version with the claimant's comments added to these (which was the version we used). The Tribunal also requested that the respondent prepare a separate chronology of the claimant's sickness absence as this was difficult to ascertain from the lengthy documentation (which the respondent did prepare). We explained to the parties that the Tribunal would not be reading every document in the file, but only those that we were referred to either in a witness statement or during evidence.

23. Due to various issues arising during the course of the hearing, a supplementary bundle was prepared by the respondents in advance of the reconvened hearing on 8 February 2024 at the Tribunal's request. This was split into four tabs and is referred to as the "Supplementary Bundle". The supplementary bundle of additional documentation for the final day of the evidence on 8 February 2023 included additional documentation relating to the rota issue and a number of payslips (which were relevant to the night shift issue as well as sick pay) along with the Attendance Management Policy and Procedure.

24. A number of issues arose in relation to the documents for hearing as follows:

    a. The claimant alleged that the bundle had a lot of documents within it which were irrelevant, including previous GMC investigation documentation. We refer to the previous GMC case in in our facts below and find that this was clearly relevant to the case, not least because the claimant himself referred to it, but also because his later exclusion from work related to it (and he makes allegations of discrimination about that exclusion). He also objected to the order in which documents appeared in the file. We explained that, as we would not be reading the file in totality in any event, the order of the documents would not present an issue because the parties would be taking us to the documents in the order they wished to refer to them. We also took the view that, rather than lose time trying to sift through the relevance or otherwise of documents at this stage, it was preferable to leave them all in the file and inevitably the parties would simply not refer to any that were not relevant.

b. The claimant submitted that the bundle had not been agreed within the timeframe set out by Employment Judge Meichen at the preliminary hearing on 20 July 2023. He noted that Employment Judge Meichen had criticised the respondent for non-compliance at that preliminary hearing and that he had indicated that if there was further non-compliance the responses may be struck out. The claimant asserted on a number of occasions during the hearing that there had been further non-compliance by the respondent and that consequently the respondents' responses should be struck out. The Tribunal dealt with this as a preliminary issue and declined to strike out the respondents' responses. We found that, following the preliminary hearing on 20 July 2023, the majority of the disclosure was provided within the required timeframe and the remainder was only a few days late, and there was a valid reason for this: namely that redaction was being carried out on certain matters within those documents. It was not the case that the respondent was not engaging in preparations for hearing, and given the limited delay, the fact that this did not cause significant prejudice to the claimant, and the fact that a fair trial was still possible, we found that it was not in the interests of justice or in accordance with the Overriding Objective to deal with cases fairly and justly to strike out any of the responses when there had in fact been substantial, albeit not total, compliance.

c. The claimant submitted that certain of his documents had been excluded from the bundle. We informed the claimant that if he wished to refer to a specific document which he did not think was in the bundle, then he could bring it to the Tribunal's attention and we could either assist him to find it in the bundle (if it was there) or consider whether to allow it to be used at that point.

d. The claimant also complained that there was further non-compliance by the respondents because he had not had the paginated file in time. We accepted the respondent's position that the claimant had had a file since early September 2023 (albeit it appeared that the claimant may have had some difficulty accessing it) and the final paginated version since 20 October 2023. Although the Orders of Employment Judge Meichen referred to the file being agreed by 29 September 2023, those Orders also specified that the respondents would disclose their documents on 1 September 2023 and the claimant would send his documents by 15 September 2023. This therefore left only two weeks to agree the final version, and prepare a copy of it. Given that the eventual file was 2738 pages and it was clear that there was some debate between the parties about the relevance of each party's documents, we find that the bundle was prepared within a reasonable period of time and declined to strike out the respondents' responses for non-compliance with the orders.

e. Where the claimant referred to page numbers of documents in his witness evidence, those documents were often irrelevant to the issue that the claimant was referring to at that time. On occasion the respondent asked him about this however the claimant was generally unable to identify a different document that he had intended to refer to

when that happened. In addition, the claimant's statement did not always explain the allegations that he made so considerable time was spent in evidence seeking to extract that information.

f. Additional documents came to light during the hearing. For example, the claimant produced Dr Muogbo's clinical supervisor report (to which we refer in our findings of fact below) following the end of the initial hearing period but before 8 February 2024. The respondents agreed that they had no objection to it being admitted into evidence at that late stage and we agreed to that. Likewise, upon it becoming apparent that the claimant was using a different rota to the respondents to assert that he had carried out night shifts, we allowed both the claimant's and respondents' rotas to be admitted into evidence during the hearing.

Applications for Postponement

25. There were a number of applications for postponement during the course of the hearing, which we set out below.

Postponement Application 1 - 13 November 2023

26. During discussions about preliminary issues on the first morning of the hearing, the claimant indicated that the British Medical Association ("BMA") had told him that, if they had more time, they would review his case and consider whether they could represent him. He therefore requested that the hearing be postponed to enable that to take place. The claimant explained that he had been informed by the BMA on 3 November 2023 that they would need to send the bundle to their legal team to review and see if they could represent him or not. Therefore the Tribunal concluded that the claimant had not been informed that he would be represented, merely that the BMA would review its position in that regard.

27. The Tribunal concluded that it would not be in accordance with the Overriding Objective to deal with cases fairly and justly to postpone the hearing, in particular the need to avoid delay, save expense and deal with cases in ways which are proportionate to the complexity and importance of the issues so far as practicable. This was listed as a 9 day hearing and the length of the delay if a postponement were granted would be considerable: this would cause significant prejudice to the respondent who had 10 witnesses ready to give evidence, some of whom had roles which presented difficulties in taking time away from clinical duties. The case had been listed for a number of months and, whilst the final bundle was not paginated until 20 October 2023, the claimant would have been able to take advice from the BMA at an earlier stage. The Tribunal also found that any application for postponement should have been made before the hearing commenced. The Tribunal further noted that there was no guarantee that a delay would lead to the claimant securing representation in any event.

28. The Tribunal also reassured the claimant that it was well used to dealing with litigants in person (i.e. unrepresented people), and disabled people. It was confirmed that the Tribunal could make adjustments for the claimant and proceed at an appropriate pace, and that the claimant would not be

expected to be able to recite the law. It was also made clear to the claimant that, in his written submissions, he was again not expected to be able to recite the law to the Tribunal.

Postponement Application 2 – 14 November 2023

29. During the preliminary discussions on the first day of the hearing, it had come to light that the claimant had not read the respondents' witness statements before the hearing commenced. He said that he would need more time to read these, despite having had copies of them since 20 October 2023. He said that he had tried to read them the previous day but that he had been ill for two weeks with ongoing anxiety. The Tribunal acknowledged the claimant's health conditions at that stage, but explained to the claimant the importance of him reading the respondents' statement and expressed surprise that he had attended the hearing without having done so. The afternoon of the first day of the hearing was allocated as Tribunal reading time, which would have provided the claimant with an opportunity for reading time. The claimant did not request a postponement of the hearing on health grounds at this stage.

30. The following day, when asked by the Tribunal if he had read the statements, he said that he had started to read them but he was not well so had not read all of them. He said that he had severe anxiety and stress and that he had seen a mental health nurse and spoke to the GP the previous week. We asked him if he felt he was fit to continue with the hearing and at that stage he said that he did not think so as he could not sleep for the previous two nights. It was explained to him that medical evidence would be required if he sought a postponement saying that he was not fit to attend. The claimant confirmed that he had not been to the doctor since the previous week, and that he had not made either the mental health nurse or the GP aware of the fact he had a Tribunal hearing to attend the following week. He said that he did not have a fit note covering this period, but that he had previously had one which had finished on 30 October 2023. On further discussion with the claimant and respondent, it transpired that since 30 October 2023 the claimant had been working on Wednesdays (which was a teaching day) and self-certifying absence on Mondays and Tuesdays. When asked why he had not raised his health with the Tribunal before this stage, he responded that the Tribunal had not asked him and commented that the Tribunal had not answered the telephone or responded to his emails on the disclosure issues. The respondent's position was that, as a doctor himself, the claimant ought to know how to evidence fitness, and that Tribunal proceedings are by their nature stressful and therefore the claimant was always likely to be anxious about the litigation regarding of when the hearing takes place.

31. After a short adjournment to consider the claimant's application, the Tribunal informed the parties that the onus was on the claimant to show the need for a postponement and that no evidence of that had been provided. It was noted again that this was a 9 day hearing with a large number of witnesses who were ready for hearing and the delay would be substantial if the hearing were postponed. The Tribunal felt that the claimant would have known about the need for a fit note or other medical evidence and that,

although the Tribunal acknowledged that the claimant had not received a response from the Tribunal to some correspondence about other matters, he should still have raised it so that it would at least have been in the Tribunal's papers to consider at the start of the hearing if not before. The Tribunal also noted that the claimant's position was that his ill health had been ongoing for some time and related to the treatment the claimant said he had received from the respondent, therefore the Tribunal had no confidence that postponing the hearing would assist the claimant.

32. The Tribunal did consider whether to adjourn the hearing for a short period to allow the claimant to visit his doctor and considered the case of **Iqbal v Metropolitan Police Service and anor EAT 0186/12, EAT**, along . However, the Tribunal concluded that the claimant could have raised this the previous day, in which case he could have sought to visit his doctor during the Tribunal's reading time. He had also seen his doctor and mental health nurse recently but chose not to raise the question of these proceedings with them and did not request a fit note. His own evidence was that this was not a short term illness therefore he could have done so. The Tribunal confirmed that it would make adjustments for the claimant during the hearing, and given that the following day was not scheduled to be a sitting day he would have some time at that stage to rest and to further prepare for the hearing. We concluded that it would not be in the interests of justice or in accordance with the Overriding Objective to postpone the hearing and refused the claimant's request.

33. After informing the claimant of our decision, the claimant asserted that every UK citizen has the right to self-certify ill health for seven days, and that the Tribunal had denied him that right. It was explained to him that the seven day reference was that a fit note was not required to be provided to an employer in a workplace setting for the first seven days of absence, and that there was legal authority for the fact that it was for the claimant to show why the postponement of the hearing should be granted and to provide medical evidence. The claimant repeated that he felt this was "unfair justice". During the course of being cross-examined he also said that he thought the decision was discriminatory on the basis that "*if all the people in the UK can self certify for 7 days and I cannot, that is discrimination*. *There is not any question*".

34. The claimant commenced giving his witness evidence that afternoon.

Postponement Application 3 - 15 November 2023

35. As outlined above, 15 November 2023 was a non-sitting day. However, during the course of that day the claimant submitted a fit note to the Tribunal along with a further application for postponement of the hearing. The fit note was dated 15 November 2023 and said that the claimant was unfit for work due to stress and depression and anxiety between 15 November 2023 and 29 November 2023. No further comments were included on the fit note. In his application for postponement, the claimant said that his mental condition was worsening and it would be unfair to provide evidence in that condition. He requested a postponement of a month. He also said that he was concerned about individuals from the

respondents sitting in the Tribunal room as they distracted him and made him more frustrated, and asked that they stop attending the Tribunal. We address this latter point separately under "Comments regarding harm to self and others" below.

36. As the Tribunal were not sitting on 15 November 2023, the claimant was informed that his application would be considered at the start of the hearing the following day and he was instructed to provide any additional medical evidence that demonstrates how his medical condition impacts on his ability to participate in a hearing. He was informed that if he did not attend the following day, a decision would be made based on the information available. That evening, the claimant sent the Tribunal a more detailed description of his condition, along with some earlier fit notes (which did not specifically address his fitness to attend a hearing).

37. At this stage the claimant was already under oath as he was part-way through his evidence, so he was asked some questions under oath about his postponement request. He confirmed that he had seen the doctor face to face and that this had been at the suggestion of his wife because she felt that his behaviour had changed and he could not speak to her or their children normally (the claimant was visibly upset at this stage and the Tribunal suggested he take a moment before continuing). He said that he talked to the doctor about the hearing and that the doctor had told him that if a patient has depression they are automatically not fit for any hearing. The Tribunal clarified to the claimant that this was not correct and that the Tribunal regularly conducts hearings with individuals who have depression. The claimant was asked whether the doctor had specifically told him that he was not fit to attend this Tribunal hearing and to give evidence, and the claimant said that he was told that if he needed further assistance for that he could request that from GP and they would refer him to a specialist which would take at least 28 days. He said that the doctor told him that he was unable to provide a letter saying that he was unfit for a hearing, this would need to come from a specialist.

38. The claimant was also asked whether he had discussed with the doctor whether the doctor could place any detail in the comments box on the fit note and the claimant clarified that he did not discuss this. He said that it was not his usual doctor who he saw. He said that his medication had been increased by the doctor.

39. The claimant also confirmed that his position is that the depression, stress and anxiety were caused by the alleged bullying and discrimination by the respondents (i.e. the subject matter of the hearing). He said that his condition had worsened "a lot". When it was explained to him that a postponement would be likely to be for around 10 months, and he was asked whether he was confident that he would be fit to attend the hearing at that stage, he said that he could not guarantee his health but that he would try. He also explained that he was not keen on attending the hearing by video (which we had explained was a potential adjustment we could consider) as English was not his native language.

40. Following an adjournment to consider our position, the Tribunal decided to allow the claimant a period of time to visit his GP again to seek further medical evidence on his fitness to attend a hearing, given that the claimant did not currently have any medical evidence addressing his fitness to attend a hearing or his likely prognosis. The Tribunal provided the claimant with a letter (addressed to himself, not the GP) which he could show the GP to explain the kinds of information that the Tribunal needed (such as his fitness to attend a hearing, his prognosis and whether his ill health was likely to persist until the allegations against the respondents were resolved). In reaching this decision the Tribunal took account of the Equal Treatment Bench Book, the Overriding Objective, the general duty to make reasonable adjustments and the right to a fair trial under Article 6 of the European Convention of Human Rights. The claimant was also referred to the Presidential Guidance on Seeking a Postponement of a Hearing and what it says medical evidence should include.

41. It was acknowledged that the case of **Teinaz v London Borough of Wandsworth 2002 ICR 1471, CA** is authority for the proposition that postponement is usually appropriate when the evidence shows that the litigant cannot attend the hearing through no fault of their own. However, in this case there was no evidence showing that the claimant was unfit to attend a hearing specifically. The Tribunal balanced the adverse consequences of proceeding when the claimant asserted that he was too ill to do so and/or proceeding in his absence if he did not attend, against the adverse consequences to the parties in not having the case heard in this listing window, along with the public interest in the prompt and efficient adjudication of cases (**O'Cathail v Transport for London 2013 ICR 614, CA** and **Andreou v Lord Chancellor's Department 2002 IRLR 728, CA** and **De-Smith v AWE plc and ors EAT 0292/16**). We also acknowledged that earlier in the week, in the context of the claimant having no contemporaneous medical evidence at all, it was put to him that he did not even have a fit note, and therefore we considered that the claimant might have thought that a fit note saying he was unfit for work would be sufficient. We also noted that the claimant said that his GP had refused to provide the additional information.

42. On the one hand, the claimant said that he would not be able to find the relevant pages in the bundle or present his case effectively if the hearing was not postponed. On the other hand, if the case was postponed then it would be at least 10 months until it would be re-listed, by which time we were advised that two more of the respondents' witnesses would have retired. The allegations date back to August 2018 and therefore some allegations would be six years old by the time of the hearing. We also noted that the ill health appeared to be related to the underlying issued in the claim and that his ill health may remain until the claim is resolved one way or the other. However, we also noted that his medication had been increased and his stated worsening of health, which suggested that his health had not been consistently in this state – the claimant himself having opposed an application for postponement from the respondent in July 2023.

43. Overall we considered that there was insufficient evidence to justify a postponement at that stage, however in the circumstances it would be

appropriate for the claimant to have a further opportunity to visit his GP and seek further clarification/evidence. We gave the claimant until 12pm the following day to obtain that evidence and indicated that the hearing would re-start at 2pm the following day. We suggested to the claimant that, if his GP was not able to provide a specific letter to the claimant, the GP could complete the "comment" box on the fit note with relevant information. The Tribunal provided the claimant with the letter referred to above that he could show his GP, and made clear to the claimant that in the absence of more detailed medical evidence regarding his fitness to attend, it was likely that his request for a postponement would be refused.

44. The following day, being day 4 of the hearing, the claimant provided a further fit note at 11.58am. This was dated 17 November 2023 and this time listed the conditions as being "Depression and anxiety, Insomnia, Dyslexia and Difficulty concentrating, memory impairment". In the comments box it said only "Patient denies any self-harm or suicidal thoughts or thoughts of harming others" (this relates to the "Comments regarding harm to self and others" section below). The claimant reiterated that the GP had advised him that it would take at least six weeks to assess the matters the Tribunal had included in its letter to the claimant the previous day and said that the GP had told him that this information also could not be included in the comments box.

45. When the hearing re-started shortly after 2pm, the claimant attended by CVP. He remained under oath and gave evidence as to the steps he had taken to try to secure medical evidence that he was unfit to attend the hearing. He repeated that it would take six weeks to get documentation regarding his fitness to attend a hearing. When asked whether he had discussed his fitness to attend a hearing with the GP, the claimant said that the GP had told him that it would be occupational health who would decide that, not the GP. The claimant asked the Tribunal to order the respondents to refer him to occupational health, and it was explained to him that the Tribunal would not do so.

46. The claimant also said that the comment about the risk of self harm or harming others had been added to the fit note at the claimant's request. The respondents' representative noted at this point that he did not understand why the doctor apparently felt able to write a comment about this topic, but not about the claimant's ability to give evidence.

47. Having adjourned to consider our decision, the Tribunal informed the parties that the claimant's request for a postponement would not be granted. We considered all of the points and information outlined above in reaching our decision, along with the points considered the previous day (which we do not repeat here). We recognised the additional detail now provided in the fit note and the claimant's ongoing ill health, however we had already agreed to make reasonable adjustments to assist in addressing those matters and could make further adjustments as needed during the course of the hearing. We said that we could facilitate CVP (video) which would mean that his family could provide support to him and remove his commute time, and encouraged (but did not require) this. We also noted that the claimant had

been able to express himself clearly that afternoon and participate in the hearing fully to determine this issue.

48. We also considered that, if the hearing were to proceed, there remained sufficient time to complete evidence the following week, with a reserved judgment to follow (later issues meant that evidence was not in fact completed, but we did not anticipate those further issues at this time). Evidence would not re-commence until the following week and this would give him some time to prepare for the hearing.

49. Having weighed up everything, we concluded that there were insufficient medical evidence and insufficient grounds to justify granting a postponement in this case, when the adverse consequence of each potential course of action are weighed up. We had regard to the Equal Treatment Bench Book, the need to make adjustments, the Overriding Objective, the right to a fair trial, and the public interest in the prompt and efficient adjudication of cases. However, we were not in possession of any medical evidence which showed us that the claimant was unfit to proceed with a Tribunal hearing, particularly given the adjustments we could put in place. We also needed to balance the prejudice to the claimant against the prejudice to the respondents if we were to postpone and the considerable delay that would ensue in a case where some of the allegations were already over 5 years old and where two witnesses would have retired by the date of the re-listed final hearing. There would also be cost implications of a postponement and the implications for witnesses of having the allegations hanging over them for a further period.

50. Following our decision, the claimant said that this was a disgrace and an unfair decision. He also said that he had the right to attend the Tribunal. The Tribunal explained to him that no order had been made that he could not attend the Tribunal, it was simply that the Tribunal would make CVP available to him and advised him to consider using it. The claimant said that he would continue to attend the hearing in person and said that "*if something happens, you will be responsible for it*". It was confirmed to the claimant that he was able to attend the hearing in person if he preferred to do so, and that this would be reviewed if anything happened that gave the Tribunal cause for concern.

51. Before the hearing finished, the claimant asked how to contact the Tribunal if he did not feel well the following Monday. He was advised to send an email to the Tribunal and reminded that he would still have the option of attending by video. It was explained that if he did not attend, the Tribunal would need to consider whether to proceed in his absence and possibly whether a fair trial was still possible. It was explained to the claimant that failing to attend on Monday would not mean that a postponement would be granted, but rather that the Tribunal would consider what to do and if the Tribunal still felt a postponement was not appropriate then they may consider whether to dismiss the claim. The Tribunal made this point because it had a genuine concern that the claimant might not attend as a mechanism to secure the postponement of the hearing (although the claimant denied this).

Potential Postponement Application – 20 November 2023

52. At 9.16am on Monday 20 November 2023 the claimant wrote again to the Tribunal saying that he was "*not well and medically not fit due mental health condition to give evidence or take evidence*". He also stated that he felt that the Tribunal treated him unfairly and listed five grounds of complaint, and said that if the Tribunal had any questions he could answer on CVP. The five grounds of complaint are addressed separately under the heading "The claimant's email of 20 November 2023" below, however it was also not clear to the Tribunal whether the claimant was indicating that he was requesting another postponement and/or saying that he would not be attending the hearing. The Tribunal requested that the claimant join the hearing by CVP to discuss his email, which he did. The Tribunal found the claimant to be able to articulate his position clearly during that discussion. He initially had his camera off, but after an objection from the respondent, he agreed to turn it on.

53. During our discussions, the respondents indicated that if the claimant said that he was too ill to proceed, they would make an application for the claimant's claims to be struck out on the basis that the respondents could not have a fair hearing, and on the basis of unreasonable and possibly vexatious behaviour on the claimant's part. The Tribunal also explained to the claimant the way in which the burden of proof operates in discrimination claims, i.e. that it is for the claimant to show facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. It was explained that there is a two stage test, with the claimant being required to show an initial case (not that discrimination has actually occurred, but more than just showing that someone else is treated differently). Once that is done, the burden then shifts to the respondent to show that there is no discrimination. It was explained to the claimant so that the claimant understood that it was not for the respondent to have the burden of showing no discrimination from the outset (so if the claimant did not attend the hearing this could affect the claimant's prospects of succeeding in his claim).

54. The claimant was given a short break to consider his position, and after that break he confirmed that he would continue to participate in proceedings. For the rest of the week, the claimant continued to attend the hearing by CVP, with reasonable adjustments being made as set out below, and to reiterate that he was not well but that he would continue with the hearing. The Tribunal observed that the claimant was able to participate in the hearing fully and to give detailed evidence and ask relevant questions of the respondents' witnesses.

Postponement Application 4 – 5 February 2024

55. As the hearing had gone part-heard, it was listed for evidence to be concluded on 8 February 2024. On 5 February 2024 the claimant applied for a postponement of that hearing on health grounds. He said that he had been hoping that his health would improve but that it had not, and that in fact it had worsened. He said that it would be unfair for the hearing to continue where he had already been unfairly deprived of legal

representation by the respondents in this claim. He also said that it was unfair that the respondents had referred him to occupational health since the first hearing dates (as a continuing employee of the first respondent) but that they had not asked occupational health to advise on his fitness to attend this hearing. He also alleged that the respondents used bullying in the Tribunal to provoke him "*as he has mental health conditions and he easily become angry*". He asked for a postponement of a "*few weeks*". He also attached a fit note dated 22 January 2024 which said that he had work related stress and anxiety and depression and that he was not fit for work between 20 January 2024 and 19 February 2024. There were no other comments on the fit note. He also enclosed an occupational health report dated 11 January 2024.

56. The claimant's request for a postponement was refused on 6 February 2024, and detailed reasons for that refusal were provided to him by letter (which are not repeated in full here). It was noted that the fit note did not comment on his fitness to attend a hearing and that the claimant had been advised in November 2023 that his previous fit note (which included similar wording to this one) was insufficient to justify a postponement. The claimant was also advised that it was not for the respondent to seek medical evidence on the claimant's fitness to attend a hearing, this was for the claimant to do. Given that the claimant's assertion was that his health had not improved since he first considered himself unable to attend the hearing in November 2023, he had had sufficient time to arrange this.

57. The claimant emailed again on 6 February 2024, stating that he was appealing against the refusal of his postponement request. At this stage he submitted a letter signed by a doctor, stating that the doctor had seen him the previous day, listing a number of medical conditions and stating "*He was distressed and not fit for work. He will benefit from postponement of his tribunal hearing for at least a few weeks….I hope you will take his medical history into consideration*". The claimant said that the refusal of his postponement request was not in the interests of fair justice, that the Judge had discriminated against him, that he had seen doctors many times over the past month but doctors do not issue fit notes every time and that doctors were wondering if someone is not fit for work, how he could be fit for a court hearing. He referred to the Presidential Guidance on Seeking a Postponement of a Hearing and said that this advised to see one medical practitioner but he had seen three. He said he was happy to be referred to another doctor by the Tribunal.

58. The Tribunal invited the respondents' comments on the application, which was provided on the morning of 7 February 2024. The respondents opposed the application and said that if the hearing was postponed, they would be arguing that it would no longer be possible to have a fair hearing given the passage of time.

59. The claimant's stated appeal against the postponement request was refused. The Equal Treatment Bench Book, the Overriding Objective, the parties' right to a fair hearing and the duty to make reasonable adjustments were all considered. Whilst the letter from the doctor did indicate that a postponement would benefit the claimant, it did not specifically state that he

was unfit to attend. The claimant was aware of the Presidential Guidance and that set out specific information that the medical evidence should cover, which it did not. The claimant's medical history had been taken into consideration, and in fact that showed that his health had not improved since he first applied for a postponement in November 2023. Therefore, the evidence indicates that a short postponement would not be likely to result in the claimant being any more able to attend a hearing. It was for the claimant to provide his own medical evidence, not for the Tribunal to obtain it for him. It was also noted that the claimant had completed his evidence and that the claimant could if he chose to do so, bring someone with him to the hearing to represent him and question those witnesses and, if he did not attend, the hearing could proceed in his absence. It was recognised that the issues in the case dated back over five years. The cases of **Teinaz v London Borough of Wandsworth 2002 ICR 1471**, **Andreou v Lord Chancellor's Department 2002 IRLR 728**, **O'Cathail v Transport for London 2013 ICR 614** and **Phelan v Richardson Rogers Ltd and anor 2021 ICR 1164** were considered. Whilst a postponement is usually required where medical evidence shows that one party cannot attend through no fault of their own, fairness to the claimant must be balanced against fairness to the respondents and those named in the allegations along with the prompt and efficient adjudication of cases. The claimant was advised that he could attend by CVP and that regular breaks could be offered to him along with consideration of any other adjustments he may reasonably require.

Request to change Judge

60. The claimant sought to raise a further appeal against the refusal to postpone the hearing on the afternoon of 7 February 2024. In this correspondence he said that he had no confidence in Employment Judge Edmonds and asserted discrimination. He asked that his appeal be considered by a different Judge. Examples of alleged discrimination by Employment Judge Edmonds given included:
    a. that she had refused to provide legal representation for the claimant or order the respondents to provide him with legal representation expenses.
    b. that all British citizens have the right to self certify absence for the first 7 days but Employment Judge Edmonds refused him this right.
    c. that his fit note had not been accepted on 16 November 2023, and continued with the hearing.
    d. that the position that someone could be not fit for work but fit for a hearing was illogical.

    He asked for a different judge to consider his postponement request and also to take over the case more generally.

61. The claimant's request was refused. It was explained that his renewed request did not disclose any material change in circumstances save that he had now also provided an earlier fit note dated 3 January 2024 which in fact supported the position that this was not a short term issue and that the claimant could have applied for a postponement at an earlier stage. His request for a different Judge was also refused as it was important for the application to be dealt with by someone with knowledge of the background

to the matter and it would not be in the interests of justice for another Judge to take the case over more generally given that nearly all the evidence had been heard. It was denied that he had been discriminated against by Employment Judge Edmonds or the Tribunal.

Postponement request 5 – 8 February 2024

62. The claimant requested again to postpone the hearing by email dated 8 February 2024, sent at 8.58am (the hearing being due to start at 10am). He said that he was unwell and had no confidence in the Judge.

63. The claimant did not join the hearing. The Tribunal arranged for a clerk to call the claimant initially, and he said that he was ill. The clerk then sought to contact the claimant a second time to explain that the claimant's postponement application would be dealt with at the hearing and he could dial in on CVP to discuss it. The claimant at that stage did not answer his phone (despite having done so a short time previously).

64. The claimant's further application to postpone was therefore dealt with in the claimant's absence. The respondents opposed the claimant's application on the same basis as previously and the Tribunal declined to postpone the hearing, also on the same grounds. A clerk contacted the claimant to advise him of this, and written confirmation of the decision not to postpone the hearing was also sent to him. In that written confirmation, the claimant was advised that if he wished to submit any written questions to the remaining witnesses, he could request to do so if he did so urgently so that their evidence could still be taken today. He did not do so. The clerk also then sought to contact the claimant again to say that the hearing would recommence at 11am if he wished to join.

65. The claimant did not join the hearing. The Tribunal decided that it was in the interests of justice to continue in the claimant's absence (rather than to postpone the hearing or dismiss the claim). The final two witnesses for the respondents (Dr Smith and Mr Russell) therefore were not cross-examined by the claimant. The Tribunal had no questions of its own for Dr Smith however did ask a number of questions of Mr Russell during his evidence.

Comments regarding harm to self and others

66. There was considerable disagreement as to what had been said by the claimant in relation to this matter at the hearing. The Tribunal panel's respective notes of the hearing reflect the below summary, which we are confident reflect what happened.

67. On 16 of November 2023, when discussing the claimants application for postponement of the hearing, the claimant said that his family were concerned about his health and that they also had a concern that he could also harm others because of his health. He said they saw behavioural changes. The Tribunal was concerned by this comment and explored it further with him. The claimant said that his family was concerned he might harm others and himself. When asked what kind of harm, he said that this could be self harm and suicidal and could harm others as well because of

feelings. The claimant was asked whether he meant that he could harm others' feelings, but he clarified that he did not mean that, that he meant physically. He was then asked whether he meant that he might harm his family physically and he clarified that he did not mean his family, he meant others, but it might include his family as well. He said that when you are mentally not well you do not understand what you are doing.

68. The Tribunal decided to have a break at that point to consider what had been said, as well as the postponement issue. When the hearing reconvened that afternoon, after addressing the postponement issue (and informing the claimant he could visit his GP again), the Tribunal indicated that the claimant's comments about potentially harming himself and others had given the Tribunal cause for concern. The claimant was urged to discuss this with his GP when he went back to them.

69. The Tribunal then referred to the fact that the claimant had said that he might self harm, be suicidal, and also could harm others if the postponement request was not granted. At this stage the claimant said that this concerned his family, however it was clarified with him that he had said that it related to anyone. The claimant was informed that it was of concern that he would be physical towards his family in any case, however because he referred to anyone we also needed to consider the safety of ourselves and Tribunal users. The claimant was told that the tribunal wanted to understand more about exactly what the claimant meant and assess whether we needed to consider whether a fair hearing was possible.

70. During this discussion, two of the respondents' witnesses had been in the waiting area and not in the Tribunal room, Mrs Houghton and Mrs Thomas. This was because the claimant had previously requested that they not be present and the respondents' representative had voluntarily agreed to that temporarily whilst the matter was considered. However we had not yet considered the claimant's request because of the issues that had arisen that morning. The respondents' representative indicated that he would now like those individuals to re-enter the Tribunal room to listen to our discussion on this issue. The Tribunal then indicated to the claimant that the claimant had not suggested any specific conduct on the part of those individuals which concerned him other than apparently smiling, and it was explained that this is a public hearing and therefore the starting point is that they should be entitled to be present unless the Tribunal considered otherwise. The claimant was asked whether he had a particular concern about them being present.

71. The claimant replied that he had a mental health problem and that sometimes mental health patients cannot recognise what they are doing. He said it was for their safety also and that he had a concern about family safety as well. When asked to clarify what was meant by family safety, he said that in fact there was no risk to his family's safety but that he was referring to the safety of those involved and himself. He was asked if he was saying that there was a risk to the safety of Mrs Houghton or Mrs Thomas if they entered the room to listen. He initially said that there was not and that he did not think either of them had any role and what happened to him. However he added that for as long as he has the depression he cannot

guarantee the safety of anyone even himself. In light of this comment he was asked to be clear about whether he was saying that he could not guarantee their safety if they came into the room. He said that he was not saying that, and that he was saying that if he has depression and becomes frustrated and does something with himself he can't guarantee (he did not clarify what he could not guarantee).

72. We pointed out to the claimant that he was saying in one moment that they were safe, and in the next moment that there is no guarantee, and the Tribunal needed to understand which it was. The claimant replied that he had explained that he has depression. We clarified that the question was about safety and the claimant said that he was becoming very frustrated and his wife had said he was becoming annoying. The claimant was asked again whether there was any risk at all to Jane Thomas or Chelsea Houghton's safety if they come into the room. The claimant replied that a mental health patient can do in one minute anything and that his wife had told him that his behaviour had changed.

73. The Tribunal informed the claimant that it had not heard anything to warrant excluding the individuals from the hearing and they would not be excluded. The Tribunal noted that it had still not had a straight answer from the claimant and also commented that it could investigate setting up a CVP room so that video could be used. At this stage a short break was agreed.

74. When the hearing reconvened, the respondents' representative explained that neither of the individuals were comfortable to come back into the room and therefore he would be attending alone for the remainder of that day at least. The Tribunal indicated that it could set up a second tribunal room connected by CVP if the respondents' witnesses would like to observe but from a different room. It was agreed that that would be set up. The respondents representative indicated that he had a number of matters to consider when assessing whether to make any applications. It was agreed that this would be addressed the following day.

75. Before we finished for that day, we explained to the claimant that he remained under oath and asked him to confirm under oath that his position remained as stated about potential harm and specifically that he could not guarantee the safety of witnesses. The claimant said that it was what he had previously told the tribunal and that it was because of the behaviour his wife had observed, he said he became very aggressive. The claimant was visibly distressed at this stage and the tribunal encouraged him to take a moment before continuing. The claimant reiterated that he was worried about himself and others and said that it was not his intention to do anything but he warned the Tribunal that his behaviour had changed very much in the last two weeks.

76. When asked specifically what he was concerned that he might do to a witness, he said that to be honest he did not think he would do anything but it was the concern of the family. When it was pointed out that he had said he could not guarantee witness safety, he said that this is because a mental health patient has no control themselves. The tribunal explained to the claimant that either the respondents or the Tribunal may need to consider

whether it remained possible to have a fair hearing and also the manner in which the proceedings and this hearing has been conducted the Tribunal explained that under rule 37 of the employment tribunal rules this can lead to the striking out of a claim either on the application of a party or on the Tribunal's own initiative. The claimant was informed that he should come tomorrow afternoon (as the hearing was not sitting in the morning whilst the claimant saw his GP) ready to discuss this matter. Before ending the hearing for the day, the tribunal checked that the claimant had support from his family for that evening, checked he felt safe to drive home, and recommended that if he did feel he may be inclined to self harm or to harm others he should seek immediate medical assistance, including if necessary by calling 999.

77. At the start of the hearing the following afternoon, the claimant was informed that he remained under the oath he gave to the Tribunal earlier that week. Having discussed the claimants postponement application, the issue regarding his comments about harm were discussed and it was noted that his updated fit note said "*patient denies any self harm or suicidal thoughts or thoughts of harming others*". The claimant said that the doctor had asked him about this and he had said he had no intention of harming himself or others and that he had asked the doctor to put this in his fit note. He said that he had explained to the Tribunal many times that he would not harm himself or others but the Tribunal had not understood. He said that he had explained that he was not a danger to himself or others but that it was his wife who had concerns that if he went to hearing and had an accident on the way and if he had a second heart attack it could kill him and endanger others as well.

78. We explained to the claimant that our clear notes from the previous day where that he had said that he could not guarantee that he would not harm others or himself because of his mental health condition. The claimant denied having said this and said that he had said he could not guarantee the safety of himself or others and that he was not security so he could not do so. He said that the question was asked in a way that he could not understand what was meant by "guarantee". We explained that the question was about whether he might hurt himself or other people and the claimant said that he had clearly answered that he would not, that he had no intention to do so. We clarified that we agreed he had said he had no intention to do so, but that he had gone on to say that people with mental health conditions could not control what they do and therefore could not guarantee it. The claimant said he could not guarantee it because no one could guarantee it but that he was not dangerous. We explained that it was possible for a person to say that they are not going to cause physical harm to another person in a Tribunal room. The claimant said that he did not intend to hurt anyone in the Tribunal room and the tribunal noted that he was again using the word "intend" and that the question was whether he could say that he would not hurt someone. The claimant confirmed that of course he would not.

79. The respondents' position was that the comment in the box on the fit note was in stark contrast to what the claimant had said yesterday. The respondents' representative stated that his note and the note of the member

of the respondent's HR team who had also been present the previous day accorded with the Tribunal's note of proceedings.

80. We determined that, although the claimant now denied having said that there was a threat to safety it was the clear recollection of the tribunal, supported by our contemporaneous notes, that the claimant did say that. We felt that the claimant did understand the questions being asked of him, which were put to him on a number of occasions to ensure full understanding from everyone. However we recognised that we now had in our possession a fit note in which the claimant had denied such a risk which was reassuring. We considered that by offering all parties the opportunity to participate via video link or from a second Tribunal room, any concerns could be overcome.

81. We discussed with the parties whether they would attend the hearing in person or by video the following week. The claimant said he should be permitted to go to the tribunal and it was confirmed that there was no order that said he could not. The respondents representative explained that its witnesses did not wish to attend in person in light of what had happened and it was agreed they could attend by video link. Mr. Williams confirmed he had no objection to him being present with the claimant in person and it was confirmed that both him and the claimant could attend in person and a second Tribunal room would be available if needed. It is relevant to note that the claimant commented that he would attend in person and that if something happened to him, the Tribunal would be responsible for that.

82. The Tribunal also confirmed that it had considered whether to strike out all or part of the claimant's claim under rule 37 of the Employment Tribunal Rules based on the manner in which the proceedings had been conducted by him and/or based on whether it remained possible to have a fair hearing. We considered that a fair hearing remained possible and that it was not in the interests of justice to take such action.

83. In the end, although the respondents' representative attended in person on 20th of November, as the claimant attended by CVP from that point onwards, the respondents' representative also attended via CVP from 21st of November onwards. Therefore, for the remaining days of the hearing everyone was on CVP except for the Tribunal panel.

Reasonable Adjustments

84. A number of reasonable adjustments were made for the claimant to accommodate his health conditions and ensure that he could participate fully in the hearing, as follows:

    a. The claimant made an application to record the hearing. Although he had not indicated to the respondent or to the Tribunal in advance that he would wish to do so, having heard submissions from both parties and considered the case of **Heal v Chancellor, Master and Scholars of the University of Oxford and ors 2020 ICR 1294**, the Tribunal granted the claimant permission to record the hearing each day on a dictaphone type device. The Tribunal noted in particular that the

claimant had medical advice that he should record his work and that the claimant's stated intention was to use the recording each evening to help his memory and enable him to capture all relevant information prior to the next day's evidence. However, it was also explained to the claimant that he might be asked to turn it off if it became disruptive to proceedings or if confidential patient matters were discussed. The claimant was ordered to delete the recording no later than midnight on Saturday 25 November 2023 (and midnight on 9 February 2024 in relation to any recording on 8 February 2024). Certain other conditions were placed on the claimant's use of the recording to ensure that the recording was only for the claimant's private use, which were set out by way of separate written Orders dated 13 November 2023 and 24 November 2023. It is also worth noting that, as the hearing was being recorded by the claimant in any event, and the wider recording of Employment Tribunal hearings was due to commence on 20 November 2023, the Tribunal opted to also record the hearing from the start of the second day and no objection was raised by the parties to this.

b. The claimant requested that he have a break after every one hour to one and a half hour. The Tribunal agreed to have breaks approximately every hour. The Tribunal further agreed to ensure that there was a break which covered some of the period between 12pm and 1pm each day so that the claimant could control his diabetes.

c. The claimant requested time to read documents. The Tribunal confirmed to the claimant that he could pause each time a document was looked at to see what it said.

Save as set out below, the claimant confirmed that no other adjustments to accommodate his health were required.

85. At the start of the hearing the claimant also requested that the Tribunal provide him with legal representation and/or order the respondent to do so (or for the respondent to fund that representation). He said that occupational health had recommended that he have legal representation at hearings but that the respondents had refused to provide this because they said that the indemnity insurance provided to the claimant in connection with his employment only covered claims from patients, not claims by the claimant against the respondents. The claimant felt that this was wholly unfair and continued to raise this issue throughout the hearing, including in his written submissions. He viewed the indemnity insurance provided to him as deficient because it did not cover the cost of him bringing a claim himself against the respondents. The Tribunal does not consider this to be a deficiency in the indemnity insurance: it would be highly unusual if the insurance policy taken out by the respondents would cover the cost of legal action being taken by the claimant against themselves - the purpose of the indemnity insurance is to protect employees (including the claimant) from the cost of defending claims brought against those employees.

86. The Tribunal explained to the claimant that it would not be able to provide him with legal representation, but did explain to the claimant that if he did

not have his own legal representative, he could be represented by someone who was not a lawyer if he wished. We also encouraged him (on a number of occasions) to bring someone with him to support him and take a note of the hearing, however he did not do so.

The claimant's email of 20 November 2023

87. As explained above, the claimant raised a number of specific complaints in his email of 20 November 2023. We discussed and addressed each of these with the claimant at the start of the hearing that day, and the position was as follows:

    a. Complaint that the respondent and Tribunal both called him with the wrong title. By this the claimant meant that he had been referred to as Mr Mokhammad and not Dr Mokhammad. The Tribunal acknowledged immediately that this had indeed occurred, and apologised to the claimant for this. The Tribunal explained that the reason that this had happened was because the claimant had ticked the "Mr" box on his claim forms which meant that the official Tribunal record showed him as Mr Mokhammad and all Tribunal correspondence had therefore been framed in that way. This had led the Tribunal to read from those documents and inadvertently mis-address the claimant. The Tribunal acknowledged that they were aware that the claimant was a doctor and therefore that his title should be "Dr" and this would be used moving forward.

    b. Complaint that the respondent speaks for ages in hearing and claimant was not given enough time for speaking. The Tribunal disagreed with the claimant's position on this: the Tribunal explained that he had had significant opportunity to speak and in fact the hearing had progressed slower than usual because the Tribunal had ensured that he had a proper opportunity to speak. It was acknowledged that there had been occasions where the Tribunal or respondents' representative had interjected when the claimant was speaking, but this was because the claimant was referring to irrelevant matters or was making statements rather than asking questions during cross-examination of the respondents' witnesses, and it was necessary to stick to the issues relevant to the case.

    c. Complaint that it was extremely unfair that the claimant's medical fitness evidence was rejected. It was explained that this issue had already been addressed and the Tribunal was not prepared to re-open it again.

    d. Complaint that the respondents' non-compliance with orders was not considered fairly. In relation to non-compliance it was explained to the claimant that Employment Judge Meichen had merely said in his Case Management Order that the respondents "may" be struck out in the event of further non-compliance. A key consideration is whether a fair hearing remains possible, along with the extent of non-compliance and reason for it. The Tribunal's conclusion had

been that a fair hearing was still possible and that the non-compliance was not material and that there was a reason for it. It was reiterated to the claimant that if there were particular documents he considered to be fabricated (this being a point he had raised) then he could point that out when taken to that document, and that if there was something he believed to be missing, he could draw that to the Tribunal's attention and provide a copy to the Tribunal.

e. Complaint that the respondent had chosen the Judge for the hearing. It transpired that one of the respondents' witnesses, Professor Rowland, sits at the Employment Appeal Tribunal as a lay member and he had recently sat on a case which had overturned a decision made by one of the Judges in Midlands West Employment Tribunal. Therefore the respondents had requested that the claimant's case not be heard by that particular Judge to avoid any bias (perceived or actual). This was agreed to by the Midlands West Employment Tribunal. The claimant had interpreted this as meaning that the respondents had chosen the Judge: I explained that this was not the case and this was done to ensure a fair hearing for all, and that it had been the Employment Tribunal that had made the decision on who the Judge was, not the respondents.

f. A comment that the claimant would required at least two weeks for a written submission. Whilst a final decision would be taken on how submissions are presented later in the hearing once the timetable became clearer, we confirmed that this was a potential reasonable adjustment that could be considered.

Other matters

88. Generally, the Tribunal found that the claimant was not ready for hearing. Whilst the Tribunal acknowledged the claimant's ongoing health concerns, it was clear that he had not read any of the respondents' witness statements at the start of the hearing. Despite repeated encouragement given by the Tribunal to make sure that he read the statements, he did not take the opportunity to do so at various stages throughout the hearing: for example, when the potential interposing of witnesses was discussed on day 5 of the hearing (Monday 20 November 2023), the claimant indicated that he had not yet read those witness statements, despite having previously been told to do that over the weekend. Likewise, 15 November 2023 had been a non sitting day which could have given him a further opportunity to read them. Although the Tribunal recognises that the claimant was suffering from some ill health at the time, he had had those statements for a number of weeks and was fully aware that he would need to have read them in order to ask questions about them. We consider that, in reality, the claimant was banking on his postponement applications being granted and part of his concern about continuing with the hearing was simply that he not sufficiently prepared for it.

89. Initially, the claimant chose to wear a face mask in the Tribunal, which he said was because his family had an infection and was to protect others. The Tribunal explored with the claimant whether he would be able to remove this in order to give evidence and he confirmed that this was no problem and that he would do so.

90. On the second day of the hearing, shortly before evidence was due to commence, the claimant made a comment (about one of the respondents' witnesses) that he "*was the one to do religious and racial discrimination against me*". It was pointed out to the claimant that he had not brought a claim for discrimination on the grounds of religion or belief, and the claimant said that he would add this. It was then explained to him that this was not something that he could just decide to do, that this would require formal amendment to his claim and that he would need to make a written application should he wish to do so, explaining the full detail of what that claim was and why it was not part of his original claim. As he had not made an application to amend, the Tribunal decided that it would proceed with his claims as set out in the agreed List of Issues.

91. Although the Tribunal had intended to sit fully in person, Mr Stanley himself developed a health issue during the course of the hearing which meant that he joined by CVP (video) on 16 and 17 November 2023.

92. As a general theme throughout the hearing, it was apparent that the claimant considers that every decision that he disagrees with must be an act of discrimination, and he stated in evidence that the UK is the most discriminatory country in the world. We find that this view sets the scene for why the claimant appears to automatically view anything negative that happened to him as an act of race discrimination.

93. During the course of the hearing and in his witness statement, the claimant on a number of occasions referred to the respondents' witness Mr Geoff Neild as Neil Geff. Whilst the Tribunal accepts this was a genuine error on the claimant's part, we note it in the context that the claimant has complained about the wrong terminology being used to address him and in his closing submissions specifically alleged that this was an act of "open intimidation and discrimination", however has not recognised that if he himself made an error in the way that he referred to a witness, that the Tribunal and respondents' representative might also have made a genuine error in the way that they referred to him. We consider this to be an example of the way that the claimant automatically assumes that anything which happens to him is an act of discrimination.

94. In his postponement request dated 5 February 2024, the claimant said that he wanted to give more evidence about pay slips. In the Tribunal's response to that application, it was explained to him that he had completed his evidence to the Tribunal and it would not be in the interests of justice to re-open that evidence or the hearing would go part-heard again, however if there is documentary evidence that he wishes to be added to the bundle he should provide this so that it could be considered. He did so and the respondents did not object to the Tribunal considering that documentation, which we did.

95. Although the claimant made a number of requests for postponement, the Tribunal generally found him able to participate in proceedings, both in terms of answering the questions put to him and being able to formulate questions to ask the respondents' witnesses. Whilst the Tribunal did have to interject on a number of occasions because he was not always answering the questions put to him, we consider that he knew what he was being asked and the Tribunal took steps to re-clarify matters on a number of occasions to ensure that his evidence was properly considered.

Findings of Fact

The claimant's background

96. The claimant was born in Afghanistan and is part of the Pashtoon ethnic group. He graduated as a doctor in Russia in 1999. In his witness statement he says that he speaks, reads and writes four languages fluently, including English. The Tribunal notes however that on other occasions the claimant did comment on difficulties with English not being his first language and the content of some of his emails (to both the Tribunal during proceedings and to the respondents during his employment) indicate that he is not entirely fluent in English: this was also raised as a concern by the respondents during his GP training: although not directly relevant to the specific issues in this case, it is relevant to the general concerns that the respondents had about his performance and ability to undertake his role.

97. The claimant moved to the UK in 2002, has been working in the UK healthcare system since 2003 and has been registered as a doctor with the UK General Medical Council since 2011 with full registration from 2013.

Background of the respondents

98. The clamant was and remains employed by the first respondent, also known as Lead Employer. During the course of his GP training programme he was sent to the third respondent, known as a Host Organisation, for part of his GP training programme. During the period of time relevant to these proceedings he was also sent to other Host Organisations however they are not respondents to this claim. The second respondent is the Non-Departmental Public Body which has responsibility for oversight of the GP training programme. It is responsible for implementing training and managing the Annual Review of Competence Progression (known as ARCP). However the second respondent is not involved in the day to day management of trainees.

99. Doctors complete two years of foundation training after completing medical school. Following this, trainees choose to apply for GP or speciality training. GP training lasts for a minimum of three years, including 18 month hospital-based placements and 18 months in GP practice placements. The trainee rotates every 4-6 months with the final year normally being spent in one GP practice.

100. Each trainee is allocated an Educational Supervisor / Trainer who is responsible for their overall supervision throughout the GP training

programme. They complete Educational Supervisor reports on progress for the ARCP process. In addition, for each individual placement the trainee has a Clinical Supervisor, who supervises them during that rotation.

The car park incident and GMC investigation

101. On 17 May 2017 an incident took place in a car park involving the claimant and a car park attendant. At this time the claimant was not employed by the First Respondent and whilst it predates the issues in this case, it is relevant because of the claimant's later exclusion which we come to below.

102. The allegations were that on 17 May 2017 (page 402), when the claimant had difficulty finding a parking space, he engaged in threatening and abusive behaviour towards car park staff. An extract from the allegations as set out in the Case Examiners Decision dated 10 May 2018 in relation to the matter is set out below:

> *…*
>
> *5. You said:*
> *a. you were "fucking angry";*
> *b. "fuck you";*
> *c. "you are a mother fucker";*
> *d. "I'm going to fuck your wife";*
> *e. "you fucking bastard";*
> *f. "you're a donkey";*
> *g. "you are not human you are an animal" and*
> *h. "come on, hit me – I'll have you out"*
>
> *6. You squared up to Mr A to invite a physical altercation by:*
> *a. stretching both of your arms out wide;*
> *b. moving your body close to his; and*
> *c. bringing your face close to his.*
>
> *7. You parked your car in such a way as to block the ground floor of the Car Park such that staff arriving at Birmingham Women's Hospital (BWH) would not be able to park in their allocated spaces.*
>
> *8. You left the Car Park on foot.*
>
> *9. After around 5 minutes you returned to the Car Park and moved your car into a space allocated for BWH staff.*
>
> *10. You were asked to move from this space by Mr B.*
>
> *11. You shouted at Mr B "you motherfucker, I rape your wife and split her legs" or words to that effect.*

103. The claimant accepted that there was a disagreement but did not accept the behaviour as alleged (page 403). On 23 October 2017 (page 402) the

General Medical Council ("GMC") formally alleged that the claimant's fitness to practise was impaired because of his misconduct.

104. The matter was investigated and this resulted in the Case Examiner's decision on 10 May 2018 (page 396) to refer the claimant to a medical practitioners tribunal, although it is important to note that the claimant denied the allegations of which he was accused. The Medical Practitioners Tribunal Service ("MPTS") is independent of the GMC and is the adjudication body in relation to doctors.

105. During the course of the GMC investigation a number of colleagues and former colleagues of the claimant provided character references for him. (pages 2408, 2409, 2410). These all pre-dated the issues in this Tribunal claim.

106. The Medical Practitioners Tribunal ("MPT") made a decision on 25 January 2019 to impose a warning on the claimant for his conduct (page 632), although it also found that his fitness to practise was not impaired. It is relevant to note that this was a "warning" and not a "sanction" within the meaning of the GMC Policy Document named "Publication and Disclosure Policy - Fitness to Practice" (page 2428, at 2442). This is referenced in the later High Court Judgment dated 28 October 2021 (page 2493, at page 2498).

107. Following an appeal by the claimant, the decision was quashed by the High Court of Justice (pages 1543 and 2493) by Judgment dated 28 October 2021. Although there was no statutory right of appeal given that it was a warning and not a sanction that had been imposed, the role of the High Court was to supervise the decision-making process of the MPT (page 2498). The High Court of Justice found that "*procedural fairness required that the MPT give reasons for the adverse findings it made against the claimant. Whilst I accept that any such reasons need not have been elaborate, they must nevertheless have been adequate, transparent and intelligible in order to explain why the MPT reached its conclusions. I do not find that the MPT's reasoning was legally adequate to enable the Claimant to understand why the MPT found against him*". There was no finding by the High Court of Justice as to whether the claimant had or had not committed the alleged acts.

108. The claimant says that the respondents should not have told anyone about the warning from the MPT whilst his "appeal" to the High Court of Justice was ongoing. The GMC policy document on Fitness to Practice (page 2428, at 2442) simply states that if a sanction is appealed, it is published that the sanction is not effective pending the outcome of the appeal. However, in the claimant's case, he was not issued with a sanction (which would have meant fitness to practice was impaired), he was issued with a warning. The section that the claimant relies upon regarding sanctions is therefore not relevant. Therefore, although the respondents did refer to the warning whilst there was a pending appeal (for example, page 640), the claimant is incorrect in asserting that they were not entitled to do so. Until such time as the warning was overturned, that warning remained live.

The GP training scheme

109. There are two relevant matters in relation to the protection of the claimant's pay when he commenced GP training (having previous worked in a different specialism and as a locum):

    a. Continuous service for the purpose of long service benefits such as annual leave and sick pay: previous service within the NHS should be taken into account provided that the gap between placements was less than one year. The respondent accepts that the claimant's continuous service with the NHS should have been protected for these purposes, that it failed to do so until the matter was raised by the claimant in 2022 but that it then rectified the matter and made additional payments to him in respect of this.
    b. Continuous service for the purposes of basic pay: this is treated differently. Pay protection in this context is covered by paragraph 48 onwards of "Schedule 2: Arrangements for Pay" within the Terms and Conditions of Service for NHS Doctors and Dentists in Training 2016 (page 2615, at page 2620). This sets out that pay protection may apply in certain circumstances where a doctor switches from one training programme into an "agreed hard-to-fill training programme". We heard evidence from Mrs Houghton that this did not apply to the claimant, given that the claimant had previously been undertaking locum shifts rather than him moving from one training programme to another. The claimant has not provided any evidence to show that it did. We accept Mrs Houghton's evidence.

    The claimant did not raise any concerns about pay protection or protection of benefits when he commenced employment, or at all prior to 2022.

110. Given that GP trainees work for Host Organisations whilst being employed by the Lead Employer, we heard from Dr Mukherjee that there is a mechanism in place for Lead Employers to let Host Organisations know about any reasonable adjustments that might be needed, through a process called "management information". Through this process, the Lead Employer shares information with the Host Organisation through encrypted email to the medical staffing team at the Host Organisation. It is then for that organisation to implement them. The reason for the adjustment is not shared with the host, only the nature of the adjustment. Trainees are encouraged but not required to disclose that information themselves. It is for the Host Organisation to share it with the specific clinical supervisor and there is no specific confirmation sent back to the Lead Employer to show that has happened. We find that this process does leave scope for information not to always be passed to the supervisors who really ought to see it.

The claimant's first rotation

111. The claimant's employment with the first respondent commenced on 1 August 2018 when he started his GP training under a Lead Employer arrangement. He was assigned to Burton Hospital (within the third respondent) to the Paediatric Ward. On 20 July 2018 (page 336) the claimant emailed and requested an exemption from the rotation due to his

previous experience of working in that field. Catherine English, a programme administrator, replied to ask whether the claimant had referenced that point on his application form, which he responded to and confirmed he had not. Ms English offered to review his CV, and the claimant chased for an update on 24 July 2018. He was advised that he would need to wait until the next GP board meeting for a decision (page 334) and that he should commence in Burton in the meantime (page 333).

112. The claimant then replied on 25 July 2018 to say that he did not want to start in Burton, which he did not like, that the wait was unacceptable, and that he would appeal any decision on the basis of discrimination (page 333). At this point, it had only been 5 days since the claimant had first requested to move, and we find that it was fair and reasonable for the matter to have to wait until the GP board meeting to decide. In addition, we find it surprising that the claimant referred to discrimination in his email: no decision had even been made at that time and there was no basis given for why any future decision might be discriminatory.

113. Dr Steve Walter, Head of School at the Postgraduate School of General Practice, wrote to the claimant on 27 July 2018 (page 332), explaining that the claimant's application for transfer had not been granted. It was explained to the claimant that exceptional and unforeseen circumstances would be required to support a transfer, whereas the claimant had knowingly accepted a job offer in Burton. He was also informed that he had spent insufficient time in suitably recognised posts for this to contribute towards his GP training time. He was informed that allegations of discrimination are taken extremely seriously and any evidence to support that would be investigated.

114. In evidence, the claimant said that individuals normally get to choose the rotations that they go on. When questioned as to who had told him that, he said that it was his friends on the GP training scheme. The evidence from Professor Mohanna on behalf of the respondents was that the deanery would try to accommodate requests as much as possible such as to address long commutes of doctors who cannot drive, but due to pressures on general practice it was not normal practice for doctors to choose their own placements. We accept her evidence and find that the claimant had no right to choose his own placement / rotation. We note that the claimant continued to request a transfer after starting his placement: in an email dated 5 September 2018 he asked for a transfer to a hospital closer to home on the basis that he was sleepy after work and was worried about having an accident (page 361). In response the claimant was informed that his transfer request had been rejected but was offered an occupational health referral if he wanted one (page 360) and provided with information about wellbeing support.

115. The claimant's first clinical supervisor was Dr Muogbo. Although the claimant said that he had no recollection of an initial meeting between himself and Dr Muogbo, we accepted Dr Muogbo's evidence that there would have been a clinical supervision meeting, although he could not recall the date. This was their normal practice, and there does not have been any complaint from the claimant at the time querying why there had not been a meeting, despite him having raised other complaints on 10 August 2018.

We find on the balance of probabilities that a clinical supervision meeting did happen (although it may not have been a formal meeting), because there is no reason for it not to have happened, it is usual practice and Dr Muogbo has some recollection of there being one. This meeting would have been general in nature, to discuss what the claimant's experience was, what training roles he wanted and what he could have got out of the post.

116. According to the claimant's evidence, Dr Muogbo also met him as part of his induction into the ward. The claimant however complains about the length of the induction, and says that this induction should have been two weeks long and not one day. When asked in evidence why he believed this to be the case, he said that when he was in geriatric medicine there was usually two weeks shadowing for the GP trainees.

117. We saw a "Junior Doctors Induction Day" table dated 1 August 2018, which included the claimant's name and signature. We also saw an induction form specific to the claimant, showing all tasks completed, signed by the claimant on 2 August 2018 (page 345) and Dr Muogbo referred in evidence to a two day induction. The claimant asserts that this document is not an induction form but an introduction form but it is clearly titled "induction form" and we find that this is exactly what it is – it records the completion of the various induction tasks. The claimant has also submitted that this document is in fact fake. We do not accept this. Nothing about the document appears to have been forged, and it carries the claimant's own signature. It is a serious matter to accuse an organisation of forging a signature on a document. We find that he has made this allegation because this document is unhelpful to his case. The fact that he has accused the respondents of preparing a fake document for the purpose of these proceedings is, we find, reflective of his approach generally: when he sees something that does not support his case he alleges lying or forgery. We accept that he may genuinely not remember the document, however we consider that he is lying when he says that it is fake as he can clearly see his own signature on the document. We consider that the claimant is deliberating saying that the document is fake without any basis for doing so.

118. Dr Mukherjee, when giving evidence about his department (which we accept is a different ward and rotation) said that inductions are for a day or two. We were not shown any policy documentation referring to a two week induction or given information about any other specific individuals who had a two week induction. We find that there is no general rule that inductions should be for two weeks and the fact that it may have been for two weeks in geriatric medicine does not create an automatic right to a two week induction in other wards. We find that the claimant's induction was consistent with Dr Muogbo's normal practice.

119. The claimant also says that he was put on night shifts from the outset when could not use the third respondent's computer system. He says that he should not have done night shifts for the first month. We accept the respondents' evidence that the third respondent operated a rolling rota, and therefore different trainees would commence night shifts at slightly different times. The claimant commenced employment on a Wednesday and did his first night shift the following Monday. We saw no evidence to suggest that a

trainee's race would play any part in determining when they would be placed on night shifts (and for the avoidance of doubt at this stage the claimant did not have medical advice suggesting that he should not work night shifts: that came later).

120. The claimant also says that he was not issued with an NHS smart card or ESR card at the start of his employment. The claimant said in evidence that the smart card and ESR card are the same. ESR stands for "Electronic Staff Record". He said that he was not issued with one until November 2019. We accept that the claimant was not issued with this card at the start of his employment: although the induction form at page 345 records that "Smartcard and/or ESR training delivered and smartcard terms and conditions agreed", it does not actually state that he had the card. However, we heard from Dr Muogbo, and we accept his evidence, that the card was not actually required to carry out day to day duties as a separate log in and password could be used. During the hearing the claimant stated that he only had a password for the general computer and Dr Muogbo explained that this was all that was required. We find that the claimant had not understood that the card was not needed. He did manage to perform his role so the absence of the card cannot have been a total barrier to him doing his job.

121. The claimant raised the matter with the third respondent on 10 December 2018 (page 595) and the third respondent replied to say that it could not issue the ESR card as it did not employ the claimant. The claimant replied on the same day questioning who could provide it, using a mixture of lower case and capital letters which resulted in the tone of the email being somewhat aggressive. The card was eventually created for him on 25 November 2019.

122. We can understand that it must have been somewhat frustrating for the claimant not to have had the card, and it should have been issued to him earlier. We find that it was the Host Organisation (third respondent) who should have done so: this was confirmed to be the case in evidence by Mrs Houghton. However, if it was a significant problem we find that he would have raised a complaint about it in writing prior to December 2018, and it cannot have been a barrier to him doing his job or the third respondent would have pushed for him to have the card. We further find that the failure to issue the card to him was inadvertent: it would make no sense for the respondents to deliberately fail to provide a piece of equipment such as this to the claimant.

The claimant's complaint dated 10 August 2018

123. The claimant raised a complaint about alleged bullying and discrimination by email dated 10 August 2018, saying that he felt uncomfortable working in a bullying and discriminatory environment (page 349). He attached a document setting out the detail of his complaint (page 2601). The essence of his complaint was that:

    a. He disagreed with the dose of salbutamol recommended by a registrar to be given to a patient, and said that she was angry with him when he

told her that he was right. Based on the evidence we heard, we find that the registrar had recommended the correct dose.

b. That he had not had a shadowing period.
c. That the registrar had complained to a colleague that he did not answer his bleep quickly enough and that this was bullying and discrimination.
d. That on his third night he felt ignored by the registrar and the neonatal sister.
e. That he was given the wrong medical notice, but then accused of filling in the wrong information.
f. He went onto say that he felt that the registrar and neonatal sister were bullying and discriminating against him (it should be noted that this was in fact the first occasion of him working with the neonatal sister). His basis for this was that he was not the only person involved in the mistake and he alleged racism. He then asked that he was not required to work with the registrar on evening and night shifts. There was however nothing in his complaint to indicate why he felt that this amounted to racism.

124. Although not referenced in his complaint, we are aware from the evidence we heard that there was a separate issue between the register and the claimant in that the register had apparently told the claimant that he was using the wrong staff room.

125. The claimant says that this complaint was not investigated. In evidence he asserted that because it was a discrimination complaint, if it was not investigated by Dr Muogbo then that means that Dr Muogbo was also discriminating against him. However, in fact Dr Muogbo acknowledged his complaint on the same day (page 2599) and confirmed to him that the third respondent had a zero tolerance policy towards bullying, harassment and discrimination. It was a supportive email and explained that his complaint had been escalated to the HR Manager.

126. We were also shown an email dated 22 August 2018 (page 347) from someone named Maria Gates to the claimant, copying Dr Muogbo, which referred to a meeting which had taken place that day to discuss his complaint. The email stated that the claimant had said he was happy for the issue to be dealt with informally and set out the agreed steps that would be taken to resolve the matter. The claimant did not respond to this email to indicate that he was not happy for it to be dealt with informally. In evidence he first of all suggested that because he did not respond, that meant that he did not agree to this, however the email stated that he had agreed and therefore it was for him to respond if he did not. A short while later in his evidence, the claimant then suggested that he may not have read the email at all as he gets a lot of emails and he did not remember that email. If that is true, we find that the complaint cannot have been that important to him or he would have read the email, particularly as it was sent to him on the day that he had had a meeting about the issue.

127. This was also referenced in an email from Dr Muogbo to Dr Fiona Sellens (the Staffordshire GP Area Director, who was the GP training Programme Director) on 12 September 2018 (page 355) (in which Dr Muogbo was

raising concerns about the claimant's attitude at work by reference to a number of examples of concerning behaviour on his part). Dr Muogbo also confirmed in an email dated 9 November 2018 to Hayley Proudlove (page 472) that his concerns were investigated, that the claimant had wished for it to be handled informally, that Dr Muogbo had met with the registrar in question to address the concerns and that this was fed back to the claimant, and that HR referred the concerns raised about the nursing staff to the senior matron.

128. We find that the claimant clearly did agree to his complaint being addressed informally, which it was. He attended a meeting to discuss it and follow up actions were taken to address the concerns he raised. We find that there was no failure to investigate the complaint.

129. We also find that, despite the claimant only having been working at the hospital for a short period, Dr Muogbo had genuine concerns about the claimant's behaviour. This is clearly shown from the contents of Dr Muogbo's email to Dr Sellens on 12 September 2018 (page 355) where he raises concerns about his refusal to prescribe medications that he is not familiar with even when shown by the register or when part of a patient's regular medication, refusal to see or assess patients when requested on the basis that he felt it was the registrar's job to do so, not answering his bleep promptly. It was also noted by Dr Muogbo that despite the claimant complaining about not being shown the ropes, he often declined help when offered.

Lack of educational supervisor

130. Initially the claimant's educational supervisor was Dr Noor however Dr Noor ceased taking on GP trainees. Unfortunately, the respondents do not appear to have communicated with the claimant about this, because on 6 December 2018 the claimant wrote to Dr Sellens to advise that he did not have an educational supervisor because of this (page 613). Dr Sellens replied on 9 December 2018 (page 613), apologising and saying that she thought it had been changed to another trainer and she would follow this up. At the same time she also commented that the claimant had not entered any learning log entries or evidence into his portfolio system.

131. On 11 December Dr Sellens informed the claimant by email (page 612) that Dr Kay Mohanna would be his educational supervisor (the Tribunal refers to her as Dr and not Professor in this section to reflect the terminology used in the email). She gave the claimant Professor Mohanna's email address and suggested that he contact her. Professor Mohanna would normally have one or two trainees, but occasionally three if they were at different stages of their training.

132. In evidence the claimant asserted that his colleagues did have supervisors and that they were of different races (he said one was white and one was Asian/African). He could not provide the Tribunal or the respondents with their names.

133. We find that the claimant did not have an educational supervisor until December 2018 and he should have had one. We find that Dr Noor was initially allocated to be his educational supervisor, however when they stepped back from the role there was an internal error meaning that this role was not reassigned at that point. Once it came to Dr Sellens' attention, she acted promptly to appoint Professor Mohanna, which suggests that there was no deliberate decision not to provide an educational supervisor to the claimant. There is also nothing to suggest that the claimant raised the matter before December 2018, and we find that if he had done so this would have been addressed earlier. We also note that the claimant was excluded from work during some of this period (see our findings on this below) which may have led to no-one realising the issue.

The claimant's exclusion from work

134. The claimant was excluded from GP training on 19 October 2018 until the end of November 2018. This was initially a two week exclusion but it was then extended. "Exclusion" is used by the respondents in preference to the word "suspension". This is because suspension in the context of the medical profession is used when regulatory action is taken to remove the legal right of a doctor to practise medicine in the UK.

135. The reason for his exclusion at that time related to the car park incident referenced above. The reason why he had not been excluded beforehand was because the first respondent was only informed of the nature of the allegation against the claimant on that day by the GMC (page 431 and 432 where this is referred to, and page 394 for the letter from the GMC). The first respondent had been aware of an issue previously relating to an altercation with a car park attendant but had not had the full details disclosed to it.

136. Having now been provided with those full details, the first respondent was concerned that the incident happened within a public space and there was potential that patients saw it and they could not be assured at that stage that the same behaviours would not be displayed again. The first respondent determined that immediate exclusion was appropriate. The first respondent sought to contact the claimant to discuss this with him but could not reach him, and therefore informed him of the decision by e-mail dated 19 October 2018 (page 433). He was advised that a fact finding process would be carried out and was provided with details of well-being support. In the circumstances we find that the decision to exclude him was a reasonable one, given the serious nature of the allegations against him.

137. The claimant objected to his exclusion by email dated 19 October 2018 (page 439). He said that it was the car park attendants who had threatened him and used rude language against him and that the allegations were baseless and false. He said that he had complained of bullying and that he sees this exclusion as punishment. Ms Proudlove attempted to contact the claimant by telephone to discuss his exclusion from the workplace however the claimant declined to discuss matters by telephone (page 438). Miss Proudlove wrote again to the claimant on 22nd of October 2018 (page 437) attaching a letter explaining the first respondent's position (page 441).

138. During his exclusion the claimant was not permitted to attend teaching sessions as well as clinical sessions. We find that it was natural that if he was excluded from work he would be excluded from both.

139. On 9 November 2018, the claimant appealed against his formal exclusion (page 476). Dr Hankin, Case Manager and Medical Director at the first respondent, responded to the claimant on 14 November 2018 (page 488), upholding the decision to exclude him.

140. The claimant's exclusion was lifted on 30 November 2018 (page 517 and page 514), once a detailed investigation had now been carried out. However, the claimant was informed that due to the seriousness of the allegations, Dr Hankin had requested that he be contacted immediately if any further concerns arise during his rotation and the claimant was requested to undertake a reflection in light of the circumstances and concerns raised. He was informed that it was his responsibility to disclose the outcome of the MPTS hearing in January 2019 and that if any action was taken on his GMC registration this would need to be considered in relation to his suitability to undertake his role. Well-being support was again offered to the claimant. The fact that his exclusion was lifted at that time shows that it had been properly kept under review by the first respondent.

141. On 4 December 2018 the claimant raised a concern about whether his exclusion time would count towards his training and requested that it should do so. He said that it seemed to him that the investigation was being used to expose him to bullying (page 526). We consider that it was reasonable for him to be concerned about the exclusion period not being included in his training period, however we find nothing to suggest that the decision amounted to bullying. We heard from Dr Smith that it was not usual for an exclusion period to count towards training if it was a period of weeks, because training is about developing the competencies. We acknowledge that this would have been disappointing for the claimant and understand that he would be upset by this, however in the circumstances we find that this is a reasonable position for the respondent to have taken.

142. We also find that it was reasonable for the first respondent to ask the educational supervisor to inform it of any concerns. Given the nature of the claimants role it will always be reasonable for concerns to be escalated and this did not expose him to bullying.

CSR Report

143. The claimant took a short period of annual leave once the exclusion was lifted (page 517). This meant that he did not return to the third respondent as his next rotation was starting. Ordinarily, at the end of a rotation a trainee would be given a clinical supervisor report ("CSR") by their clinical supervisor, in this case Dr Muogbo. One was not produced at that time by Dr Muogbo. We find that this was because the claimant was absent at the end of his rotation and it therefore got missed.

144. We were presented with a clinical supervisor report dated 28 August 2019 alongside the claimant's closing submissions, which was not in the Bundle. By this stage Dr Muogbo had said in oral evidence that he did not recall whether he did or did not do a clinical supervisor report. The claimant asserts that the fact that he has found this clinical supervisor report which Dr Muogbo had not disclosed shows that Dr Muogbo lied in evidence. We disagree. We find that this is consistent with his evidence that he did not recall whether he did one or not. We also note that the clinical supervisor report would have been stored on the claimant's e-portfolio, which is an electronic system where such matters were retained. It is therefore logical that it is the claimant who had access to this document rather than Dr Muogbo, which explains why the respondents did not disclose it during these proceedings.

145. We find that the clinical supervisor report was not prepared until a number of months following the end of the claimant's rotation. We assume that someone must have chased for the report and this prompted Dr Muogbo to write it. Although Dr Muogbo explained that he would normally produce a report with the trainee in question, given that on this occasion the claimant's rotation had ended sometime earlier, we find that this explains why the claimant was not involved.

146. We also note that the report stated that "*early feedback in post suggested problems in interpersonal relationship with other colleagues and reluctance to work cooperatively with senior direction*", along with various other concerns and notes that Dr Muogbo was unable to comment in some areas. Whilst we accept that would have been upsetting for the claimant to read, it appears to be consistent with what the Tribunal have ascertained of his time at the third respondent. It also in several areas acknowledges that Dr Muogbo cannot comment on the particular issue. For the avoidance of doubt, we do not consider that the negative comments relate to the claimants complaint of bullying and discrimination, but rather to the general feedback from the claimants colleagues about the claimant's work during that rotation.

Rotation to Peel Medical Practice

147. On 5 December 2018 the claimant moved to a new work rotation at the Peel Medical Practice. The claimant says he was prevented from seeing patients between 4 December 2018 and 3 April 2019 whereas other trainees were permitted to see patients. The claimant's rotation did not start until 5 December 2018 and he was on annual leave on 4 December 2018, however we assume the claimant intended the allegation to refer to the start of his rotation. The claimant asserts that the reason he was not permitted to see patients was because of an e-mail from Dr Hankin.

148. His supervisor on this rotation was Dr Barkell. Professor Mohanna gave evidence that Dr Barkell had raised concerns about the claimant. In response to the claimant raising that no concerns appeared on his e-portfolio, Dr Mohanna indicated that she would have spoken to Dr Barkell by telephone or face to face.

149. We accept the claimant's submission that he was shadowing rather than seeing patients during this period. We also accept that other trainees may well have been seeing patients. There was a lack of evidence before us about what was happening during that period and no witnesses at the hearing appeared to have direct knowledge. This was unfortunate, given that it was part of the claimants pleaded claim and we consider that the list of issues was detailed enough to enable the respondents to address it.

150. As explained in Professor Mohanna's witness statement, a placement provider does not have to allow a trainee to lead consultations if they do not feel comfortable with this. She has suggested that the fact that he was not leading consultations indicates that the Peel Medical Centre had concerns about him. We agree, however we feel unable to say whether those concerns were about his ability or about the GMC investigation, or both. The claimant has not produced any evidence either of what he was told the reason was, however in evidence he said that the Peel Medical Centre were "very nice people" and that Dr Barkell was also nice. We find that the claimant therefore did not consider that the Peel Medical Centre we're discriminating against him and not allowing him to see patients. We also find that it would have been for the Peel Medical Centre to make the decision not to allow him to see patients and this was not an instruction from any of the respondents.

151. On 11 December 2018, Dr Smith provided a letter and accompanying documentation to the GMC about the claimant (page 537). We find that this was in response to a request for information from the GMC and was part of Dr Smith's role as the "Responsible Officer" for the claimant. The contents of the letter were factual and did not express opinions. There were a number of appendices which appear to be largely emails. The claimant alleges that the first and second respondents provided the GMC with his personal emails without consent and that this amounted to a breach of data protection legislation and discrimination: his concern appears to largely relate to the appendices. We find that it was appropriate for Professor Smith to respond to the request for information, and there was nothing inappropriate about what he said. It was factual and correct, and was a measured response.

152. On 12 December 2018 Dr Hankin wrote to the claimant about the issue as to whether his exclusion time would count towards his training. It was explained that it would be for Dr Walter, the Head of School, to decide (page 597). The email also confirmed that his allegations of discrimination and bullying had been dealt with by Dr Muogbo.

153. On 23 December 2018 Dr Sellens emailed the claimant referencing a meeting she had had with the claimant and Dr Barkell the previous week. The tone of the email was supportive and acknowledged the stress that the upcoming MPTS hearing could be having on him, and provided details of support available to him. He was given some guidance about how to structure learning log entries to upload into his e-portfolio, and it was also explained to him that his use of capital letters in a particular email was the equivalent of shouting and should not be used, and that the tone of the email also came across as aggressive.

The MPTS hearing

154. On 25 January 2019 the MPTS hearing took place. It was decided that his fitness to practice was not impaired and a warning was issued. This decision was ultimately challenged successful at a judicial review hearing in August 2021 by the claimant (page 2493).

155. On 26 January 2019 the claimant emailed various individuals at the respondents to thank them for their support during the process, and to inform them of the outcome (page 630). He said "*I would like to update you on the outcome of Hearing. Hearing was ok and I have good news. I pleased to inform you that Tribunal concluded that my fitness to practice is not impair".* Whilst this is technically correct, it is a notable omission that he did not reference that he had been given a warning. He clearly recognised that a warning had been issued, as he later challenged this by way of judicial review.

156. On 13 February 2019 the claimant had his first meeting with his educational supervisor Professor Mohanna (page 1038). He alleges that she told the claimant she would be treating him differently because of the car park incident. In evidence, Dr Mohanna could not recall exactly what was said and does not recall saying this, and it is not in her summary note on page 1038. However, she did acknowledge that she might have referenced the claimant being under more scrutiny because of the GMC investigation. We accept this. We find that he would inevitably be under more scrutiny, as would any employee who has recently been under a serious investigation, especially as a warning was issued to him.

157. During the meeting there was also reference to the claimant's wife and child going to Pakistan because his wife's father was very ill. This is recorded in the note of the meeting (page 1038). We find that this discussion took place in the context of providing pastoral support and recognising that the claimant was going through a difficult time. Whilst this is clearly personal information about the claimant, it was done as a mechanism for support. The claimant said that she talked about her own family but did not record that on his record: we see no reason why she would record anything about her own family on his record. His family situation was relevant to ensuring he was adequately supported, her family situation was not.

The stroke ward rotation

158. The next rotation, on a stroke ward, commenced on 3 April 2019. The claimant says that he was sent the rota just one day before the start of the rotation. He said that it should be provided 8 weeks beforehand because at least 6 weeks' notice was required to book annual leave. Within the standard terms and conditions of employment it does state that the generic work schedule must be provided at least 8 weeks in advance (page 2636) however this appears to be distinct from the duty roster (see paragraph 15 of that document). We do find however that the claimant should have been provided with a work schedule 8 weeks before the start of the rotation. We acknowledge that the claimant later (on 22 July 2019) complained that it was only sent one day beforehand (page 751): it does seem strange that it

would only have been sent the day before as the department would presumably have needed to make arrangements in advance, however we have no evidence to show when it was provided to the claimant. We note that the claimant has not provided any documentation showing when it was sent to him.

159. If it was not provided to the claimant at the appropriate time, we find however that it was the responsibility of the admin team to send out the rota therefore, if there was a failing, it was their failing. We also find that there was no evidence to suggest that the claimant was treated any differently to others – although the claimant said that this was the case in oral evidence, he had not raised this at any time before that, nor was he able to provide the details of who had been treated differently to him, and we do not accept that this was the case.

Night shifts

160. On 9 April 2019 the claimant requested not to work nights because of his diabetes (page 667) . He was referred to occupational health on 15 April 2019 (pages 651 and 652), which we find was a relatively speedy response. The advice from occupational health was received on 16 May 2019 (page 663), which confirmed that the claimant was not fit to perform night duties and should not work past 10pm. On 20 May 2019 the first respondent notified the third respondent that he should no longer perform night duties (page 670). We find that the first respondent acted very promptly in addressing this matter and handled it appropriately.

161. It is the respondents' position that, from that point onwards, the claimant was not asked to work night shifts. The claimant says that he was and that he not only remained on the rota, but that he continued to work night shifts on 3, 4, 5, 6, 14, 15 and 16 June 2019. The claimant referred to an email dated 23 July 2019 (page 749) where he had commented (within an email about an ARCP meeting) that he was not happy with the rota where he was put on shift after 10pm. The respondent denied that this was the case and also noted that when the claimant raised a complaint later in the year, he did not raise an issue about night shifts (page 1096). The claimant said that he probably did raise it even if not shown in the notes.

162. During evidence it came to light that the claimant (whilst on CVP) was looking at a document which was not in the Bundle. When asked what this was, he said it was his rota. It was explained to the claimant that he should not be using his own documents whilst giving evidence without the permission of the Tribunal but in the circumstances it appeared to be a relevant document and he was asked to provide it to the Tribunal. Once this rota had been provided to the Tribunal and the respondents, the respondents submitted that this rota was in fact the rota that had been provided to the claimant at the start of his rotation, around April 2019. Therefore, it did show that he would work nights because this predated the occupational health advice stating that he should not. The respondents submitted that the rota was altered following the occupational health advice and that in fact he did not work the nights that he was originally rota'd to work.

163. This led the respondents to provide to the Tribunal and the claimant further documentation in the form of a "live rota" ("the live rota"): this was a detailed spreadsheet which the respondents say shows the actual shifts worked, including embedded tabs explaining any updates to the rota (page 701A and a clearer version of page 701). Having reviewed both the claimant's and respondents' versions of the rota we are satisfied that the position is as the respondents have stated it to be i.e. that the claimant is using the original rota which pre-dates his request not to work nights and the occupational health advice recommending that be agreed to, and the respondents are using the accurate rota which shows the shifts actually worked. Therefore the version used by the respondents is the one which shows the shifts actually worked by the claimant.

164. Looking at the live rota, it clearly showed that the claimant had originally been rota'd to work nights on 3 to 6 June 2019 and 14 to 16 June 2019. However, he did not actually work those nights and this is clearly shown on the rotas. For example, on 3 June 2019, under the column "SHO 2 Night", it records that this shift is worked by a particular (different) doctor, with the letter "L" beside it to denote that they were a locum. Embedded content within that entry is revealed when the cursor is hovered over the entry, and that states "Was Mokhamad". The same occurs on 4, 5 and 6 June 2019. The same is true for 14 and 15 June 2019, and on 16 June 2019 it shows that the claimant's shift was swapped to 20 June 2019, where he appears on the rota as working a day shift.

165. We were also provided with further versions of the rota in a supplementary bundle before the reconvened hearing on 8 February 2024 (at tab 3). These had a specific column showing the claimant's rota'd shifts and clearly show that he did not in fact work nights following the occupational health advice. The entries for 3 to 6 June 2019 show that he worked day shifts, and it is specifically recorded on each of the entries that a locum was used to work the night shift. The same is true of 14 to 16 June 2019. This rota covers the period to 8 August 2019 and at no time during that period does he appear as working a night shift. In preparations for the re-convened hearing, the respondents had also carried out internal discussions over email to verify the rota and this email chain was disclosed in the supplementary bundle (tab 4): at page 7 of that tab, it was stated by the person investigating the matter that "he didn't work any nights after the restriction email". Although we did not hear evidence from the writer of this email, we accept that this was the case, as this aligns with the clear documentary evidence that we were provided with.

166. We also note that there were no emails in the file showing that the claimant had raised a complaint about being put on the night shift rota at that time, or complained that he had been forced to work a night shift at that time. This is despite the claimant's clear ability to complain about things when he was unhappy about matters relating to his employment. The only complaint we had was on 23 July 2019 when, within an email complaining about the ARCP process (page 751) he made a comment that he was not happy with the rota as he was put on the night shift. It is not clear which night shifts he is referring to or whether these are night shifts that he was originally on the

rota to do but in fact did not because the rota was changed following occupational health advice. We do not consider that this email shows that he worked night shifts and, given that in his Tribunal hearing his complaint was about allegedly working night shifts in June (in his written submissions he said that he was "*still working in night shifts until 16.06.2019*"), we find that this issue would have been raised by him in June if he were still being required to work a night shift.

167. Despite being presented with the respondents' rota showing that he did not work nights, the claimant continued to assert in evidence that he did. He not only said that he did on the basis that his rota showed this, but he specifically said that he recalled working nights in June 2019 (i.e. that he was not just relying on what the rota said). The claimant was specifically made aware by the respondent that it would be obtaining rota's to show that he did not work those shifts, and was asked to clarify his position, on the basis that the respondents said that if he argued that he definitely worked the shifts then this would show that he was lying. The claimant continued to argue that he worked night shifts in June 2019. When shown the respondents' rota during evidence, he said that he did not even know some of the people marked with an "L", and commented that these "swaps" were not on his rota. We find that it is not unusual that he did not know the people marked with an "L" given that they were locums and it is also logical that they did not appear on his rota, given that his rota pre-dated the swaps.

168. The respondents accept that the claimant continued to be paid for night shifts following the occupational health advice. This was because of pay protection within the NHS which applied where reasonable adjustments are made. This meant that, despite not working nights, he continued to be paid for them for a period of time. The official policy was that this should continue for at least three months (Supplementary Bundle, tab 2, page 29), however we can see from the payslips disclosed by the claimant that in fact it continued for a much longer period. That does not however mean that he actually worked nights: it means that the respondents exercised their discretion to continue to pay him by way of pay protection.

169. The claimant's evidence on this point was very clearly put. He was adamant that he continued to work nights. In evidence, after the document at page 701A was put to him, he very specifically informed the Tribunal that he worked night shifts in June 2019 but was removed from night shifts in July 2019. He said that he worked all the night shifts that he was originally on the rota to do in June 2019. He said that he had complained about this at the time (despite it not being in his later written complaint). He repeated the point in his closing submissions, arguing in fact that the rota provided by the respondents was "fake".

170. We find that the claimant has lied to the Tribunal when he says that he has a specific memory of working night shifts in June 2019. We also find that he has lied to the Tribunal when he has said that the rota which was provided to him in April 2019 is the final rota and did not change from that shift pattern. We find that the claimant does not genuinely believe that the respondents have fabricated the other rota. It is very clearly a real rota and a record of what he actually worked. We consider that the claimant may

have initially mis-remembered the position, but when presented with the evidence showing that he was wrong, instead of reviewing his position he instead decided to accuse the respondents of fabricating documentation. He said specifically that he remembered working the night shifts (not just that he assumed he had because the shifts were on his rota) on several occasions.

171. Finally, we note that although not part of his pleaded claim, alongside his written closing submissions the claimant provided a document headed "*Unlawful pay deduction and underpaid due disability claimant was deprived from Night shift entitlement*". This document sets out a list of purported night shift entitlements from 2020 to 2024 and a list of specific months in 2020, 2022, 2023 and 2024. Although the nature of the document is not clear, it also states "*As claimant was exampted from night duty due diabetes permanently and respondent should not deprived him from night entitlement*". appears that the claimant is seeking to argue that he was deprived of night shift entitlement at certain points. This is not part of his claim and we do not therefore need to make a decision on this however we would comment that (a) the first respondent's policy makes clear that pay protection is only required for a three month period and (b) it seems somewhat inconsistent that the claimant is arguing both that he was required to work nights when he should not have been, and that he should be paid for working nights that he did not work. We assume he is seeking to argue that he should not work nights, but he should be paid for them by way of reasonable adjustments, but this is not part of his claim.

Breaks

172. The claimant has alleged that there was a failure to provide breaks to him during this rotation. We heard evidence from Dr Mukherjee that there was no set rule around the taking of breaks and it was for individuals to take them according to need and after discussions with the team that they are working with. We find that this is a sensible approach, given the nature of the work that the team carry out and the fact that it would not always be possible to schedule breaks at specific times given patient needs. However, we also accept Dr Mukherjee's evidence that no one stopped the claimant from taking breaks and that he would have been able to take breaks as and when needed. In this kind of role individuals take accountability for taking their breaks as and when possible throughout the day rather than it being specifically rota'd.

173. The claimant has not pointed to any specific occasion when he says he requested a break but was refused one. He has indicated that there were occasions when he was working alone and therefore felt unable to take a break for a period of time: in that situation the claimant could have raised the matter and specifically requested that breaks be provided to him, but we saw no evidence to suggest that he did that. We did see an assessment report diagnosing the claimant with dyslexia dated 25 June 2021, which did make recommendations in relation to regular breaks (page 2228, at page 2250). This postdates the rotation in question considerably and would therefore not have been available to Dr Mukherjee or the team at the time, nor would they reasonably have known that the claimant might have a need

for regular breaks because of his dyslexia, as even the claimant did not at that time know that he was dyslexic.

Treatment of the claimant on the stroke ward

174. The claimant has said that Dr Kay Ling joked about him between May and August 2019, specifically that he clerked patients slowly. The claimant has not provided any specific examples or any specific dates on which this is alleged to have happened, or the context. In the list of issues this is specified to be an allegation of race and disability discrimination, however in evidence the claimant clarified that he did not believe it was related to his disability of dyslexia (which is why he says he clerked patients slowly) because Dr Ling did not know that he was dyslexic and he was not diagnosed until 2021. We agree that Dr Ling did not know, and could not reasonably have known, in 2019 that the claimant was dyslexic – given that the claimant did not know himself.

175. We did not hear any evidence from Dr Ling about this matter, nor were any of the respondents' witnesses able to identify anything to assist us on this point. Although the claimant has said that Dr Ling joked about him, given the lack of any particularity about the allegation, and given that we do not always consider the claimant's recollection of events to be correct (given our findings on the other matters he has alleged in this claim), we do not find, on the balance of probabilities, that Dr Ling mocked the claimant. If we are wrong on that, we would add that it appears to be accepted by the claimant that he did indeed work at a slower pace when seeing patients (the claimant himself has asserted that he should have been given more time for consultations and we infer from this that he was unable to complete his consultations in the time available). In that context, even if a comment were made about the speed of the claimant's work, this would not necessarily be mocking in nature but could have been factual.

Educational Supervisor Report 28 May 2019

176. On 30 April 2019 the claimant met with Professor Mohanna and they discussed the claimant's entries on his e-portfolio. Professor Mohanna made suggestions for how to could improve these.

177. On 28 May 2019 Professor Mohanna submitted an Educational Supervisor Report ("ESR") regarding the claimant (page 1055). It related to the period 1 August 2018 to 28 May 2019. It was a detailed report and in the "Recommendation" section it noted "Unsatisfactory progress". The summary comments accompanying this acknowledged that he was making a good effort, reading well and completing online and other training to develop and maintain his professional competence. It referred to one good "CBD" that graded him as excellent in several areas. However it expressed concern that:

    a. He had not got much evidence in his e-portfolio of interaction with patients or clinical decision making.

b. Those entries which were in the e-portfolio were not written well enough to demonstrate insight and therefore did not provide robust evidence of competence.
c. He carried out joint surgeries at Peel Surgery and did not appear to have consulted along in GP practice.
d. His written and oral skills in English were holding him back, in particular his understanding of the requirements of the e-portfolio and "PDP".
e. In the absence of more firm evidence, it was Professor Mohanna's view that he was not working at the level expected of an "ST1" level trainee.
f. His own self-assessment suggested a lack of insight (being at odds with Professor Mohanna's view).

178. We consider that this was a measured and fair summary by Professor Mohanna. Although the claimant says that Professor Mohanna had not properly reviewed the feedback about him, we find that the claimant had not asked sufficient colleagues for feedback on his performance, and on reading the report we note that in several places she gives him the benefit of doubt where the actual evidence on his e-portfolio was lacking. We also note that she had discussed her recommendation with Dr Sellens in advance (referred to on page 699).

179. The claimant objects to the fact that this was written without him, and said that other trainees told him that they had meetings. Professor Mohanna's evidence was that she had in fact met the claimant twice before completing the form (one of which was the meeting on 30 April 2019), and that she followed her normal practice in the approach she took in completing the documentation. We note that in the ESR report (at page 1062) she comments "*We have now had two discussions about how to make entries in your PDP…*" which supports this. She also had possession of the claimant's self assessment and she thought she had sufficient information to complete the ESR. We accept her evidence and find that this was consistent with her normal practice.

180. The claimant disagreed with the contents of the report (page 694) on the same day. He set out a number of grounds for his disagreement and said that he had very good insight. Professor Mohanna replied the following day (page 693) explaining that the claimant's e-portfolio lacked evidence to give confidence in a higher grade. She noted that he had not yet worked in GP, but had self-assessed himself as competent for licensing as a GP, which is a level most trainees reach towards the end of ST3, whereas he was still at ST1 stage. She referred to there being a mis-match between the claimant's view of his own performance and her view. She ended the email by saying that it was early days and that the claimant was reading and working hard so things would improve if he tried to take on board the feedback. The claimant replied the same day (also page 693), disagreeing again, although he noted in the email that "*I personally very respect you"*.

181. The claimant has alleged that Professor's Mohanna's actions were done to remove him from the training programme because of his race. We find nothing to suggest any intent to remove him from the training programme.

To the contrary Professor Mohanna gives constructive feedback to the claimant on what he needs to do to improve his performance, and ended the email with a reassuring message that she felt things would improve if he took the comments on board. This is supported by an email she later sent to Dr Sellens on 31 May 2019 (page 699) where she commented that "*I think there is a germ of a good doctor in there and I would like to continue to dig and see if we can find it*".

182. On 31 May 2019 the claimant requested a change of educational supervisor (page 1122), and also requested a transfer to the Walsall area. Dr Walter replied on 4 June 2019, informing him that he should liaise with the Training Programme Director about any issue with his educational supervisor.

The claimant's failure to attend work on 19 July 2019

183. At 8.44am on 19 July 2019 (when he was due to start work at 9am), the claimant emailed Professor Mohanna and Dr Mukherjee to say that he could not attend work that day (page 761). The email was titled "*Can not go to work today as unexpectedly friends come from Glasgow"*. In the email he said that he could not attend work because some of his friends from Glasgow and Pakistan had unexpectedly visited. He said he was sorry for the very short notice to request annual leave but he could not leave them as they have *"strong hospitality and Pashtoon tradition and I hope there is enough doctors to cover ward to day. Sorry for any inconvenient"*. There was no request for permission, he was simply telling them that he would not be coming to work.

184. We find that this is a wholly inappropriate basis to not attend work on short notice, and would add that 16 minutes is not just short notice but extremely short notice. This would be the case in any profession, but this is particularly so given the nature of the employee's role and the potential impact on patients. The claimant himself has referred in evidence to the need to give six weeks' notice of annual leave requests. In any case though, even if that were not a requirement, giving notice at 8.44am on the very day of the shift in question is wholly insufficient. He should also have asked permission and not simply informed them that he would not be attending. During evidence, the claimant was somewhat inconsistent as to whether he now accepted that this was inappropriate: he did accept in cross-examination that the reason he gave was not acceptable, however a short time later he was asked whether he regretted not attending work that day and he said that he did not. We find that in reality the claimant still considers that what he did that day was reasonable.

185. In evidence, in addition to the strong hospitality and Pashtoon tradition, the claimant relied on the fact that his wife could not drive and did not speak good English and therefore he also had to go to the shops to buy food for their guests. We accept that hospitality is important in Pashtoon culture, however as a doctor he had responsibilities towards his patients, the respondents and colleagues and the Pashtoon culture does not justify him making a unilateral decision not to attend work at short notice.

186. The claimant has also said that he should be given credit for being honest and for not just taking the day off and pretending it was for another reason (such as sick leave). Whilst we acknowledge that the claimant did not do that, the fact that he did not commit a different act of misconduct does not detract from the one that he did commit. He also suggested when questioning Dr Mukherjee during the hearing that there were other doctors who did not come to work and did not inform anyone. Dr Mukherjee denied being aware of anyone else who had done that and the claimant did not provide any details of who these people were.

187. During evidence the claimant also suggested that, in addition to the reasons stated in the email on 19 July 2019, there was some kind of family emergency which meant he needed the day off. He did not express this at the time to the respondents, and when asked in cross-examination what the family emergency was he said that this was private, that he had the right to privacy, and he declined to disclose this. We find that there was no genuine family emergency: if there had been he would have included it in his email. Even if there was, he did not tell anyone about this so the respondents could not have been aware. If the claimant is seeking to argue that entertaining his guests was the emergency, we find that it was not.

188. The claimant also submits that there was no danger to the ward because he knew that it was well covered. The respondents deny this and Dr Mukherjee says that they were short-staffed that day anyway, and that the claimant would have known that as he had been present at a meeting where short-staffing was discussed the previous day. We accept the respondents' evidence. The claimant could not have known that the ward was well-covered because in his email he himself says that he hopes there is enough cover. In any case, for the avoidance of doubt, even if there was sufficient cover, this is still not acceptable conduct on the claimant's part.

189. The respondents submit that the claimant did not even have any annual leave yet. Although the respondents genuinely thought that to be the case at the time, we find that he did in fact have sufficient annual leave to cover that day. This is because there had, at that time, been a failure to protect his previous length of service for the purpose of long service benefits (this is the same issue as later arose in relation to sick pay) which meant that the annual leave allocation he had been given was lower than it should have been. With his full annual leave allocation, taking into account his previous service, he would have had sufficient. That does not however detract from the overall position that he did not give sufficient notice of his request (and that it was not a request at all, but rather the claimant informing the respondents of what he had already decided to do).

190. Dr Mukherjee told the claimant to inform Professor Mohanna of what he had done. The claimant says that this was inappropriate, however we find that it was entirely appropriate for the matter to be flagged to his educational supervisor. Dr Mukherjee also spoke to Professor Mohanna about it, which we again find to be appropriate. The fact that they discussed it shows how significant the issue was.

191. The claimant also says that Dr Mukherjee shouted at him when they spoke about the issue. We accept Dr Mukherjee's evidence that it is not normal practice for him to shout, however we also find that he would inevitably have had a frustrated tone when speaking to the claimant. We find that anyone would be incredulous at the claimant's behaviour and that this may well have shown in his tone of voice. We do not find that he shouted as such, or that he was rude to the claimant, but it would have been very apparent that he was unhappy with the claimant's actions.

192. Professor Mohanna emailed the claimant at 10.25am on 19 July 2019 (page 747) urging the claimant to reconsider his decision and explaining that not turning up for work is likely to be seen in a poor light by the ARCP panel. The claimant did not change his position.

193. On 22 July 2019 Professor Mohanna emailed Dr Sellens about the issue (page 747). In this email she also raised general concerns about the claimant, saying that he was "*verging on being a liability on the wards, staff are taking avoidance behaviour towards him to ensure patient safety. There are significant concerns about him being totally out of his depth"*. It is therefore clear that by this stage, in addition to the conduct issue relating to his email on 19 July 2019, there were wider performance concerns.

194. Dr Sellens replied on the same day (page 758). In her email she said debated whether a disciplinary process should be followed and she said that it should be noted in the ESR. The claimant also objects to the fact that the issue was referenced on his his e-portfolio (page 1043) and put into his ESR. We find that this was appropriate given the inappropriateness and severity of the incident, and also given that lack of insight was a pre-existing concern about the claimant.

195. On or around 23 July 2019 the claimant had a meeting with Dr Mukherjee. The claimant says that Dr Mukherjee informed him that he would be removed from GP training. Dr Mukherjee denied this. During the hearing the claimant clarified that he meant that he had been told that he "could" remove him from training (not "would"). We find that it was not for Dr Mukherjee to make a decision on removal from training, as he was only the clinical supervisor for that rotation. We find that Dr Mukherjee may have made a general comment to the effect that the claimant's conduct could jeopardise his training. Such a comment would be perfectly reasonable, and factually correct. Dr Mukherjee did not say that he could remove the claimant from training.

ARCP meeting and ESR complaint

196. Also on 23 July 2019 the claimant emailed the assessments team (page 762) to complaint about his ESR report which he said was based on discrimination, bullying and intimidation. Karlene Richards, Assessment, Appeals and Revalidation Officer replied the following day (page 764), saying that these were serious allegations and that he should raise them with his employer, the first respondent. Dr Walter also replied to him on 24 July 2019 (page 763), explaining that the ARCP process is conducted by

entirely independent and external senior GP educators and that he was confident his e-portfolio evidence would be assessed without prejudice.

197. The complaint was therefore not ignored as the claimant has said, but rather he was told what he needed to do to progress it. It is also worth noting that the claimant raised further complaints about issues in the workplace (again alleging bullying and discrimination) on 31 July 2019 (page 777) and the claimant was contacted (page 776) to advise him of the dignity at work policy with the first respondent, and also to ensure that the claimant had wellbeing support. This shows again that the claimant was consistently advised that he should send any complaints to the first respondent and that he was provided with appropriate support from a wellbeing perspective.

198. The claimant's ARCP panel meeting was due to take place on 8 August 2019. The claimant requested time off to attend this and this was initially refused on the basis that he needed to be available in case called by the panel, but not to actually be there. However, through emails it became apparent that there was a genuine need for the claimant to attend in person and he was then granted the time off. Whilst the claimant had to push for this, the reason for rejecting his request initially was because there was lack of realisation that he did need to be there (page 749 to 752).

199. At this stage, although the claimant had been in employment with the first respondent for a year, he had in reality only spent approximately six months treating patients, because he was not permitted to see patients at the Peel Medical Centre and because he had been excluded for a number of weeks during his first rotation. The claimant says that he therefore should not have had an ARCP meeting at this stage. However, the ARCP is a standard process which takes place at set times during the training programme. Whilst we can empathise with the claimant in that he was lacking hands-on experience due to the circumstances, it was nevertheless still appropriate to hold the ARCP at that stage.

200. The ARCP took place on 8 August 2019 and the claimant was issued with "Outcome 3" which means inadequate progress to training with additional training time of 6 months. We find that this was a decision made by an independent panel and, whilst the ESR would have been used in making that decision, it was not Professor Mohanna or Dr Sellens' decision.

201. The claimant appealed the ARCP outcome (page 1035 and 1164). Although the ARCP appeal postdates some of the below matters, we address it here. The ARCP appeal process involves two stages. The first stage is for the same panel that made the original decision reviewing that outcome and any other evidence (as explained on page 917). If the decision is not changed as part of the review process, then the trainee has the option to proceed to an appeal hearing. At that stage the matter is dealt with by an independent panel. These are addressed further below.

Respiratory Rotation and Dignity at Work Complaint

202. The claimant moved to his next rotation on the respiratory ward in early August 2019, and this lasted until 3 December 2019.

203. On 7 August 2019, Professor Rowland wrote to the claimant about his request for a transfer and his allegations of bullying, discrimination and unfair treatment (page 784). By this stage the claimant had said that he did not want to formalise his concerns under the dignity at work policy because he did not want to involve the first respondent. It was explained to him that a transfer could not be facilitated based on his allegations without them being formally investigated. On that basis it was explained that, even though he had said he did not want to involve the first respondent, a case investigator would be appointed who was external and independent from the Burton GP training scheme. The claimant was asked to provide further detail of his complaints and was told of the wellbeing support available to him. This also shows that his complaints were not being ignored.

204. The claimant submitted details of his complaint (page 837) – although undated, we believe this to be the complaint he says he submitted on 14 August 2019. Dr Reed was initially appointed to investigate this (page 912). He met with the claimant to discuss his complaint on 15 October 2019 (page 1096). However, part way through the investigation, Dr Reed identified a potential conflict and therefore he withdrew from the investigation (page 1196). Whilst unfortunate, this was an appropriate course of action.

Disciplinary Investigation

205. The first respondent determined that the matter should be subject to a disciplinary investigation. There appears to have been some confusion about who the investigator was. In evidence it was submitted that this was Mr Geoff Neild, and we find that he was the individual who took the matter forward and completed that investigation stage. However, we also saw documentation indicating that a different investigator, Dr Crampton, was appointed (page 2738). The claimant says that he was interviewed by Dr Crampton on 7 September 2019, although there were no notes from this meeting in the Bundle. In addition, we were also provided with a letter during the course of the hearing (on 23 November 2023), dated 28 August 2019, which suggested an intention for Dr Crampton to investigate the claimant's dignity at work complaint (which he also did not do). It is clear to the Tribunal that Dr Crampton's investigation did not reach a conclusion, but we recognise that the claimant may have attended two separate investigation meetings about the same matter. We find that this was due to an internal error on the respondents' part – as demonstrated by the clear surprise on the faces of the respondents' witnesses when this matter came to light during the Tribunal hearing.

206. The claimant says that the decision to commence a disciplinary process was made because he raised a dignity at work complaint. We saw an email (page 831) discussing the decision to start a disciplinary process in which Jennifer Tully, HR Service Manager, stated *"Please note that we have not informed Dr Mokhammad of the decision to proceed to an MHPS investigation just yet as we don't want it to appear as though the decision*

has been taken in response to the submission of the statement regarding the alleged bullying." Whilst the first respondent acknowledged the potential for it to appear as though the two matters were linked, that does not mean that they were and we find that they were not. We also find that it was entirely appropriate for the 19 July 2019 matter to progress to a disciplinary investigation.

207. A letter was sent to the claimant by the first respondent on 5 September 2019, explaining that formal investigation into his absence on 19 July 2019 was required. Mr Neild was appointed to hear the disciplinary investigation (subject to the comments above regarding Dr Crampton also being involved). The claimant on occasion refers to Mr Neild as "Neil Geoff" however this is the same person, it is simply that the claimant has put his name the wrong way around. Mr Neild was employed by the third respondent but had been on secondment for a period of time. The claimant says that Mr Neild was not sufficiently independent. We find that the claimant has misunderstood what the respondents mean by "independent" in this context. Independence means that the investigator is not part of the department or connected to the individuals being investigated, it does not mean that the investigator cannot be employed by the same organisation (which is what the claimant submitted).

208. Mr Neild interviewed Professor Mohanna (on 13 September 2019), Dr Mukherjee (also on 13 September 2019) and Ms Dalby, Medical Workforce Coordinator, (on 20 September 2019) as well as the claimant (on 18 September 2019).

209. The claimant has alleged that Mr Neild discriminated against him during their meeting on 18 September 2019 (notes at page 946), at which MS Shelley Boyle, HR Manager, was also present. In his witness statement the claimant described it as "*the investigator was the most racist person I ever met in my 30 years of living in Europe and the UK"*. When asked about the basis for that assertion, the claimant explained that this was because Mr Neild had asked him about the Pashtoon tradition of hospitality and Pashtoon culture. We find that Mr Neild did indeed ask the claimant about these things, but that this was because the claimant himself had given this as the reason for his non-attendance at work on 19 July 2019. It would have been remiss of Mr Neild if he had not referenced these matters. We have seen nothing in the notes from the meeting or from Mr Neild's evidence to suggest that the line of questioning was in any way inappropriate. To the contrary, Mr Neild gave evidence (which we accept) that he spent time researching Pashtoon culture and the tradition of hospitality before the meeting and it was approached with sensitivity and from an open perspective of Mr Neild genuinely wanting to understand the claimant's position on the matter.

210. The claimant described Mr Neild's conduct as "blackmail". When asked what he meant by this in cross-examination, he said that Mr Neild was asking about his race and that this was blackmailing. We find that the claimant does not understand the meaning of the word "blackmail" and have found no allegation of specific wrongdoing that could amount to blackmailing (which we note is a serious allegation to make).

211. During the meeting with the claimant, the claimant referred both to his allegations of bullying and harassment against the respondents, and to the GMC investigation into the car park incident. Nr Neild told the claimant that the meeting was to focus on the 19 July 2019 matter. The claimant did not dispute that he did not attend work on that day and said that it was due to the unexpected visit from friends and relatives. He said the ward was well covered (yet acknowledged that he had been at a ward meeting the day before where it had been noted that it was short staffed), and confirmed that he was aware of the process for submitting annual leave requests.

212. Mr Neild felt that the claimant did seem to understand that he handled the situation badly and he did apologise however the claimant alleged that the investigation and the failure to authorise his short notice leave was due to bullying. At the end of the interview Mr Neild asked the claimant what he had learnt from the experience and he replied that he had learnt that, if you are honest you will lose everything. Mr Neild felt, and we agree, that although the claimant had apologised, in reality he did not appreciate the severity of his actions and was not taking proper accountability for them.

213. Mr Neild prepared an investigation report (page 931) which was sent to Ms Tully on 7 October 2019 (page 930). His conclusion was that all three allegations were supported by the evidence and that the claimant lacked self-awareness and accountability for his actions.

214. Professor Rowland wrote to the claimant on 21 October 2019, explaining Mr Neild's findings. He said that, although such matters would normally be heard at a full disciplinary hearing, the claimant would also have the option to elect to have the case dealt with through a fast track process. This is where an employee admits to an allegations and does not wish to contest it. Wellbeing support was offered. The claimant declined the fast track process.

ARCP Review Outcome

215. The ARCP review was completed and the outcome notified to the claimant on 30 October 2019 (page 994). The original decision was upheld and he was given the right of appeal, which he exercised on 6 November 2019 (page 1034).

Walsall

216. From 4 November 2019 the claimant's GP training was transferred to Walsall. Mrs Houghton shared details of the reasonable adjustments required by the claimant with the new Host Organisation (we comment on this here as we heard specific evidence on this point, the fact that we have not commented on this being done at previous stages does not mean that it was not done, simply that we heard no evidence on the point).

217. An Occupational Health report was received in relation to the claimant, dated 4 December 2019 (page 1081). This related to his fitness to attend an investigatory meeting and said that he was fit to attend such meetings but

that *"He should have the opportunity to have representation at the meetings as appropriate"*. We note that this does not specify the type of representation or that it is the respondents' duty to organise this or fund it for the claimant.

ARCP Appeal

218. The claimant's ARCP appeal meeting took place on 20 December 2019 and the outcome was confirmed to him by letter dated 9 January 2020 (page 1285). Dr Greening was one of the panel members. The finding of the appeal panel was that there were potential flaws in the ARCP process because it had assumed that all of the previous posts counted towards his training, when in fact for at least one of his posts he was an observer, and therefore there was a question as to whether or not they should have done. The claimant was asked to provide evidence that confirms the period of training that would not be counted towards training, for example by way of statement from Dr Walter. He would need to upload this to his e-portfolio in time for his next ARCP along with a statement from his GP placement that he was for the most part only observing and not leading on consultations. He was told to collate all missing evidence and again upload them to his e-portfolio before his ARCP. The January 2020 ARCP panel would assess and determine if those placements did in fact count towards training.

219. When the outcome of the ARCP appeal was verbally confirmed to the claimant, he was unhappy with this and the letter dated 9 January 2020 commented that "*your attitude remained quite alarming, and your conduct was quite dogmatic to the appeal hearing panel. You were very forceful in your need to state your point several times and interrupted every panel member in turn who spoke to you and accused the Appeal hearing panel of wasting your time before leaving the room"* (page 1289). We find that this demonstrates that the claimant behaved inappropriately during the meeting which is rather surprising given that the appeal panel were in fact offering the claimant the opportunity to update his e-portfolio and potentially to enable the outcome he had appealed against to be overturned.

Invitation to disciplinary hearing

220. The claimant was invited to attend a disciplinary hearing on 6 January 2020 (page 1142). Dr Bassi was to hear the case. The formal invitation letter, case investigators report and all written evidence was sent to the claimant on 19 December 2019 (page 1139).

221. On 19 December 2019 the claimant emailed Ms Tully, saying that he could not attend any hearing without a solicitor (page 1238), and alleging that the investigators report was all based on discrimination and racist language. He said that he could not attend any hearing or interview with "both of you" (it is not clear who was being referred to here).

222. Ms Tully was on annual leave and Ms Proudlove replied in her place on 31 December 2019 (page 1237). It was explained that the first respondent was unable to provide funding for legal representative however he was provided with the details of "NHS Resolution" for free advice and advised that he

could also contact his medical defence organisation or union, and told that some insurance policies provide this cover. He was asked to review the investigation report and send back any specific examples of inaccuracies or omissions so that this could be considered. It was also explained to the claimant that, in relation to his complaint under the dignity at work policy, Dr Reed was unable to proceed and Ms Jane Thomas (Head of Employee Relations) wished to meet with him to discuss his concerns and the most preferable resolution. She would then appoint a case investigator. The claimant was asked to provide his dates of availability to meet with Ms Thomas.

223. On the topic of legal representation, the claimant has alleged during these proceedings that the indemnity insurance which the respondents have for doctors should cover the cost of him having legal representation in meetings (and at this Tribunal hearing). We find that the purpose of the indemnity insurance is to provide protection for doctors in the event that they have action taken against them by patients, rather than to provide representation in internal disciplinary proceedings and/or Tribunal proceedings brought by the doctor. We also find that any reference to allowing legal or other representation in Occupational Health reports means simply that the respondent should not prevent the claimant from doing that (as many employers ordinarily do, given that the statutory right to be accompanied relates to colleagues and union representatives), and does not require the respondent to fund or provide the legal representation.

Update on disciplinary and dignity at work matters

224. On 7 January 2020 the claimant was sent an update on both the disciplinary and dignity at work matters (page 1240). In relation to the disciplinary hearing, it was explained that given the claimant's allegations regarding Mr Neild's investigation, the hearing would be postponed to enable the claimant to review the investigation report and provided a statement setting out specific examples of inaccuracies/omissions for review. He was asked to do so by 10 January 2020. In relation to the dignity at work matter, he was reminded that this was a separate matter, and he was again asked to provide the dates on which he would be available to meet with Ms Thomas to progress this, again by 10 January 2020. The claimant did not do so. We therefore find that, to the extent that his dignity at work complaint was not progressed, it was due to his inaction. This appears to be due to the claimant mistakenly believing that an "independent investigator" had to be someone from outside the third respondent entirely, and not just someone unconnected to the individuals and matters complained about.

225. On 20 February 2020, Steven Preece from NHS Resolution wrote to Professor Rowland (page 1307). Although not directly relevant to his pleaded claim, the claimant has alleged that this was an act of religious discrimination and therefore we mention it briefly here. In the letter it mentions the ongoing disciplinary matter and says that the investigation has been paused in order for an occupational health report to be obtained because the claimant had raised some health issues. The letter outlined that, during the course of that investigation, questions had arisen regarding the claimant's fluency in English, especially written English. It was noted

that consideration was being given to whether this issue needed to be reviewed, and a review date was set for 12 May 2020. The letter also references the claimant being investigated for *"not coming to work because he was unexpectedly visited by friends on a religious festival"*. For the avoidance of doubt, we see nothing in this email which appears to the Tribunal to be inappropriate, save that in reference to the disciplinary matter there is an erroneous suggestion that there was a religious festival on the date of the incident. Any reference to the claimant's English is about his understanding of the English language, and does not relate to any medical condition.

The claimant's sickness absence

226. The claimant was absent from work due to infection between 16 and 30 March 2020 (we have taken this from a separate sickness chronology which was provided to the Tribunal by the respondents during the hearing). He was then absent due to anxiety and stress from 2 April 2020 until 9 July 2020. In an email chain between 2 April 2020 and 7 April 2020 (page 1334) he said that he was not happy to work in the current "epidemy of COVID-19" and we find that the email chain more generally shows that the reason for the claimant's anxiety was because of his (understandable) concerns about catching Covid-19 given his diabetes. In his impact statement for the purposes of assessing disability (page 2282) he said that this was when his condition commenced (although other than saying that it was sometimes better and sometimes worse, that he was prescribed medication and he did not know how long it would last for, he provided very little additional information about it).

227. On 9 April 2020 a management referral to occupational health took place (page 1341). This recorded that the claimant was self-isolating due to Covid-19 and that "*Dr Mokhammad was not keen to return to work and felt that the issue around where he was working caused him stress and anxiety, and as such he has now been signed off work".*

228. On 23 April 2020 the claimant emailed Ruth McCann, HR Advisor at the first respondent regarding his health in connection with a covid-19 risk assessment. He listed various medical conditions and said *"I also have stress, anxiety, tension and depression caused due to current situation…"*.

229. Occupational Health reviewed the claimant again on 11 May 2020 (page 1350) and recorded that the claimant had told them that he was suffering from "*severe anxiety disorder affecting his concentration. He is extremely worried about his underlying conditions and his risk of complications if he were to contract Covid-19."*

230. On 2 June 2020 an occupational health report was received in relation to the claimant (page 2292). This recorded that "*he says that his anxiety depression has been worse since we last spoke….he remains extremely worried about his underlying conditions and his risk of complications if he were to contract Covid-19"*. It also stated that he would be unlikely to fit to attend a disciplinary hearing for at least 4 weeks.

231. A further report was received on 30 June 2020 (page 2295). This recorded the claimant as having said that his anxiety and depression was improving.

Sick Pay

232. Due to the respondent having incorrectly recorded the claimant's length of service for calculation of sick pay purposes, the claimant's salary was cut after two months of absence, however that should not have happened. Although this was a clear error on the first respondent's part, we find that when it came to light in 2022 the first respondent took steps to rectify it and made additional payments to the claimant to make up the shortfall (page 1696). The claimant has alleged that there are still monies owed to him and has provided a number of payslips and his own documentation, however he has not clearly set out how this has been calculated, save for a table at page 1722 which he did not refer to during the hearing. The first respondent has set out clear calculations, and we have seen email exchanges within the first respondent which show that the matter was investigated (page 1663) and calculations made of the sums owing to him (page 1660), which were then paid. On the balance of probabilities, we prefer the first respondent's evidence and find that although there were underpayments during the period of sick leave (and in relation to subsequent sick leave), these were rectified and the balance owing was paid to the claimant. It is worth noting that there was a recovery advance paid initially, followed by the balance. The total gross repayment was £7,926.95 (page 1660), which is recorded as having been paid to him on a spreadsheet (page 1696) which was also provided to the claimant on 13 June 2022 (page 1697) and he was asked to tell the first respondent if he did not agree that it was correct.

233. Further investigations were then carried out by payroll later than month as it appeared that there could still have been an underpayment (page 1719) and there were communications between the first respondent and the claimant's union representative about the matter. Following that investigation, it was concluded on 30 June 2022 that in fact all arrears had been paid to the claimant, as the potential additional underpayment had already been paid in August 2020 (page 1957). Although it is not possible for the Tribunal to cross-check against individual payslips due to the complex nature of the way the payslips are set out, we find on balance that this was indeed the case: by this stage the calculations had been reviewed by a payroll officer and cross-checked by his team leader and the overpayments team leader.

Disciplinary and Dignity At Work

234. On 8 April 2020 Professor Rowland had written to the claimant about the ongoing disciplinary and dignity at work matters (page 1337). In relation to the disciplinary matter, it was explained that he had now seen occupational health and that this had confirmed him to be fit to attend disciplinary meetings with adjustments. We have had sight of that report (page 1320) and it says that the claimant should have the "*option of having representation, if possible*". As well as talking about other potential adjustments it goes onto say "*As you will appreciate, I am unable to advise*

on who should pay for any legal representation". In the letter from Professor Rowland, he confirmed that the recommendations for the option of having representation, and breaks if the meeting was longer than two hours would be implemented, and explained that if he chose to be accompanied by a representative this would be for him to fund himself. From the wording of the letter, this was clearly something that had already been discussed between them. The letter said that the hearing had been provisionally arranged for 16 April 2020 but due to the claimant's absence from work it would not go ahead, and a further occupational health review would take place.

235. In relation to the dignity at work complaint, it was explained that arrangements could be made for a meeting once he had attended a further occupational health review, but that the investigator would be an employee of the third respondent and if he failed to attend a meeting with Ms Thomas then the matter would not be progressed. Wellbeing support details were provided.

236. The claimant was later sent a further invitation to disciplinary hearing on 13 July 2020 (by which time his period of sick leave had ended), scheduling the hearing for 30 July 2020. In response, the claimant emailed Ms Lydia Kilshaw in HR, referring to his separate discrimination complaint, complaining about the fact he was also interviewed by Dr Crampton as well as Mr Neild, and ending by saying that he could not attend or recognise any hearing that related to Mr Neild's report because he used racist and discriminatory language in it. He sent a further email that evening repeating this. The respondent agreed to postpone the hearing to consider the points he raised (page 1389).

Aliya Murtaza

237. On 12 August 2020 the claimant spotted what he considered to be an incorrect entry on his e-portfolio which had been added by someone he did not know named Aliya Murtaza. The content appeared to have been added that January however the claimant did not see it until then. We did not see evidence to show us whether it was incorrect or not. He was angered by this and sent her an email on 12 August 2020 (page 1410). The email stated:

"*Hi*
I do not know who are you ? and who allow access to my GP E portfolio?

you entered incorrect and inaccurate information (GP VTS teaching attendance for the autumn term dates of 19/09/2019 – 28/11/2019. Attended 2 out of 12 mandatory sessions.) as I attended almost all GP VTS teaching. from 19.11.2019 to 28/11/2019) I missed only last teaching, I have evidence so can you write who give access to my E portfolio and you are not any of my assessor why you write this in my e portfolio as this is incorrect information.
If you provide me full explanation that you entered with mistake or for other any reason, otherwise I will request Royal college of GP for investigation of this wrong information by the person who has no any relation to my training

and I will refer you to GMC as well for investigation, if you have not provide credible explanation.
Regards

Dr Mokhammad ST2 GP trainee"

238. The tone of this email is not what would be expected in a professional environment. It is over the top, rude, and to threaten to report someone that he does not know to the GMC for one incident of inaccurate recording of information (when he did not know the reason for that) was inappropriate. Ms Murtaza was an administration assistant and the claimant had no knowledge of her before that date.

239. On 13 August 2020 the claimant emailed Dr Smith and others, complaining about Ms Murtaza having entered "incorrect, misleading and wrong" information on his e-portfolio. He referred to the treatment as discriminatory.

240. Ms Rachel Slater, a senior postgraduate administrator within Ms Murtaza's team, wrote to the claimant on 17 August 2020. She said that it was standard policy for VTS attendance to be recorded in a trainee's e-portfolio and that the attendance was collated from the signing in sheets which she said accord to what Ms Murtaza had noted. She said that she was surprised and concerned by the tone of his email and said that it had caused distress to Ms Murtaza. The email was copied to Dr Sellens and Dr Palmer (Head of School).

241. The claimant replied to Ms Slater on the same day (page 1408). In this email he said:

"*First of all you and your colleague are providing false and misleading information in my Eportfolio without my permission, I have evidence that I attended more than 80% of the VTS teaching for the period your colleague entered false and misleading information To my E portfolio. Dr Sellens and other PTDs should have witness of this that I attended more teaching as they also saw me in every teaching.*
Its not normal to have access to any trainee E Portfolio without his permission for anybody, E portfolio has very confidential and private information, its breach of confidentiality law. your colleague was not my assessor as she wrote in my E portfolio, she is not my assessor and provided false information of my attendance of VTS.
It s not first time when Burton hospital admin staff and VTS involve in deception, provide false and discriminate information and play bullying game in my E portfolio, I can see from your tone in the email that you have played part to provide this assess to my E Portfolio to your colleague without my permission.

It s also not first time when Burton Hospital and VTS, are making mokery of my email with tone as they know about my previous investigation of false accusations, in this way they bullying me and take advantage of that investigation but I am not the person to be scared this kind of threat.

I already requested West midland GP training head and Deanery head to investigate this illegal access to my e portfolio and why this false information was provided by this person, who allow her this access without my permission.
If I have not got credible answer, I will not hesitate to go further for fair justice. This kind of criminal and unprofessional activity is not allow to play in the any Trainee E Portfolio.
This email and all your emails, E portfolio and other evidence will be used for any legal purposes if necessary.
Regards

Dr Mokhammad GPST2"

242. Dr Smith had been copied into the email and he replied to the claimant on 18 August 2020 (and the others at the respondents who had been included on the claimant's original email), (page 1408) expressing concern at the content and style of these emails and said that he would liaise with the first respondent to address it. He said that he would also ensure that support was provided to the staff criticised by him. He then sent a separate email to Ms Slater, apologising for the claimant's behaviour and requesting that an apology be passed onto Ms Murtaza. He said that he was working with the first respondent to address the matter. The claimant wrote to Dr Smith on 18 August 2020, repeating that he was being discriminated against and referring to abuse of his e-portfolio (page 1414).

243. We find that the tone of the claimant's email on 17 August 2020 was entirely inappropriate again. It was an overreaction and came across as threatening. The language used was very inflammatory. Even if the claimant was right and the wrong information had been uploaded, it was unnecessary and inappropriate for him to use such language and tone with Ms Slater and Ms Murtaza. We find this to be a clear example of the claimant failing to understand the consequences of his tone and actions on other people: even during the Tribunal hearing it was apparent that the claimant did not understand that he had overreacted on this issue.

244. The claimant has objected to the fact that he raised a complaint, but it was him who was investigated and not Ms Murtaza. We find that the claimant was investigated not because he made a complaint, but because he wrote highly unprofessional emails using a threatening and aggressive tone. It just so happened that his complaint was within those highly unprofessional emails. We find that in those circumstances, the focus for the respondents would have been to support the recipients of the inappropriate emails. He also already had a separate dignity at work complaint ongoing in relation to alleged discrimination by the third respondent so if he felt that this was a further instance of discrimination it could have been considered as part of that investigation. We can understand why the respondents did not launch an investigation into Ms Murtaza and/or Ms Slater in the terms requested by the claimant. We would also note again the claimant's general approach to allege discrimination at every decision made in relation to him: it would simply not have been practicable for the respondents to launch a separate investigation on each occasion that he did that. That said, Professor Rowland also suggested (page 1420) that the correspondence be reviewed

by HR to identify anything capable of amounting to a grievance or dignity at work complaint and to handle that in accordance with policies. Therefore his complaint was not in any case ignored.

245. On 19 August 2020 Professor Rowland suggested to Dr Smith (page 1420) that the ongoing disciplinary proceedings be paused whilst an investigation is carried out into the claimant's emails to Ms Murtaza and Ms Slater, so that if it is appropriate to consider them at a disciplinary hearing it could be consolidated with the other allegations. He ended by saying that the claimant would be informed the following week, to avoid communicating news of a pending disciplinary investigation on a Friday when there may be less support available over the weekend. We find that this was a sensible approach, and his closing remark showed compassion.

246. On 3 September 2020 the claimant was sent a letter (page 1421) informing him that the two emails sent to Ms Murtaza and Ms Slater would also be investigated, and that a case investigator would be in touch. In the meantime, his ongoing disciplinary hearing process would be paused. The claimant emailed Professor Rowland on 7 September 2020, saying that his own complaint needed to be investigated, that his emails were very professional and saying that it was a crime to provide illegal access to someone to his e-portfolio for deception. He said that this was another part added to his dignity at work complaint. Once again his tone was inflammatory and inappropriate in a workplace setting. It also shows a complete lack of insight on his part that he was continuing to argue that his emails had been "very professional".

247. On 25 September 2020 Ms Natalie Villagas, an HR Business Partner, wrote to the claimant (page 1433), noting that the claimant had declined to meet with Ms Thomas regarding his dignity at work complaint. The letter explained that he had been provided with a further opportunity to do so by email dated 15 September 2020 but he had not responded to that. He was therefore informed that the matter was now considered closed (i.e. that it would not be investigated further).

248. On 16 November 2020 Ms Anne Potter of the first respondent wrote to the claimant, inviting him to an investigation meeting with her regarding the emails to Ms Murtaza and Ms Slater (page 1439). This was due to take place on 23 November 2020. The claimant replied on 19 November 2020 (page 1437) saying that he could not speak to her without any solicitor or legal expert (although he did not specifically spell out that he was expecting to be provided with one by the first respondent). He reiterated that his emails were professional and appropriate.

249. The claimant refused to attend the investigation meeting and it was to be rescheduled. The Tribunal is not clear as to the reason for the delay, but the next correspondence we saw was on 6 April 2021, when Ms Potter emailed the claimant with an update (page 1452). She said that this was further to their meeting on 5 March 2021. She explained that due to service demands the investigation was not yet concluded and she asked him a number of clarification questions.

250. The investigation report was completed on 15 April 2021 (page 1460). In conclusion, it found that the claimant had now agreed that the contents of the emails fell below the standards expected of him, and that he had put this down to his lack of communication skills. A letter was sent to the claimant on 13 May 2021 by Professor Rowland (page 1467), explaining that he had determined that this should be considered at a disciplinary hearing and that it would be consolidated with the other matters that were already waiting to be dealt with at a disciplinary hearing.

Dyslexia diagnosis

251. The claimant was diagnosed with dyslexia and dyspraxia on 25 June 2021 (page 2228). The report recommended a number of strategies to assist the claimant, including (at page 2250) a comment that the claimant "*is encouraged to pace himself when he is working which means working for short periods and taking regular breaks.*". The claimant was also absent from work due to ill health from 22 June 2021 to 25 July 2021.

252. The claimant explained in his impact statement (at page 2283) that this condition gave him a lot of day to day difficulties, such as cooking, needing help with shoe laces, needing more time for reaching and writing reports and consultations, and needing specific software. He says that he works more slowly than other people.

253. Ms Laura Driscoll, Assistant HR Business Partner at the first respondent, wrote to the claimant on 25 August 2021 (page 1489). In this email she referred to his recent diagnosis and set out some steps for the claimant to follow in order to obtain further adjustments. She informed him that he should inform the Training Programme Director and liaise with the Royal College of General Practitioners to seek additional time in examinations, told him to liaise with his GP regarding assessment for ADHD (the report dated 25 June 2021 had suggested that it was also worth exploring this condition) and she recommended a referral to Remploy and to involve Access to Work. She attached information regarding Access to Work and explained that he should apply directly to Access to Work for any equipment or supportive tools. She also referenced that he already had a permanent adjustment in place regarding night work. In this email she also recorded that the claimant had stated that his clinical work was unaffected by the new diagnosis and that it affects him academically only, with him feeling he had adequate support from his supervisor on placement in his current rotation.

254. A further occupational health report was obtained dated 8 October 2021 following his diagnosis (page 2263). This, combined with Ms Driscoll's email, shows that the first respondent had reacted to his diagnosis appropriately. This occupational health report set out certain recommendations, including technology solutions through Access to Work (and it commented that the advisor had recommended that the claimant contact Access to Work), additional time in examinations, recording meetings, and pacing himself at work, which was stated to mean working for short periods and taking regular breaks. It also stated that his dyslexia was likely to fall under the Equality Act 2010. The report recommended scheduling the disciplinary hearing for in three months time to allow the

correct support to be instated (talking therapy, counselling and medication) and time to take effect and increasing appointment times to 15/20 minutes, among other things. It did not make any specific recommendation in relation to representation at hearings.

255. Professor Rowland wrote to the claimant on 21 October 2021 regarding the ongoing disciplinary proceedings. He referred to the claimant's recent diagnosis of dyslexia, and explained that Ms Houghton had informed him that the recommended adjustments would be shared with HEE (Health Education England) around his future training needs. He was reminded that he had been sent the details of Access to Work and encouraged to contact them to ensure appropriate adjustments are put in place. He confirmed that the disciplinary hearing would be postponed for three months from 8 October 2021 in line with the occupational health recommendation. The claimant was later sent a further invitation to disciplinary hearing on 14 December 2021, rescheduling the hearing to 12 January 2022. Given that he had been invited to the original disciplinary hearing on 6 January 2020 he was informed that the hearing would continue in his absence if he did not attend.

256. The claimant was then signed off sick due to stress on 25 November 2021, and this absence continued until 4 July 2022.

257. We saw an email chain between 30 November 2021 and 2 December 2021 (page 1509) between Ms Driscoll at the first respondent and the claimant's BMA union representative, Mr Scott Cresswell. In this chain the representative had explained that the claimant had raised concerns that the occupational health recommendations had not been implemented by his current placement, St Johns, including no Access to Work being completed. It was explained to Mr Cresswell that Access to Work was a self referral scheme and therefore the claimant would need to chase this up himself. Ms Driscoll also commented that she was unable to see the recommendation for additional time for consultations in the occupational health report so she said she had asked the claimant for further information. She was incorrect as this is clearly referenced (page 2265) however we can also see that she was investigating the matter further and had asked the claimant for clarification, rather than disregarding what he had said.

258. Ms Driscoll was involved in a separate email chain on 3 December 2021 with Mr Cresswell and the claimant, in which the claimant confirmed that he had contacted Access to Work and was waiting for an adviser to contact him. Ms Driscoll asked him to confirm what occupational health recommendations had not been implemented so that she could try to support with these.

259. On 16 December 2021 Ms Jennifer Prosser, HR Advisor at the first respondent, emailed the claimant's supervisor and practice manager in his current rotation regarding the occupational health recommendations (page 1521). In this email she included a recommendation that the claimant's appointment times be increased from 10 minutes to 15/20 minutes. In this way, the first respondent had made sure that the host employer knew what

adjustments to make. It would then be for the host employer to implement those recommendations.

260. On 21 December 2021 a further management referral to occupational health was made (page 2297). This recorded (at 2299) that the claimant had been absent since 18 November 2021 due to stress and anxiety. It also said that the time he required to extend his consultations due to dyslexia had not been given and that HR had re-sent those recommendations to his host employer, supervisor and others.

The disciplinary hearing

261. The claimant requested a postponement of the disciplinary hearing through his union representative on health grounds on 4 January 2022 (page 2509). This request was refused on 7 January 2022 (page 2508) and it was stated that the hearing would continue in his absence if he were unable to attend. This was due to the amount of time that the investigation had been ongoing for and the number of occasions it had already been rescheduled, and included a timeline. We find that in the circumstances and given the significant time that had by now passed since the incidents in question, this was a reasonable approach to take notwithstanding the claimant's ill health.

262. Although the claimant's representative had indicated that he was too ill to provide a statement for the hearing, the claimant did in fact do so (page 1523). In this statement he referred to the strong culture of hospitality and the lack of food at home in relation to the 19 July 2019 incident and said that he classed this as a family emergency and that he believed sufficient cover was available. He asked that the GMC case regarding the 2017 car park incident be disregarded as the decision was quashed following judicial review. He set out a number of inaccuracies he felt were contained in Mr Neild's report. He said that "*I recognise I could have handled this situation better and explained how long my visitors were staying and when I would next be in"*. The Tribunal notes that he does not actually suggest that he should not have taken the leave in the first place, although later in his statement he did apologise for what happened and said he would handle the situation differently if it arose again. In relation to the emails to Ms Murtaza and Ms Slater, he said that his e-portfolio should not have been accessed and he did not know why they had written what they did, which made him very frustrated. He said that English was not his first language, that he did not intend to upset anyone, but having reflected he could now see how the tone of the emails could be perceived and he apologised. He referred to his ill health as a mitigating factor.

263. The disciplinary hearing went ahead on 12 January 2022 and was conducted by Ms Jacqui Bussin as responsible officer, with Ms Potter and Mr Neild present as case investigators along with HR (notes at page 1544). Having considered the evidence and taken into account the claimant's statement Ms Bussin decided to issue a first written warning for twelve months from that date. This decision was confirmed to the claimant by email dated 13 January 2022 (page 1549). The Tribunal considers this decision to have been properly considered and in fact we consider that many employers would have issued a more severe sanction in the circumstances.

264. On 20 January 2022 a further occupational health report was received in relation to the claimant (page 2300). It said that the claimant was experiencing psychological symptoms attributed to work related stress. This said that he would be fit to attend a further hearing in four to six weeks "*with representation present"*. It did not specify the type of representation or whose responsibility it was to provide it.

265. The disciplinary outcome was formally confirmed to the claimant by letter dated 25 January 2022. It set out detailed reasons for the outcome and also set various conditions for the claimant to adhere to, such as engaging with Access to Work and neurodiversity coaching, and declaring the matter on his ARCP form.

The claimant's appeal, ongoing absence and Access to Work

266. The claimant appealed against the first written warning on 31 January 2022 (page 1561 and 1562). He raised a number of grounds of appeal, including that the hearing was in breach of the Human Rights Act and NHS / MHPS rules, that the hearing was disability discrimination, that the investigations/complaints were recrimination for his own complaints of bullying and discrimination, that clear racial discrimination had been ignored, and that Occupational Health's recommendation for representation at hearing had been ignored. He said that all evidence and full details would be provided when he had recovered from his medical condition and was medically fit for work.

267. On 11 March 2022 Ms Prosser contacted the Department for Work and Pensions (page 1566), explaining that the claimant had applied for an Access to Work assessment in October 2021 but was still waiting for contact about when an assessment would be arranged. The email acknowledged that he was absent from work since November 2021 and asked whether this would be the reason for the delay. We find that it is unfortunate that Access to Work had not been arranged by this time, however we also find that this is not any of the respondents' fault (nor for that matter the claimant's). It is clear that this is something that the claimant was due to arrange directly with Access to Work and when the claimant highlighted to the first respondent that Access to Work had not been in touch with him despite him chasing, the first respondent chased it on his behalf.

268. On 15 March 2022 the claimant appealed again against the final written warning (page 1569), adding additional grounds of appeal. By now, it had been six weeks since the claimant's original appeal, therefore we find that the first respondent should have made some contact with a view to progressing that appeal (or at least setting out how it would be progressed given the ongoing ill health) by that stage. We also find that the tone of this appeal is inflammatory, accusing Mr Neild and Ms Potter of lying, asserting that he had never had any language or communication problem before, and saying that his email to Ms Murtaza was not in fact unprofessional. He also alleged that the third respondent was using GP training for blackmailing and threatening trainees.

269. A further occupational health report was received dated 7 April 2022 (page 2305). This stated that "*He requires representation at hearings ideally from trade union such as BMA"*. It also noted that Access to Work would help once the employee was back at work.

270. In June 2022 the claimant's salary was reduced due to his ongoing sickness absence. As was the case in 2020, the reduction was incorrect and the first respondent emailed the claimant on 14 June 2022 (page 1698) to confirm that although his continuous service was correct (i.e. for basic pay purposes) his annual leave had been updated and the sick pay issue would be investigated. We have set out above our findings on this point.

271. The claimant submitted his first Employment Tribunal claim on 1 July 2022.

272. On 4 August 2022 a further occupational health report was received (page 2270). This reported the claimant's medical conditions as:

    a. "*Work related stress, anxiety and insomnia – on anti-depressant therapy and receiving psychology support – stable.*
    b. Dyslexia and dyspaxia – please see previous report for advice on reasonable adjustments in the workplace, to help support GP training
    c. *Insulin dependent diabetes mellitus*"

    In relation to the first condition listed above, it said that the claimant should hopefully get better with time and the right treatment.

273. It stated that "*When Siradzh is ready to attend disciplinary hearings, he will require representation due to dyslexia condition*". We note that this does not refer specifically to legal representation and/or to the respondents being required to provide that representation.

274. The claimant submitted his second Employment Tribunal claim on 24 September 2022.

275. On 19 December 2022 a Needs Assessment Report was prepared by People Plus (part of the Department for Work and Pensions) in relation to his dyslexia (page 2516, date at page 2523). This report enabled the claimant to access equipment under the Access to Work scheme. The report contained a number of recommendations of adjustments for the claimant, including regular breaks, increased appointment times and a number of pieces of specific equipment such as Dragon software. It also highlighted a number of areas of difficulty for the claimant, including writing neatly and quickly (page 2517). Although the claimant was absent from work for a considerable period during 2021 and 2022, we do find that it took a long time for this report to be prepared. This was not either of the parties' fault, but was unfortunate and we can understand that the delay would have been frustrating for the claimant.

276. We were shown an email chain between the claimant, Ms Prosser at the first respondent and various others (including someone at the claimant's current rotation) regarding the Access to Work equipment on 10 January 2023 (page 2062). This showed that the respondent was in the process of

ordering it. We consider that this was within a reasonable period of time, particularly given the time of year at which the Access to Work report was received.

277. In relation to the recommended software, the respondents' position is that this has been made available to the claimant, but that he needs to complete a piece of training before he can use it, which he has not done. The claimant accepts that the software has been provided and that he cannot use it without the training, but says that the first respondent has not given him the training. Mrs Houghton explained in her evidence that the claimant had been sent the relevant information to undertake the training but that he had advised at the time that he was not well enough to do it. She says that he is due to arrange it directly with the provider at a time suitable to himself. This is supported by an email from the claimant to Ms Hickling on 11 April 2023 (page 2115) where he says "*I have not got or done any training yet as I am still not well*". This email chain also shows a table from the first respondent showing their understanding that each of the required items had been received or communication sent directly to the claimant. This confirmed that "confirmation received" in relation to the Dragon software. The claimant replied to say that he had not received a pen grip and that he only had one headphone.

278. We find that, once the Access to Work assessment had been completed, the respondent did order the necessary equipment within a reasonable period of time and then followed it up with the claimant. It was the claimant who said that he was too ill to undertake the training necessary to use the software and the position was left that he would arrange it when he felt well enough.

279. On 20 January 2023 a further management referral to occupational health was made (page 2065). This recorded that there were delays with Access to Work and requested support to return the claimant to full time training.

280. On 14 February 2023 the claimant suffered a heart attack which led to the claimant being absent from work until 4 July 2023.

281. On 29 June 2023, Ms Liz Hickling, HR Advisor at the first respondent, had a welfare call with the claimant and sent him an email attaching notes from that call (page 2158, notes at page 2159). This referred to the claimant's recovery from his ischaemic heart disease and commented that "*Dr M feels optimistic as all ATW equipment has been received and he will organise coaching which will support with dyslexia"*. At this stage the claimant therefore believed that all required equipment had been provided to him.

The claimant's appeal

282. The appeal hearing against the first written warning took place on 16 October 2023 (however it was conducted based on a review of the papers at the claimant's request). The claimant has quite rightly pointed out that, by this point, the one year warning period had already expired and therefore he felt that this was pointless. Whilst he is correct and clearly it is not desirable for an appeal to be dealt with after the warning has expired, we disagree that it becomes entirely pointless at that point. There is still merit in

considering whether the warning should be overturned, so as to give the employee the knowledge that their warning either was or was not correctly issued in the first place.

283. As to the reason why there was such a long delay, Ms Houghton explained (and we accept) that the history of the appeal was as follows:

    a. The appeal hearing was arranged for 28 April 2022 however the claimant said that he could not attend due to ill health.
    b. The appeal hearing was re-arranged for 7 September 2022 and the claimant advised that he was still not fully recovered and unable to attend.
    c. An appeal hearing was scheduled for 1 November 2022, however the claimant advised he was having surgery so unable to attend (page 2040).
    d. It was then re-arranged for 6 December 2022, however the first respondent postponed that due to the ill health of the HR representative due to attend (page 2040).
    e. The appeal hearing was rescheduled for 22 March 2023 however the claimant was on sick leave following his heart attack.
    f. The claimant's union representative was contacted on 9 March 2023 to ask whether the claimant would prefer to wait until he was better or go ahead based on the papers given his ill health (page 2168). On 1 April 2023 the claimant's union representative advised that the claimant could not attend a hearing due to ill health at that time but that he did want an appeal hearing rather than the matter being conducted on the papers (page 2165). The matter was therefore held in abeyance until the claimant's return from sick leave.
    g. On 6 July 2023 Ms Houghton contacted the claimant's union representative in light of the fact that he was not fit to return to work, explaining that she would contact the claimant directly to understand if he was fit to attend an appeal hearing (page 2164).
    h. On 24 July 2023 the claimant's representative asked Ms Houghton whether the hearing could be dealt with on paper rather than at an appeal hearing (page 2177). The appeal hearing chair was on holiday at that point and the matter was referred to him following his return from leave. Ms Houghton chased the appeal hearing chair on 17 August 2023 (page 2196).
    i. The claimant's request for the appeal to be dealt with on the papers was then accepted, and the appeal hearing was conducted based on the papers on 16 October 2023. Ms Houghton explained that the reason for the delay between the claimant saying that he wished for it to be done on paper and the hearing itself was due to the availability of the hearing chair, which she believed was due to industrial action. The appeal outcome was not in the Bundle and we were not told the outcome of it however we were informed that it had been shared with the claimant within 14 days of the hearing.

284. We find that there was clearly significant delay in the claimant's appeal being heard. However, the majority of that delay was caused by the claimant's ill health and therefore was not due to any wrongdoing on the first respondent's part. The claimant had also declined (through his

representative) the first respondent's initial offer to consider the case on the papers.

Law

Disability

285. Section 6 of the Equality Act 2010 ("the Equality Act") provides that:

> *(1) A person (P) has a disability if –*
> *a) P has a physical or mental impairment, and*
> *b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

286. This comprises four separate questions for the Tribunal (**Goodwin v Patent Office 1999 ICR 302, EAT)**:

1. Did the claimant have a mental and/or physical impairment?
2. Did the impairment affect the claimant's ability to carry out normal day-to-day activities?
3. Was the adverse effect substantial?
4. Was the adverse condition long term?

It is for the claimant to satisfy the Tribunal, on the balance of probabilities, that they were disabled at the relevant time (i.e. when the alleged discrimination took place). It will not be an error of law if the Tribunal does not follow these in rigid consecutive stages, so long as all relevant matters are addressed (**J v DLA Piper UK LLP 2010 ICR 1052, EAT** and **Sullivan v Bury Street Capital Ltd 2022 IRLR 159, CA**)

287. Appendix 1 to the Equality and Human Rights Commission Equality Act 2010 Statutory Code of Practice" ("the EHRC Code") makes clear that there is no need for a claimant to show a medically diagnosed cause for the impairment: what is important is the effect of the impairment not the cause. However, where a person has an adverse reaction to workplace circumstances, but in other respects suffers no or little apparent adverse effect on normal day-to-day activities, this will not necessarily amount to a mental impairment. Being unhappy about a decision or colleague or a tendency to nurse grievances are not, in themselves, mental impairments (**Herry v Dudley Metropolitan Council 2017 ICR 610, EAT**). Tribunals should be mindful of the distinction between clinical depression and a reaction to adverse circumstances (**J v DLA Piper UK LLP, above**) The effects of medical treatment or other corrective aids should be disregarded.

288. "Substantial" means "more than minor or trivial" (section 212(1) EA). The Tribunal should compare the claimant's ability to carry out normal day-to-day activities with the ability the claimant would have if not impaired. The focus should be on what the person cannot do, or can only do with difficulty, rather than on what they can do (paragraph B9 of the Guidance on matters to be taken into account in determining questions relating to the definition of disability".

289. "Normal day-to-day activities" are "*activities which are carried out by most men or women on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people...*" (Appendix 1, EHRC Code).

290. Under paragraph 2(1) of Schedule 1 to the EA, the effect of an impairment is long-term is it has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of their life. Likely means "could well happen" (**Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) 2009 ICR 1056, HL**. The question is not whether the impairment is likely to last 12 months, but whether the substantial adverse effect is likely to last for at least 12 months. An impairment will be treated as continuing to have a substantial adverse effect if it is likely to recur.

Direct Discrimination

291. Section 13 of the Equality Act provides that:

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

292. Section 23 of the Equality Act goes on to provide that:

> *(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.*

293. In the House of Lords decision of **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285, ICR 337**, it was held by Lord Scott that "*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class"*.

294. The test as to whether there has been less favourable treatment is an objective one: the claimant's belief that there has been less favourable treatment is insufficient. Likewise, the treatment must be less favourable, not merely different. Unreasonable treatment is not sufficient, although it may be evidence which supports an inference if there is no adequate explanation for the behaviour (**Anya v University of Oxford and anor 2001 ICR 847, CA**).

295. Where there is less favourable treatment, the key question to be answered is why the claimant received less favourable treatment: was it on grounds of race or for some other reason (**London Borough of Islington v Ladele [2009] ICR 387**). As Mr Justice Linden said in **Gould v St John's Downshire Hill 2021 ICR 1, EAT**

> *"The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is*

subjective…For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision…[and] the influence of the protected characteristic may be conscious or subconscious."

296. In **Nagarajan v London Regional Transport 1999 ICR 877, HL**, Lord Nichols said that

"discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds…had a significant influence on the outcome, discrimination is made out"

297. Often there will be no clear direct evidence of discrimination on racial grounds and the Tribunal will have to explore the mental processes of the alleged discriminator and draw inferences. The claimant will need to prove facts from which a Tribunal could properly conclude that the respondent had committed an unlawful act of discrimination, and this can include the drawing of inferences (see burden of proof section below). However, simply establishing a difference in status is insufficient: there must be "*something more*" (**Madarassy v Nomura International plc [2007 EWCA Civ 33** and **Igen Ltd v Wong [2005 ICR 931]**). Likewise, unreasonable conduct alone is insufficient to infer discrimination.

298. A failure to investigate a complaint of discrimination can itself amount to race discrimination, if the reason why the complaint is not investigated is on grounds of race (**London Borough of Lewisham v Ms Chamaine Ellis UKEAT 62_00_2205**).

Harassment

299. Section 26 of the Equality Act provides:

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

a. *A engages in unwanted conduct related to a relevant protected characteristic, and*

b. *The conduct has the purpose or effect of –*

i. *Violating B's dignity, or*

ii. *Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

(2) …..

(3) …..

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

a. The perception of B;

b. The other circumstances of the case;

c. Whether it is reasonable for the conduct to have that effect.

300. In order to determine whether the conduct is related to the protected characteristic, it is necessary to consider the mental processes of the alleged harasser (**Henderson v General & Municipal Boilermakers Union [2016] EWCA Civ 1049**). This may be conscious or unconscious: as stated by Underhill LJ in **Unite the Union v Nailard [2018] EWCA Civ 1203***:*

"it will of course be liable if the mental processes of the individual decision-taker(s) are found (with the assistance of section 136 if necessary) to have been significantly influenced, consciously or unconsciously, by the relevant protected characteristic."

301. As set out in the EHRC Code, "unwanted conduct" can include "*a wide range of behaviour*" (at paragraph 7.7) and it is not necessary for the employee to expressly state that they object to the conduct (at paragraph 7.8).

302. A single incident can be sufficient provided it is sufficiently serious (**Bracebridge Engineering Ltd v Darby (1990) IRLR 3***)*.

303. When looking at the effect of harassment, this involves a subjective and objective test. The subjective test is to assess the effect that the conduct had on the complainant, and the objective test is to assess whether it was reasonable for the conduct to have that effect (**Pemberton v Inwood 2018 ICR 1291, CA**). The conduct complained about must however "*reach a degree of seriousness"* in order to constitute harassment, so as not to *"trivialise the language of the statute"* (**GMB v Henderson [2015] IRLR 451, at 99.4**).

304. In relation to the subjective element, different individuals may react differently to certain conduct and that should be taken into account. However, as set out in **Richmond Pharmacology v Dhaliwal 2009 ICR 724** by Mr Justice Underhill (as he was then named):

"if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question."

Victimisation

305. Section 27 of the Equality Act provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

a) B does a protected act, or

b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act:

a) Bringing proceedings under this Act;

b) Giving evidence or information in connection with proceedings under this Act;

c) Doing any other thing for the purposes of or in connection with this Act; and

d) *Making an allegation (whether or not express) that A or another person has contravened this Act.*

306. The detriment will not be due to a protected act if the person who put the individual to the detriment did not know about the protected act (**Essex County Council v Jarrett EAT 0045/15**, and **Deer v Walford and anor EAT 0283/10** where awareness of "some sort of legal case" was insufficient to establish knowledge).

307. For victimisation to occur, the detriment must be because of the protected act. It does not need to be solely because of the protected act to amount to victimisation, but it does need to have a significant influence (**Nagarajan v London Regional Transport 1999 ICR 877, HL**). This means an influence which is "more than trivial" (**Igen Ltd v Wong, above.**).

308. The motivation does not need to be conscious (**Nagarajan, above**). It is possible for a dismissal or detriment to be in response to a protected act but nevertheless not amount to victimisation if the reason for the treatment is not the complaint itself but a separable feature of it such as the way in which the complaint was made (**Martin v Devonshires Solicitors [2011] ICR 352**).

309. The focus should be on the motivation of the person who submitted the individual to the detriment. If a third party provided "tainted information" to influence the decision maker, that would need to be raised as a separate allegation, otherwise an innocent party could find themselves liable for an act for which they were personally innocent (**Reynolds v CLFIS (UK) Ltd and ors 2015 ICR 1010, CA**).

Burden of Proof

310. Section 136 of the Equality Act (burden of proof) states that:

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

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

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

311. Put simply, the claimant must show facts from which the Tribunal could infer that discrimination took place, in the absence of other explanation. If the claimant cannot do that, the claim fails. If the claimant does show such facts, then the burden shifts to the respondent to show that discrimination did not take place (**Igen v Wong, above**, **Royal Mail Group v Efobi [2021] UKSC 33**). In deciding whether the burden has shifted, the Tribunal should consider all of the factual evidence provided by both parties (although not the explanation for those facts).

312. In **Madarrassy v Nomura International [2007] ICR 867 CA**, Mummery LJ stated that "the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

313. Something more than a finding of less favourable treatment is required in order to shift the burden of proof to the respondent, however the "something" need not be considerable (**Deman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1276**). Unreasonable behaviour alone is not evidence of discrimination (**Bahl v The Law Society [2004] IRLR 799**) but can be relevant to considering what inferences can be drawn (**Anya v University of Oxford & anor [2001] ICR 847**)

314. Where the burden has shifted to the respondent, it is then for the respondent to prove on the balance of probabilities that the less favourable treatment was not because of race.

315. Although the burden of proof is a two stage test, there are cases where an Employment Tribunal can legitimately proceed directly to the second stage of the test (see, for example, **Laing v Manchester City Council and anor 2006 ICR 1519, EAT**).

Failure to Make Reasonable Adjustments

316. Section 20(3) of the Equality Act 2010 provides that:

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

317. Section 21 of the Equality Act 2010 provides that:

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

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

318. The burden is on the claimant to show the application of a provision, criterion or practice, and the substantial disadvantage suffered by him because of it. Substantial means "more than minor or trivial". If that is done the burden shifts to the respondent to show that the adjustment in question was not reasonable. A one-off act can amount to a PCP where there is an indication that it would be repeated if a similar situation arose in future (**Ishola v Transport for London [2020] EWCA Civ 112, CA***)*.
319. The duty to make reasonable adjustments does potentially require an employer to treat a disabled person more favourably than others (**Archibald v Fife Council [2004] ICR 954**

320. Paragraph 6.28 of the EHRC Code sets out some of the factors that might be taken into account when deciding what is a reasonable step: it is wise for the Tribunal to consider the factors although there is no duty to consider each and every one (**Secretary of State for Work & Pensions (Job Centre Plus) v Higgins [2014] ICR 341, EAT [58]**). What is reasonable is considered objectively having regard to all the circumstances. The steps are:

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

b) The practicability of the step;

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

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

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

f) The type and size of the employer.

321. The test of reasonableness is objective and will depend on the circumstances of the case.

322. The duty to make reasonable adjustments will only arise if the disabled person is put at a substantial disadvantage. The purpose of the identification of a provision, criterion or practice is to identify the matter that causes the disadvantage (**General Dynamics Information Technology Ltd v Carranza 2015 ICR 169, EAT**) and this disadvantage must not equally arise in the case of someone without the claimant's disability (**Newcastle upon Tyne Hospitals NHS Trust v Bagley UKEAT/0417/11***)*. It is for the claimant to show substantial disadvantage (**Bethnal Green & Shoreditch Educational Trust v Dippenaar UKEAT/0064/15**, and **Hilaire v Luton BC [2023] IRLR 122**). However, it is not necessary for the claimant to show that the disadvantage arises because of his disability, provided they

have shown substantial disadvantage in comparison with persons without the disability (**Sheikholeslami v University of Edinburgh UKEATS/0014/17**).

323. In **Project Management Institute v Latif 2007 IRLR 579, EAT**, Mr Justice Elias (who was then president of the EAT) said:

In our opinion, the Code is correct. The key point identified therein is that the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement which causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made. We do not suggest that in every case the claimant would have had to provide the detailed adjustment that would need to be made before the burden would shift. However, we do think that it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not".

324. The test of reasonableness is an objective one (**Smith v Churchills Stairlifts plc 2006 ICR 524**). The Tribunal should look at the proposed adjustment from the point of view of both claimant and employer to make an objective determination of whether or not it would be a reasonable adjustment (**Birmingham City Council v Lawrence EAT 0182/16**). The Tribunal should also consider the business needs of the employer (**Griffiths v Secretary of State for Work & Pensions [2017] ICR 160, per Elias LJ**, and **O'Hanlon v Commissioners for Inland Revenue [2007] ICR 1359**).

325. A key question when assessing reasonableness is whether or not the proposed adjustment would be effective in preventing the substantial disadvantage. There does not have to be a good or real prospect of the disadvantage being removed, it is sufficient if there would have been a prospect of the disadvantage being alleviated (**Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10**).

326. The duty to make reasonable adjustments will only arise if the respondent not only knows, or ought reasonably to have known, of the disability but also that the individual is likely to be placed at the substantial disadvantage. Schedule 8, Part 3, paragraph 20 of the Equality Act provides that:

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

a) …..

b) that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

c) ….

Unauthorised deductions from wages

327. Section 13 of the Employment Rights Act 1996 ("ERA") provides that:

(1) An employer shall not make a deduction from wages of a worker employed by him unless –

a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the workers contract, or

b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) …

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) …

(6) …

(7) …

328. Section 27(1) of the ERA provides that:

(1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment…

329. The Tribunal must be satisfied first that the claimant was entitled to the wages sought (**Johnston v Veritas Technologies (UK) [2023] 2 WLUK 410)** and that sums remain outstanding and owed to him.

Time Limits

330. Section 123 of the Equality Act (time limits) provides that:

(1) "*….proceedings on a complaint within section 120 may not be brought after the end of -*

a) The period of 3 months starting with the date of the act to which the complaint relates, or

b) Such other period as the employment tribunal thinks just and equitable.

(2) ….

(3) For the purposes of this section –

a) Conduct extending over a period is to be treated as done at the end of the period;

b) Failure to do something is to be treated as occurring when the person in question decided on it.

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

a) When P does an act inconsistent with doing it, or

b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

331. There is a distinction between a continuing act and an act with continuing consequences. Where there is a continuing policy, rule, scheme, regime or practice, that will amount to conduct extending over a period, however where there is a one off act which has consequences over a period of time, that will not (**Barclays Bank plc v Kapur [1991] 2 AC 355, HL and Sougrin v Haringey HA [1992] ICR 650, CA**). One relevant but not conclusive factor is whether the same or different individuals were involved *(**Aziz v FDA [2010] EWCA Civ 304**)*

332. However, the Tribunal should not focus too heavily on whether there is a policy, rule, scheme, regime or practice. The Tribunal should ask itself whether there was an act extending over a period, rather than a series of unconnected or isolated individual acts (**Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA**). It is relevant whether the same or different individuals were involved, and a break of several months may mean that continuity is not preserved (**Aziz, above**). Unproven allegations cannot be part of the continuing act (**South Western Ambulance Service NHS Foundation Trust v King 2020 IRLR 168, EAT***).*

333. Whilst it is a broader test that that for unfair dismissal, exercising discretion to extend time is the exception rather than the rule (**Robertson v Bexley Community Centre [2003] EWCA Civ 576**). When considering whether to extend time, the Tribunal should consider all the circumstances (**Robertson, above**), including the balance of prejudice and the delay and reasons for it. Although **British Coal Corporation v Keeble [1997] IRLR 336** sets out a checklist approach in line with section 33 Limitation Act 1980, it is not necessary to go through the full checklist in each case, as long as all significant factors are considered (**Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23** and **Afolabi v Southwark London Borough Council [2003] EWCA Civ 15**). Factors which are almost always relevant include:

a. The length of and reasons for the delay; and

b. Whether the delay has prejudiced the respondent.

The merits of the case can be taken into account when considering the balance of prejudice.

334. The fact that a delay is short does not mean that an extension of time should automatically be granted. Per *Underhill LJ* in **Adedeji (above)**:

> *"Of course employment tribunals very often have to consider disputed events which occurred a long time prior to the actual act complained of, even though the passage of time will inevitably have impacted on the cogency of the evidence. But that does not make the investigation of stale issues any the less desirable in principle. As part of the exercise of its overall discretion, a tribunal can properly take into account the fact that, although the formal delay may have been short, the consequence of granting an extension may be to open up issues which arose much longer ago*".

Conclusions

335. We address time limits at the end, as it is only once it is known whether the claimant's claims have succeeded, and if so which ones, that it can be assessed whether the claims have been brought within the required time limits and/or whether there is conduct extending over a period.

336. When addressing each issue we include the relevant section from the List of Issues in Italics.

2. *Disability*

Diabetes

337. The respondent has accepted that the claimant was disabled at all relevant times by reason of diabetes. The respondent had clear knowledge of this from 9 April 2019 when he requested that he be moved away from night shifts. Therefore we need only address dyslexia and dyspraxia, and anxiety and stress.

Dyslexia and Dyspraxia

> *2.2 The Tribunal will decide whether the claimant had a disability as defined in section 6 of the Equality Act 2010 by reason of dyslexia and dyspraxia.*
>
> *2.2.1 Did he have a physical or mental impairment: dyslexia and dyspraxia?*

338. It is clear that he did have such an impairment.

> *2.2.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?*

339. We consider that it did have such an effect. This is clear both from the claimant's own impact statement and from the diagnosis report (and whilst not determinative, we note that occupational health considered that his dyslexia was likely to fall within the Equality Act 2010). His difficulties were

in both his day to day life and in relation to his work, for example cooking, tying shoe laces, working more slowly, difficulties reading and writing, memory and concentration, processing speeds, fine motor control, visual thinking, and planning and organisation. The diagnosis report identified a number of challenges, such as finding it challenging to hold onto and process more than one piece of information at a time, listening to and following instructions and concentrating in busy environments. Whilst the report was focussed on issues arising in the workplace, we consider that many of the challenges identified would apply equally in normal day to day life. We consider that the effect on the claimant was substantial.

2.2.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
2.2.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

340. It is not necessary to consider this in light of our findings above. However, dyslexia and dyspraxia are lifelong conditions that cannot be cured.

2.2.5 Were the effects of the impairment long term? The tribunal will decide:
2.2.5.1 Did they last at least 12 months, or were they likely to last at least 12 months?
2.2.5.2 If not, were they likely to recur?

341. The condition is lifelong and therefore it is clear that the effects of the impairment were, and remain, long term. Although he was not diagnosed until June 2021, in reality he would have had these conditions throughout his employment (although see below in relation to knowledge).

2.3 Did the Respondents know or could they reasonably have been expected to know, that the Claimant was a disabled person by reason of dyslexia and dyspraxia? If so, by what date?

342. The first respondent first referenced the claimant's diagnosis on 25 August 2021 in an email from Ms Laura Driscoll. It therefore appears that the first respondent became aware of the diagnosis at some point between the diagnosis itself on 25 June 2021 and that email on 25 August 2021. In the list of issues it is not specified which respondents the claim for failure to make reasonable adjustments is brought against save in respect of night shifts (which is not relevant to the condition of dyslexia). However, by June 2021 the claimant's rotation to the third respondent had ended and therefore no issues as to whether the third respondent failed to make reasonable adjustments against the claimant in relation to that disability arise. It could only be relevant in relation to any allegations of direct disability discrimination or harassment related to disability in relation to the third respondent's role in investigating his dignity at work complaint, however there are no such allegations against the third respondent specifically. In relation to the second respondent, we do not know exactly what the second respondent knew in relation to the claimant's diagnosis, however we consider that the second respondent ought to have had

knowledge (if not of the condition then of the effect of it) to the extent relevant from around the same time as the first respondent i.e. 25 June 2021 at the earliest, if the claimant provided the first respondent with the report on that date.

343. We do not consider that the respondents knew, or could reasonably have known, that the claimant was a disabled person by reason of dyslexia and dyspraxia until his diagnosis: in evidence the claimant accepted that he did know that he had the conditions until that point. We can see nothing in the documents we were shown to indicate that the claimant in any way asserted that he had dyslexia or dyspraxia prior to that date, and we note that there were a number of other issues going on in relation to the claimant's work (such as his language skills, general tone of voice and other underlying medical conditions) which mean that the respondents would not necessarily expect any issues to relate to dyslexia or dyspraxia.

Anxiety and Depression

2.2 The Tribunal will decide whether the claimant had a disability as defined in section 6 of the Equality Act 2010 by reason of anxiety and depression.

2.2.1 Did he have a physical or mental impairment: anxiety and stress?

344. The claimant did have absences from work due to anxiety and stress from March 2020 and the claimant states that he had this impairment from that date. However, during the course of 2020 the claimant's anxiety and stress appears to have been specifically linked to Covid-19 and the claimant's anxieties about his underlying medical conditions and the risk to him if he contracted Covid-19 in light of those. At that time therefore we conclude that the claimant's anxiety and stress were driven by a reaction to adverse circumstances (i.e. the Covid pandemic) rather than an underlying impairment in itself.

345. We accept however that, although initially his anxiety and depression was specifically linked to Covid-19 rather than a wider condition, he was absent in June and July 2021, at which time Covid-19 restrictions had already eased and Covid-19 anxiety would not appear to be the case. At this time the claimant did have a number of other stressors relating to his workplace issues, however we conclude that by this stage the claimant did have the impairment of anxiety and depression (rather than it being simply a reaction to the life event of Covid-19).

2.2.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

346. The claimant's impact statement set out no detail on this matter. We can see that he was absent from work at various points and that he said that he was not fit to participate in the disciplinary process. However, he gives no information about what (if anything) the anxiety and depression prevented the claimant from doing in his day to day activities otherwise, although we

do acknowledge that the claimant says that he had a heart attack because of anxiety and stress.

347. We also do not have the benefit of any GP records from the claimant, only various fit notes and occupational health reports. Normal day to day activities can include work related activities and therefore the contents of the occupational health reports as to the claimant's lack of fitness to attend work, inability to attend hearings and other matters are relevant. We also note that in January 2022 the Occupational Health report identified that the claimant had insomnia, reduced diet, lack of concentration and memory problems along with intermittent mood changes.

348. Despite the lack of evidence from the claimant and the fact that it is for him to show that he was disabled, we do nevertheless consider that the claimant's anxiety and depression did have a adverse effect on his ability to carry out day-to-day activities in light of the occupational health reports which were presented to us in the Bundle, however see our comments below regarding when it became a long-term condition. We also consider the effect to have been substantial.

2.2.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
2.2.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

349. The claimant was prescribed medication (sertraline) from March 2020. No evidence was presented to the Tribunal (whether in the impact statement or otherwise) about what the impact would have been had he not had that medication. We assume it must have had some impact otherwise it would not have been prescribed.

2.2.5 Were the effects of the impairment long term? The tribunal will decide:
2.2.5.1 Did they last at least 12 months, or were they likely to last at least 12 months?
2.2.5.2 If not, were they likely to recur?

350. We consider that the effects of the impairment became long-term but that initially they were not considered likely to last for at least 12 months. As explained above, initially the claimant's ill health was considered to be a reaction to Covid-19 which would have been time limited in nature (and at that time, back in March to June 2020 would have been expected to have lasted for less than 12 months and not to have recurred).

351. However, we conclude that over time the claimant's anxiety and depression became more generalised in nature and, although occupational health continued to advise that he should make a full recovery, we conclude that the impairment became long-term from June 2022, this being twelve months after the first non-Covid related absence from work due to anxiety and depression.

2.3 Did the Respondents know or could they reasonably have been expected to know, that the Claimant was a disabled person by reason of anxiety and depression? If so, by what date?

352. We consider that the first and second respondents had knowledge that the claimant was a disabled person, and/or could reasonably have been expected to know that, from June 2022, because this was twelve months after the first non-Covid-19 related absence for anxiety and depression. The claimant's rotation to the third respondent had ended prior to the claimant developing anxiety and depression and we do not therefore consider the allegations relating to this condition to be relevant to the claimant's allegations of failure to make reasonable adjustments. Again, it could only be relevant in relation to any allegations of direct disability discrimination or harassment related to disability in relation to the third respondent's role in investigating his dignity at work complaint, however there are no such allegations against the third respondent specifically.

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 Did the respondent do the following things: [see below for individual allegations]

3.2 Was that less favourable treatment?

3.3 If so, was it because of race?

3.4 Did the respondent's treatment amount to a detriment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

353. We address each of the factual allegations in turn, dealing with all of the above issues in our conclusions (so far as relevant).

3.1.1 R1 failed to recognise the Claimant's previous NHS experience for the purposes of his salary entitlement before 22 April 2022. From 1 August 2018 – ongoing.

354. The claimant's previous NHS experience was not recognised for the purposes of his salary entitlement, and the respondent accepts that. This was because he had moved from locum work to GP training, and therefore did not qualify for protection of his basic pay in accordance with the first respondent's Terms and Conditions of Service for NHS Doctors and Dentists in Training 2016.

355. The appropriate comparator in this case would be another employee who had moved from locum work to GP training. That person would also not

qualify for protection of basic pay in accordance with the first respondent's Terms and Conditions of Service for NHS Doctors and Dentists in Training 2016. Therefore, there was no less favourable treatment.

356. In addition, the claimant has not provided any facts (nor referred to any facts from the respondents) which could lead us to conclude that, in the absence of any other explanation, discrimination has occurred. There is simply nothing which appears to link the decision to his race or to any disability. The claimant has failed to shift the burden of proof and this complaint fails.

3.1.2 R1 and R2 failed to issue the Claimant with an NHS smart card or ESR card. 1 August 2018 – November 2019.

357. We accept that the smart card / ESR card was not issued to the claimant when he started, and he did not receive this until November 2019. Although we considered it was the host organisation's (R3's) responsibility to organise this rather than R1 or R2, we do find that this failing did occur. We can also understand that this would have been frustrating to the claimant, although if it was essential we consider that the matter would have been escalated at an earlier stage. We conclude that in fact the ESR card/smart card's purpose was to act as an employee staff record and that this amounted to a detriment.

358. We cannot say whether others were issued with a smart card/ESR card when the claimant was not. There are no named comparators, however we conclude that it is possible that others did receive them given that we accept that the card should have been issued to all trainees. We conclude therefore that the hypothetical comparator would have received an ESR card/smart card and therefore there was less favourable treatment.

359. We next consider whether that treatment was because of race. In order for the burden of proof to shift to the respondents, there must be facts from which the court could decide, in the absence of any other explanation, that discrimination occurred. Whilst we have identified less favourable treatment, that on its own is insufficient, there must be something more. We recognise that the "something more" can arise from inferences rather than direct evidence, however we conclude that there are no facts which in any way indicate, or give rise to a potential inference, that race could be the reason for the less favourable treatment.

360. The claimant has not identified anything which connects the matter to his race. To the contrary, we consider that it would not make any sense for the respondents to deliberately fail to provide this equipment to the claimant, as the respondents would gain no benefit from that whatsoever. We have not been shown any facts from which we consider that it could have been anything other than an unfortunate mistake not to provide the claimant with his ESR smart card. In these circumstances, the burden of proof does not shift to the respondents and this complaint fails.

3.1.3 R1 and R3 failed to provide the Claimant with a proper induction in his first training rotation in Paediatrics. 1 August 2018 – 4 December 2018.

361. We conclude that there was no failure to provide the claimant with a proper induction in his first training rotation. Although the claimant has said that an induction period should be two weeks, we have seen nothing which says that this is the case and we accepted the evidence of Dr Muogbo that the induction period would in fact be two days long in that rotation. We saw the induction form signed by the claimant (which for the avoidance of doubt we find to be a genuine document and not a fake) and it is clear to the Tribunal that the claimant did receive an induction in accordance with the normal practice for that rotation, just not of the length that he personally would have liked. The facts as alleged did not occur and this complaint fails. We would add that we have seen no evidence of less favourable treatment or evidence (direct or by way of inference) which would link the length of the claimant's induction to his race in any way.

3.1.4 R3 (Mr Muogno) and/or R2 (Fiona Sellens) failed to investigate a dignity at work complaint made by the Claimant in August 2018.

362. It is clear that the claimant raised a complaint in August 2018 that fell within the scope of the respondents' dignity at work policy and procedure. However, we have also seen evidence which shows that the claimant agreed to it being investigated informally and we accept that the reference to that fact in emails is because he did provide such agreement. We heard from Dr Muogbo that steps were taken to investigate the matter with those implicated in the complaint. We are satisfied that it was investigated appropriately in the context of it being dealt with informally. There was no formal outcome, however this was because of the informal resolution that the claimant had agreed to (and there is no evidence to suggest that it could have been linked to his race). There was therefore no failure to investigate the complaint and this complaint fails.

363. For the avoidance of doubt we also do not conclude that the claimant was treated less favourably than other trainees, or than the hypothetical comparator.

3.1.5 The Claimant's clinical supervisor (Mr Muogbo) provided an unfair report for the Claimant's ARCP assessment in July 2019 without the Claimant's input. 28 May 2019 (date report prepared). R3 responsible.

364. This allegation refers to the "CSR" report that Dr Muogbo prepared a number of months after the claimant's rotation had ended. Whilst the report does contain criticism of the claimant, the contents align to the evidence the Tribunal has seen from oral evidence and documentary evidence about the claimant's performance and conduct at work. The report also acknowledges a number of areas where Dr Muogbo felt unable to comment and therefore it is measured.

365. The reason for this the report being prepared at that time was because the claimant had been absent from work due to his exclusion and then annual

leave for a number of weeks prior to the end of his rotation. It is also for that reason that it was not discussed with the claimant, because the claimant had by that time finished his rotation some months earlier.

366. We conclude that this report was not "unfair" and therefore this claim fails as the facts did not occur as alleged. However, in any case, the appropriate comparator would be someone whose performance and conduct was not materially different to the claimant's. The report would have been written in the same terms for that person. Equally, the comparator would be someone who had also been absent during the final weeks of the rotation and we find that Dr Muogbo would have omitted to complete the report and would then have done it without their input in the same way. There was no less favourable treatment, the burden of proof does not shift to R3 and again this complaint fails.

3.1.6 R1 suspended the Claimant from GP training on 19 October 2018 until 30 November 2018.

367. It is accepted that the claimant was excluded during this period. Although the terminology used by the respondents is "excluded" we consider this amounts to a suspension in everyday language and therefore the facts did occur as alleged.

368. As to whether there was less favourable treatment, the comparator must be in materially the same position as the claimant. That means that the comparator would also have been subject to a GMC investigation and the first respondent would have received a letter from the GMC in relation to that investigation, setting out serious allegations of wrongdoing. We conclude that in those circumstances, the comparator would also have been suspended. In addition, the claimant has not put forward any explanation as to why he considers that this exclusion was related to his race (other than a general assertion that anything negative that happens to him is because of his race). There is therefore no less favourable treatment and the complaint fails.

3.1.7 The Claimant was prevented by R1 from seeing patients between 4 December 2018 – 3 April 2019

369. We accept that the claimant did not lead consultations on his own between 4 December 2018 and 3 April 2019, at the Peel Medical Centre. However, we conclude that this was a decision made by the Peel Medical Centre themselves, and was not a requirement placed upon them by R1. Therefore this did not happen as alleged. We would add that we consider the reasons for the claimant not seeing patients were linked to his GMC investigation and/or his general performance. The appropriate comparator would be subject to a GMC investigation and would also be performing at a similar level to the claimant and we conclude that such a person would have been treated in the same way.

370. We also note that the Peel Medical Centre is not a respondent to these proceedings and that in any case the claimant speaks highly of the Peel Medical Centre and his supervisor there. Therefore, even if the Peel

Medical Centre were a respondent to these proceedings, we have seen nothing that suggests that any treatment of the claimant by the Peel Medical Centre was related to his race, or that the claimant believed that to be the case. The burden of proof would therefore not shift and this complaint fails.

3.1.8 In February 2019 Dr Hankin (R1) wrote to the Claimant's clinical supervisor, educational supervisor and other staff about a GMC investigation concerning the Claimant

371. This letter or email was not in the file and the cross-references in the claimant's witness statement are not to this document. In evidence the claimant said that he could provide the email but did not do so. Therefore, we have seen no correspondence from Dr Hankin in February 2019 in the terms alleged and this claim must fail.

372. However, if such correspondence did exist, we would in any case find that this was entirely appropriate in the circumstances. We consider that it is appropriate to inform any clinical supervisor, educational supervisor and other relevant personnel within the respondents about a GMC investigation relating to one of their trainees. The allegations were serious and related to his conduct and professionalism in the manner in which he spoke to the car park attendants. This was a serious matter, serious enough to warrant exclusion for a period of time, and it was natural that the respondents would be informed of it. Once the warning was issued, the claimant says that it should not have been referred to because it was under appeal. However, as outlined in our findings of fact, the position is different for warnings and sanctions and there is no prohibition on warnings being referenced whatsoever. We conclude that the hypothetical comparator, who would also have been subject to a similar GMC investigation, would have been treated the same way. The burden of proof would not shift and this complaint again fails.

3.1.9 R1 and R2 provided to the GMC emails from the Claimant (including a request to transfer the Claimant's training, and the Claimant's complaints of bullying and harassment). Claimant unable to confirm date but he became aware of this on 22 August 2022.

373. We conclude that relevant information was indeed passed to the GMC, following a request from the GMC. Therefore this did happen. However, we conclude that R1 and/or R2 would have responded in the same way to a request for information from the GMC about any of their trainees in not materially different circumstances, and therefore there was no less favourable treatment. We also see no evidence which indicates, or which could give rise to a potential inference, that that this was in any way because of the claimant's race. The burden of proof does not shift and this complaint fails.

3.1.10 The Claimant was only provided with his rota on the stroke ward on 3 April 2019 one day before the start of his rotation instead of eight weeks before the start of his rotation. R1, R3.

3.1.11 The Claimant was only provided with his rota on the respiratory ward on 4 August 2019 one day before the start of his rotation instead of eight weeks before the start of his rotation. R1, R2, R3 responsible.

374. We consider these allegations together as our findings are similar in respect of both. As explained in our findings of fact, the standard terms and conditions of employment do refer to work schedules being provided eight weeks in advance, although it is not clear exactly what level of detail would be included in a work schedule. It does seem unusual that the rota would have only been provided one day in advance as we would have assumed that the respondents would have needed to finalise the rota before that time, and we cannot say exactly when it was provided.

375. In relation to the stroke ward rota, we recognise that the claimant did complain some time later that a rota had only been provided to him one day in advance (within an email about other matters), however that was some time after the rota was provided to him and we have no explanation as to why he did not raise it at the time if this was the case. We are not satisfied on the balance of probabilities that the facts as alleged occurred. This claim must fail.

376. In relation to the respiratory ward rota, we were provided with no evidence whatsoever about this by the claimant, other than a general assertion that it was not provided. Again, we are not satisfied on the balance of probabilities that the facts as alleged occurred. This claim must fail.

377. We have however also considered whether this would have been less favourable treatment. We have no knowledge whatsoever as to whether the rota was sent out earlier to any specific individuals, however we have not been presented with any evidence from which we would infer that it may have been. We consider that the rota would have been sent to everyone at the same time and therefore they would have been treated in the same way.

378. In any case, even if there were a different in treatment, and despite the fact that we have commented that it is unusual for a rota to be sent so late (which we take into account as to whether to draw any inferences), we also note that the responsibility for sending the rota lay with the admin team. They had no involvement in what the claimant believes to be the ongoing discriminatory treatment of him. There would be no reason whatsoever for him to be singled out and the claimant has not provided any information to link it (directly or indirectly) to his race. We conclude that the burden of proof would not in any case have shifted and this complaint would fail (however as outlined above it failed in any case because we are not satisfied that the facts as alleged occurred, nor that there was less favourable treatment).

3.1.12 The Claimant was not allocated / left without an educational supervisor by R2 between 1 August 2018 – February 2019.

379. We have found that the claimant's original educational supervisor withdrew from taking on trainees, and that there was a delay in appointing him a new

one due to confusion because Dr Sellens mistakenly thought this had been done. This was rectified in December 2018. Therefore the claimant was left without an educational supervisor, but only to December 2018 and not February 2019.

380. We would assume that other trainees would have had educational supervisors (save perhaps if anyone else had the same one who had stepped back), as the claimant has said. Therefore the claimant was treated less favourably that others in materially the same situation.

381. We next need to consider whether there are facts from which we could conclude, in the absence of any other explanation, that discrimination has occurred. There must be something more than mere difference in treatment, although the something more need not be substantial. Once the matter was raised by the claimant in December 2018, the second respondent appointed a new educational supervisor within a few days. There are no facts which in any way indicate, or give rise to an inference, that discrimination could have occurred: the claimant himself has provided no basis upon which we could conclude that the issue arose because of his race. We conclude that the fact that the second respondent rectified the situation so promptly demonstrates that the second respondent simply had not realised that the claimant did not have an educational supervisor. Therefore, the claimant has not shown facts from which we could conclude, in the absence of any other explanation, that discrimination occurred. Even if the burden of proof had shifted, we would have found that the respondent had shown that discrimination did not occur, by demonstrating through its reaction to being made aware of the situation and the prompt resolution of the issue, that this was an inadvertent error (and not discrimination). This complaint fails.

3.1.13 The Claimant was informed by Dr Mohanna (R2) on 13 February 2019 he would be treated differently because of the GMC investigation the Claimant was subject to.

382. Although Dr Mohanna cannot recall exactly what was said, she accepted that she may have said that the claimant would be under more scrutiny because of the GMC investigation. We have accepted that. We conclude that the claimant may have interpreted this as a comment to the effect that he would be treated differently because of that investigation, and conclude that the facts as alleged did occur.

383. However, we conclude that anyone who is subject to a GMC investigation would inevitably be subject to increased scrutiny, and that Dr Mohanna would have said the same thing to any employee faced with a similar investigation. The hypothetical comparator would therefore have been treated in the same way, and the claimant has not pointed to an actual comparator. Therefore there was no less favourable treatment.

384. In any case, the issue as framed explains clearly that the reason why Dr Mohanna said he would be treated differently was because of the GMC investigation, and there is nothing to support any assertion that it was because of race. There are no facts from which we could conclude, in the absence of any other explanation, that it was because of his race and given

that the claimant has not identified any credible basis for his assertion that it was, we conclude that the burden of proof has not shifted to the respondent and this complaint fails.

3.1.14 Dr Mohanna (R2) wrote irrelevant information in the Claimant's e-portfolio in 2019 specifically that the Claimant's wife and child visited Pakistan.

385. We accept that information was recorded in the claimant's e-portfolio about his wife and child visiting Pakistan. However, we conclude that this was not irrelevant information at all, but was included to set the context for why she felt the claimant was going through a difficult time and may require support. The comment was made as part of pastoral support for the claimant, and is supportive. Therefore even though the comment was included, it was not irrelevant. The same comment would have been added to any other employee's e-portfolio where that employee faced difficult times and whose family were not at home to support them. This therefore did not amount to less favourable treatment or a detriment. Therefore this complaint fails. We would add that we have seen no evidence to support any assertion that this treatment was because of the claimant's race in any way.

3.1.15 Dr Kay Ling made a joke that the Claimant clerked patients slowly during his rotation on the stroke ward. 4 April 2019 – 4 August 2019. R1, R2 and R3 responsible.

386. We have not found, on the balance of probabilities that this joke was made. In any case the claimant has not pointed to any reason why this comment was because of his race in any way, and why he asserts that a hypothetical comparator (who would also clerk patients slowly) would not have been subject to a joke about that. There is no evidence of less favourable treatment and the claimant has not shown facts from which, in the absence of any other explanation, we could conclude that discrimination occurred. This complaint fails.

3.1.16 R2 arranged the Claimant's ARCP hearing to take place on 1 August 2019 when the Claimant had only completed 6 months of training and had been suspended and prevented from seeing patients for a period of time.

387. The claimant's ARCP hearing did take place when he had only completed around 6 months of actual training where he was permitted to lead on patient consultations (i.e. not including the period of exclusion and the rotation at the Peel Medical Centre when he was not permitted to lead on consultations). This therefore did occur.

388. However, we conclude that this happened because it was standard practice to hold ARCP hearings on particular dates throughout the training programme regardless of whether there had been absence from work or other reason why the training had not been provided to the fullest level during that period. The appropriate comparator would be another trainee who had only had 6 months of leading patient consultations and we conclude that they would have been treated in the same way. There was no

less favourable treatment and we would further note that no evidence has been put forward to indicate why such treatment might be linked to the claimant's race. The burden of proof does not shift to R2 and this complaint fails.

3.1.17 The Claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

389. It is true to say that the claimant did not attend an appeal hearing. However, he was offered one but elected to have the appeal heard on the papers following his period of absence from work. In these circumstances it cannot be said that he was not given an appeal hearing and this complaint must fail. During the hearing the claimant suggested what he means was that the appeal hearing should have gone ahead in his absence and not awaited his return from sick leave. We find that it is inconsistent that the claimant argues that his disciplinary hearing should not have gone ahead in his absence but that the appeal should have gone ahead in his absence despite him (through his representative) having stated a wish to await his return from sick leave.

390. In any case, we see no basis upon which to conclude that any comparator whose circumstances were not materially different would have been treated any differently to the claimant: there was no less favourable treatment. There is also no evidence which could give rise to a potential inference that any treatment in this regard may have been linked to the claimant's race. The burden of proof does not shift and the complaint fails.

3.1.18 The Claimant's educational supervisor prepared an educational supervisor's report in May 2019 without the Claimant's input. R1, R2 and R3 responsible.

391. We have accepted Dr Mohanna's evidence that, although she prepared the final report in May 2019 without him being present, she had had two meetings with him prior to that stage and she had the benefit of his self-assessment. We therefore conclude that it was not prepared without the claimant's input and this complaint fails.

392. If the allegation were specifically about there not being a further meeting to finalise the report, then we conclude that the approach taken by Dr Mohanna was consistent with her usual practice, and therefore that a comparator in not materially different circumstances would have been treated in the same way. There is therefore no less favourable treatment and further nothing to connect (whether directly or by inference) the treatment to the claimant's race. This complaint again fails.

3.1.19 The Claimant's educational supervisor assessed the Claimant as unsatisfactory in the educational supervisor's report. The date is July 2019 and C says R1, R2 and R3 are responsible.

393. Dr Mohanna did assess the claimant as unsatisfactory in the ESR in July 2019. We conclude that this was because his work was reasonably viewed by her as unsatisfactory. We consider that a hypothetical comparator, who

would be another trainee whose work was unsatisfactory and who had put insufficient evidence on their e-portfolio, would have received the same assessment. There is therefore no less favourable treatment. The claimant has again not provided any evidence to support his assertion that the reason for the unsatisfactory rating was because of his race, nor are there any facts from which we could conclude in the absence of any other explanation that this was the case. The burden of proof does not shift to the respondents and this complaint fails.

3.1.20 The Claimant's complaint to R2 in June 2019 about his educational supervisor's report was ignored.

394. We consider that the reference to June 2019 should in fact be a reference to July 2019 (not least because the previous listed issue above related to the report being issued in July 2019). We also assume that the complaint being referred to is the one at page 762 of the file, dated 23 July 2019 which we have addressed in our findings of fact above. That complaint was not ignored, he received two separate replies. One reply reassured him that the ARCP process was independent, and the other advised him that he should raise his complaint directly with his employer. The facts as alleged did not occur. This complaint fails.

3.1.21 The Claimant's educational supervisor (Dr Mohanna) put the Claimant's personal email onto his portfolio. The date was 19 July 2019 and the Claimant says R1, R2 and R3 are responsible.

395. Dr Mohanna did put the claimant's email dated 19 July 2019 onto his e-portfolio. This was not a personal email as such but was the email in which he informed the respondents that he would not be attending work on that day. This was a conduct issue and it was appropriate that this be recorded on his e-portfolio in the circumstances. We would also note that, if the claimant was confident that he had done nothing wrong, we do not see why he would be concerned about it being placed onto his e-portfolio in any case.

396. We consider that Dr Mohanna would have done the same for any employee who had refused to attend work at short notice on a working day and provided what was considered to be an unsatisfactory explanation for their non-attendance. Therefore, the claimant was not treated less favourably than a hypothetical comparator would have been treated (and he has not pointed to an actual comparator). The claimant has also provided no facts from which it could be concluded, in the absence of any other explanation, that the treatment was because of his race. The burden of proof does not shift and this claim fails.

3.1.22 The Claimant was removed from GP training on 23 July 2019. R1 and R3 responsible.

397. The claimant was not removed from GP training on 23 July 2019. He remained on GP training at the date of this Employment Tribunal hearing. This complaint must fail.

398. If the claimant intended to assert that he was threatened with removal from GP training, we find that he was not. Dr Mukherjee had no power to remove him from training. He may have been told that his actions (in not attending work) could jeopardise that training, but that is (a) not what the claimant has alleged and (b) is a reasonable comment to make in the circumstances, and one which we consider Dr Mukherjee would have made to anyone in similar circumstances. This complaint would again fail.

3.1.23 The Claimant was awarded an outcome 3 at his ARCP on 8 August 2019. R2 responsible.

399. The claimant did receive an outcome 3 at his ARCP. This was based on the level of information which he had provided and the various concerns which had been raised about his performance. The outcome was determined by an independent panel, although they would have used the ESR as part of their decision making process. The appropriate comparator would be another trainee where similar concerns had been raised and we conclude that person would also have received an outcome 3. The claimant has not provided any basis for his assertion that the outcome 3 was in any way because of his race, nor are there any facts from which we could conclude, in the absence of any other explanation, that this was the case. The burden of proof does not shift to the respondent and this claim fails.

3.1.24 The Claimant's appeal against ARCP outcome 3 was refused. The date is December 2019 and C says R2 is responsible.

400. The ARCP appeal panel is independent and the respondents are not responsible for that panel's decision. In any case, the claimant's appeal was not refused. He was in fact informed that there was some scope of the outcome being changed if he undertook certain tasks suggested (i.e. if he submitted more evidence of what he had said). The facts as alleged did not occur and this claim fails.

401. The claimant has also not shown any facts from which we could conclude, in the absence of any other explanation, that the appeal outcome was because of his race.

3.1.25 R1 and R2 failed to investigate or stopped investigating the Claimant's complaint made on 14 August 2019.

402. The claimant was notified in writing of the steps he needed to undertake to arrange a meeting to discuss his complaint (i.e. to contact Ms Thomas). He did not do so and it was for that reason that the complaint was closed without a formal outcome.

403. The claimant is therefore correct that the respondent stopping investigating the claimant's complaint. The reason for that was because of the claimant's lack of cooperation and engagement with it. The comparator in this case would be another person who had also failed to respond to requests to take certain steps. We conclude that this comparator would also have had the investigations into their complaint stopped. There is no less favourable treatment. We also conclude that there is no evidence to support the

claimant's assertion that this decision was because of his race. The burden of proof does not shift and the complaint fails.

3.1.26 R1 and R2 failed to share the investigation report concerning his complaint made on 14 August 2019 with the Claimant.

404. There was no investigation report because the investigation was stopped, as explained above. The conclusions we have given to allegation 3.1.25 above apply equally here.

3.1.27 R1 failed to appoint an independent investigator to investigate the Claimant's complaint made on 14 August 2019.

405. We refer to our conclusions above in relation to allegation 3.1.25. However, we would add that during the hearing it became apparent that the claimant believes that an independent investigator from outside R3 should have been appointed. We conclude that by "independent" the respondents mean that the investigator would be someone outside of the direct teams involved in the claimant's complaint, and not someone from a completely separate organisation. That is consistent with normal practice and is an appropriate position to take. We consider that R1 would have taken the same approach with a hypothetical comparator in not materially different circumstances. There was no less favourable treatment and this complaint fails. We also see no evidence from which we could conclude in the absence of any other explanation that this was because of the claimant's race.

3.1.28 R1 reduced the Claimant's salary by 50% in June 2020 and July 2020.

3.1.29 R1 reduced the Claimant's salary on 28 March 2022 to June 2022 without notice to the Claimant.

406. We consider these issues together as the same points arise in relation to both. The claimant's salary was reduced during his periods of sick leave, when it should not have been done. As explained in our findings of fact, this was because although his previous service as a locum did not count for the purposes of establishing his basic pay, he was entitled to protection in relation to some long service benefits such as annual leave and sick pay. Once the claimant raised concerns in this regard, the matter was investigated and a payment made to him to account for the difference.

407. The hypothetical comparator would be another trainee who had previously worked as a locum. We conclude that the issue was due to a genuine error on the first respondent's part and that this comparator would have been treated the same way. If we are wrong on that and they would not have been, then we have seen no facts which in any way indicate, or give rise to a potential inference, in the absence of any other explanation that discrimination could have occurred. The burden of proof does not shift to the first respondent and this complaint fails. Even if it had shifted, then we would have found that the first respondent has shown a non-discriminatory reason for the treatment: i.e. that it made a genuine error, given that the matter was investigated and rectified once spotted. We would also add that

the error must have been made when the claimant's employment details were first inputted into the HR systems when his employment first commenced, and it therefore seems even more unlikely that the person doing that (who would presumably have been with the HR and/or payroll teams) had in any way inputted incorrect information because of the claimant's race.

4. Direct disability discrimination (Equality Act 2010 section 13)

4.1 Did the respondent do the following things: [see below for individual allegations]

4.2 Was that less favourable treatment?

4.3 If so, was it because of disability?

4.4 Did the respondent's treatment amount to a detriment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

408. Again, we address each of the factual allegations in turn, dealing with all of the above issues in our conclusions (so far as relevant).

4.1.1 Dr Kay Ling made a joke that the Claimant clerked patients slowly during his rotation on the stroke ward. 4 April 2019 – 4 August 2019. R1 and R2 responsible.

409. This allegation relates to the claimant's disability of dyslexia and dyspraxia. We have not found, on the balance of probabilities, that this joke was made. In any event, in evidence the claimant himself said that he did not consider that Dr Ling made this joke because of his disability, on the basis that Dr Ling did not have knowledge of his disability at that stage (and in fact neither did the claimant). We agree. This claim must fail.

4.1.2 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

410. As we have concluded in relation to allegation 3.1.17 above, the claimant was offered an appeal hearing. Our conclusions in relation to allegation 3.1.17 apply equally here and we have seen no facts (direct or by way of inference) from which we could conclude, in the absence of any other explanation, that the treatment of the claimant was because of his disabilities. To the contrary, when the first respondent initially suggested that the hearing could be dealt with on the papers to avoid delay and the claimant's representative declined that suggestion, the first respondent respected those wishes. We see no basis for asserting that any comparator

(real or hypothetical) would have been treated differently, there was no less favourable treatment and the claimant's complaint fails.

4.1.3 R1 and R2 failed to investigate or stopped investigating the Claimant's complaint made on 14 August 2019.

411. As outlined above in relation to allegation 3.1.25, the claimant was notified of the steps he needed to take and he did not do so. A non-disabled comparator would have been treated in the same way. There was no less favourable treatment and we would add that there is no evidence (directly or by inference) from which we could conclude, in the absence of any other explanation, that the decision was because of any of his disabilities. This complaint fails.

4.1.4 R1 and R2 fail to share the investigation report concerning his complaint made on 14 August 2019 with the Claimant.

412. As outlined above in relation to issue 3.1.26, there was no investigation report to share and the reasons for that are as set out above in relation to issue 4.1.3. This complaint fails.

4.1.5 R1 failed to appoint an independent investigator to investigate the Claimant's complaint made on 14 August 2019.

413. We refer to our conclusions above in relation to allegation 3.1.27 which apply equally here. The non-disabled hypothetical comparator would have been treated in the same way and we see no evidence from which we could decide, in the absence of any other explanation, that discrimination occurred. This complaint fails.

4.1.6 R1 reduced the Claimant's salary by 50% in June 2020 and July 2020.

4.1.7 R1 reduced the Claimant's salary on 28 March 2022 to June 2022 without notice to the Claimant.

414. We refer to our conclusions above in relation to allegations 3.1.28 and 3.1.29 which apply equally to this allegation. Whilst this did happen, we consider that a comparator would have been treated in the same way. We also conclude that there is no evidence from which we could conclude that, in the absence of any other explanation, this was because of the claimant's disabilities (save for the obvious point that he would not have had the sickness absence if it were not for his disabilities, but the appropriate comparator would be someone who had also had sickness absence and they would have been treated the same way). This complaint fails.

5. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

5.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date? Did each respondent know or could they have been reasonably expected to know

that each PCP (where applicable) would put the claimant at a substantial disadvantage in comparison to non-disabled persons?

415. In relation to diabetes, the respondents knew that the claimant had the disability throughout the relevant period, i.e. from April 2019.

416. In relation to dyslexia and dyspraxia, the respondents knew, or could reasonably have been expected to know, that the claimant had the disability, from June 2021 when the claimant was diagnosed.

417. In relation to anxiety and stress, the respondents knew or could reasonably have been expected to know that the claimant had the disability from June 2022 (one year after the medical evidence ceased referring to the condition as being due to anxiety about catching Covid-19).

418. We address the question of whether the respondents knew or could reasonably have been expected to know that each PCP would put the claimant at a substantial disadvantage when we address whether each of the PCPs caused substantial disadvantage below.

5.2 A "PCP" is a provision, criterion or practice.

Did the respondent have the following PCPs:

5.2.1 A requirement by R1 and R3 to work nightshifts. NB: the claimant's case is that he was still put on the rota to work night shifts even though OH had advised that he should not.

419. Ordinarily there would be a requirement for GP trainees to work nightshifts on a rota basis. Following the medical advice received in May 2019 confirming that the claimant should no longer work night shifts, he did not do so (despite the claimant's assertion that he did) and therefore no such PCP was applied to the claimant from that point onwards.

5.2.2 A practice of not allowing legal representation at disciplinary hearings.

420. There is no such PCP. Although it is not normal practice for many employers to allow legal representation at disciplinary hearings, the respondents could do so in certain circumstances. The respondents have not refused to allow the claimant to bring (his own) legal representative to disciplinary hearings and therefore no such PCP has been applied.

5.2.3 A requirement to write notes during patient consultations.

421. We note first of all that this issue was not addressed in the respondents' written submissions and therefore we do not know whether or not the respondents accept that this PCP exists. We do consider that there was a general PCP within the respondents to write notes during patient consultations: this would be inevitable given that it is important that patient care is properly recorded. There was therefore this PCP.

5.2.4 A requirement to work shifts without regular breaks.

422. We conclude that there was a requirement upon doctors and trainee doctors to manage their own breaks, taking them at such times as were appropriate having regarding to their needs and the needs of their patients. Trainees were trusted to ensure that they took appropriate breaks throughout the day. Therefore, we conclude that there was no requirement to work shifts without regular breaks, rather the requirement was for trainees to regulate their own breaks and to take personal responsibility for ensuring that they took them.

423. We recognise that the claimant has also asserted that he was sometimes left alone and did not always feel able to take breaks and/or that he would use break times to catch up on writing notes, however that does not detract from the position that it was for the claimant to take breaks as and when he felt he needed them. If he did not feel that he had enough time to take breaks, that was something that he could have raised but he did not do so. This PCP did not exist.

5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

5.3.1 The claimant struggled to do nightshifts, in particular due to his need to control his diabetes with insulin.

424. We accept that the claimant struggled to do nightshifts due to his diabetes and, if a PCP was applied to him requiring him to do so, this would place him at a substantial disadvantage compared to someone without his disability of diabetes. However, no such PCP was applied to him from the point at which occupational health advised that he should not work nights for medical reasons. That occupational health advice was sought promptly upon the claimant raising the issue. The claimant was therefore not put at a substantial disadvantage from the time when occupational health advised against the claimant working night shifts.

425. As to when the respondents knew or could reasonably have been expected to know that the claimant was likely to be placed at a substantial disadvantage by being required to work night shifts, this was once the occupational health advice was received informing the first respondent that the claimant should no longer work nights. Therefore, it is only from that date onwards that we consider that the respondents had any duty to remove the claimant from night shifts (which they did).

426. Therefore, in conclusion, during the period when there was a PCP of requiring nightshifts to be worked, the respondents could not reasonably have known that this would place the claimant at a substantial disadvantage. From the point at which they had that knowledge, they ceased to apply such a PCP to him. Therefore this claim fails.

5.3.2 The claimant struggled to focus and take notes and deal with the hearing without legal representation.

427. We have assumed that the comment about struggling to focus and take notes relates to the hearings at which he wanted legal representation specifically, rather than patient consultations. The claimant's difficulties taking notes in patient consultations are addressed below separately.

428. As explained above, there was no PCP of not allowing legal representation. We accept that the claimant would benefit from having representation, whether that be from a union representative, colleague or a legal representative, and that he would be put to a substantial disadvantage if he were not permitted to have a representative. However, we do not conclude that this necessarily needed to be a legal representative as opposed to a union representative or colleague. The occupational health reports do not say that he is required to be allowed legal representation, only representation. We conclude that, even if legal representation had been refused, this would not place him at a substantial disadvantage provided that he was permitted to bring a union representative or colleague to represent him at those hearings.

429. If we are wrong on that, we also conclude that the respondents could not reasonably have known that the claimant would be put at a substantial disadvantage by not being allowed legal representation, in circumstances where the occupational health advice only recommended that he be permitted to have representation more generally.

430. Therefore this claim fails.

5.3.3 The claimant struggled to write notes in the time usually expected for patient consultations.

431. We accept that the claimant's dyslexia and dyspraxia is likely to have resulted in it being harder for him to take notes quickly than for trainees who did not have this disability (for example, Access to Work commented that the claimant found writing neatly and quickly difficult to manage). We also conclude that this would place him at a substantial disadvantage (given that substantial means more than minor or trivial). We would add that some of the difficulties experienced by the claimant appear to have related to his language skills as well but that does not detract from the difficulties that we accept he would face due to dyslexia and dyspraxia.

432. However, the respondents could only reasonably be expected to have knowledge of that substantial disadvantage from the point at which they became aware of the claimant's dyslexia and dyspraxia which was at the earliest 25 June 2021 (the date of the diagnosis report) and 26 August 2021 (the first time the first respondent mentions it in correspondence). By that time, the claimant was no longer working at the third respondent and therefore this could only be relevant to the first and second respondents.

5.3.4 The claimant struggled to cope on shift without regular breaks.

433. Given that there were recommendations in the medical evidence that regular breaks would assist the claimant, we conclude that a lack of regular breaks would place the claimant at a substantial disadvantage. We repeat

however that we have not concluded that there was a requirement to work without regular breaks in the first place.

434. We would also add that, following the claimant's diagnosis of dyslexia and dyspraxia (which this disadvantage related to) the first respondent did inform the claimant's host organisation (who is not party to these proceedings) of the recommendation to increase the claimant's consultation times – this would avoid a situation where he felt that he had to use break times to catch up. If there were any failure to provide such increase (of which we saw no evidence in any case save for the claimant asserting it to be the case), responsibility for that would lie with that host organisation and not the respondents. By that time the claimant was no longer working at the third respondent and therefore that host organisation cannot be responsible for implementing any adjustments.

435. The first respondent knew, or could reasonably have been expected to know that the claimant would struggle without regular breaks from the date on which his dyslexia and dyspraxia diagnosis report was shared with the first respondent, at some point between 25 June 2021 and 25 August 2021. The second respondent could also reasonably have known from that date. The claimant was no longer working at the third respondent by that date and therefore their knowledge is irrelevant to this allegation.

5.4 Did the lack of an auxiliary aid, namely those set out in the occupational health report dated 3 March 2023 and computer software to assist with making notes, put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

436. We conclude that there was no failure to provide an auxiliary aid. We accept that the Access to Work assessment took far longer to be completed than should have been the case. However, liability for that does not rest with the respondents, who chased for it on the claimant's behalf once they became aware that the claimant had not had a response from Access to Work.

437. Once the Access to Work report was received, the first respondent took steps to arrange the equipment that had been recommended and this was provided to him. In relation to the one particular piece of software that the claimant rightly says he was not able to use, this was because the claimant had not organised the training in order to be able to use it.

438. Therefore there was no lack of an auxiliary aid.

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

439. The respondent could only reasonably have been expected to know that the claimant would be placed at a substantial disadvantage by a lack of auxiliary aid once the auxiliary aid was recommended. The dyslexia and dyspraxia diagnosis report in June 2021 did outline that technology solutions were recommended and therefore from that point the first respondent could reasonably have been expected to know that some technology aids may be required, although not exactly which ones. The first

respondent therefore asked the claimant to contact Access to Work (which the first respondent could not do on the claimant's behalf). Once the recommendation was received for specific auxiliary aids, those were provided to the claimant.

5.6 What steps could have been taken to avoid the disadvantage?

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

5.8 Did the respondent failed to take those steps?

We address these together for each point as they are linked.

The claimant suggests:

5.6.1 Not requiring the claimant to work nightshifts.

440. We agree that this would avoid the disadvantage, and that it was reasonable for the respondent to have to take those steps from the point at which occupational health advised against the claimant working night shifts. This was implemented by the respondents, hence no such PCP being applied to him from that point onwards. There was no failure to make reasonable adjustments and this claim fails.

5.6.2 Not requiring the claimant to work past 10pm.

441. We agree that this would avoid the disadvantage, and that it was reasonable for the respondent to have to take those steps from the point at which occupational health advised against the claimant working night shifts. This was implemented by the respondents. There was no failure to make reasonable adjustments and this claim fails.

5.6.3 Allowing the claimant to have a legal representative at the disciplinary hearing which took place on 12 January 2022.

442. We consider that bringing a representative of some sort, including a legal representative, would avoid the disadvantage. We conclude that it was reasonable for the first respondent to have to allow the claimant to be accompanied by a representative, although we consider that a union representative would be sufficient and not necessarily a legal representative.

443. However, in any case, the claimant was not prevented from bringing a representative, including a legal representative. The claimant's case is that the first respondent should have funded that legal representative: this is not what the issue is framed as, and not what occupational health recommended. We would add that we do not consider it to be a reasonable adjustment to require an employer to pay for an employee's representation.

444. We would also note that the claimant had union representation in relation to the sick pay issue in 2022 and therefore he was familiar with the concept of union representation and how to arrange and/or request this.

445. Therefore, even if a PCP had been applied to him of not allowing legal representation, we would conclude that it would not be a reasonable adjustment to allow a legal representative, or to fund it or provide one to the claimant.

5.6.4 Increase the time of patient consultations to at least 15/20 minutes.

446. This step would help to avoid the disadvantage caused by shorter consultation times. We did not hear any real evidence as to whether it would be reasonable for the respondent to have to take those steps, however in the absence of any evidence suggesting the contrary, we conclude that it was.

447. The respondents did not fail to take those steps. The organisation which could increase the time of patient consultations would be the host organisation. The only host organisation which is party to these proceedings is R3, and the claimant's rotations there had ended before his diagnosis of dyslexia and dyspraxia (and so the duty to make reasonable adjustments in that regard was not engaged). The first and second respondents discharged its duty through the first respondent passing the recommendation onto the host employers at the relevant times (and we saw some evidence that they did so). Prior to the claimant's diagnosis in June 2021 the respondents could not have reasonably have been expected to know that the claimant was at a substantial disadvantage and therefore the duty to make reasonable adjustments had not been engaged.

448. Therefore the respondents did not fail to make reasonable adjustments in this regard and this claim fails.

5.6.5 Give the claimant computer software to assist with making notes.

449. We conclude that this would help to avoid the disadvantage, and that it was reasonable for the first respondent to have to take those steps. The first respondent provided various pieces of equipment to support the claimant following the recommendations of Access to Work. Although there was a substantial delay on the part of Access to Work, we conclude that there was no failure on the respondents' part to give the claimant computer software, and that the delays were down to (a) Access to Work and (b) the claimant not completing the required training to be able to use it.

450. The respondents therefore did not fail to take this step and there was no failure to make reasonable adjustments.

5.6.6 Allow the claimant regular breaks on shift.

451. This would also help to avoid the disadvantage, and it was a reasonable step for the respondents to have to take. The respondents did not fail to take those steps: it was for the claimant to regulate his own breaks and he was not denied the ability to take regular breaks on shift, for the reasons se out above. We would also add that the duty to make reasonable adjustments in this regard would only apply following the claimant's diagnosis of dyslexia and dyspraxia. No host organisation which hosted the claimant following his diagnosis of dyslexia and dyspraxia is party to these proceedings, and it would again be for them to allow the claimant to take regular breaks.

452. The claimant's claim for failure to make reasonable adjustments therefore fails.

6. Harassment related to race (Equality Act 2010 section 26)

6.1 Did the respondents do the following things: [see below for individual allegations]

6.2 If so, was that unwanted conduct?

6.3 Did it relate to race?

6.4 Did the conduct have the purpose of violating the claimants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

453. We address each of the factual allegations in turn, dealing with all of the above issues in our conclusions (so far as relevant).

6.1.1 On 19 July 2019 the admin staff at R3 told the Claimant to contact his clinical supervisor.

6.1.2 On 19 July 2019 the Claimant's clinical supervisor (R3) shouted at the Claimant and used rude language towards him.

6.1.3 On 19 July 2019 the Claimant's clinical supervisor (R3) told the Claimant to contact his educational supervisor.

6.1.4 The Claimants education supervisor (Dr Mohanna) put the Claimant's personal email onto his eportfolio.

454. We have grouped these together as they all relate to the incident on 19 July 2019 when the claimant said that he would not be attending work due to having visitors.

455. We conclude that the administration staff at the third respondent would have told the claimant to contact his clinical supervisor to advise them of

what he had done, and likewise that Dr Mukherjee (his clinical supervisor) would have told him to contact Dr Mohanna (his educational supervisor). This therefore did occur. It appears that this was unwanted conduct, however we would note that if the claimant was so confident that he had done nothing wrong we cannot see why he would not want to inform his clinical supervisor about it.

456. We have not found that Dr Mukherjee shouted at the claimant or used rude language, and therefore the claimant's claim must fail in relation to issue 6.1.2. However, we do consider that his natural frustration at what the claimant had done would have been apparent, and that would have been unwanted conduct.

457. We have also found that Dr Mohanna did put the claimant's email about the incident onto his E-portfolio (although it was not strictly speaking a personal email, it was a work related email that contained personal information). Again, it appears that this was unwanted conduct however we would note that if the claimant was confident that he had done nothing wrong, we are not clear as to why he would be upset by reference to it being made on his e-portfolio.

458. In all of the above cases, we have seen nothing to support the claimant's assertion that the conduct related to the claimant's race. The conduct outlined above was as a direct result of the claimant having refused to attend work with 15 minutes notice without a satisfactory explanation (although the claimant considers his explanation satisfactory we conclude that it was clearly not). We would add that the claimant is not arguing that this is related to race on the basis that he wanted the time off because of Pashtoon custom: to the contrary he has accused Mr Neild of racism for having investigated such a link. His position is simply that it was related to race because all of these people are racist, without any evidence to support that position. We find that the burden of proof has not shifted to the respondent and these complaints fail.

6.1.5 On 23 July 2019 the Claimant's clinical supervisor (Dr Mukherjee) informed the Claimant he would have been removed from the GP training programme and that he needed to look for another job. The claimant says he was threatened with being removed from GP training, and would be looking for a job in Walsall hospital The claimant says R1, R2 and R3 are responsible.

459. Although framed slightly differently, we have addressed this factual allegation within Issue 3.1.22 above. The claimant was not informed that he would have been removed from GP training and that he needed to look for another job: this was not something that Dr Mukherjee had any control over in any case. We repeat our conclusions from issue 3.1.22 above and conclude that these facts as alleged did not occur, nor was there any evidence to suggest that any comments made by Dr Mukherjee on 23 July 2019 were related to the claimant's race. This complaint fails.

6.1.6 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

460. We repeat our conclusions in relation to issue 3.1.17 above. The claimant was offered an appeal hearing and in any event there is no evidence to support his assertion (whether directly or by inference) that this treatment related to his race. This complaint fails.

6.1.7 Mr. Geff (R3) asked the Claimant questions based on his ethnic origin during an investigation interview on 18 September 2019.

461. Mr Geoff Neild (which is who the claimant means by Mr Geff) did ask the claimant about Pashtoon culture at the investigation interview, and therefore did ask the claimant questions based on his ethnic origin. The reason for this was because the claimant had himself referred to Pashtoon culture in his email on 19 July 2019 and therefore it was clearly relevant to his investigation: this was the precise reason that the claimant had given for not attending work, and therefore it would have been remiss of Mr Neild if he had completely ignored that reason. Therefore, Mr Neild did ask the claimant questions which related to his ethnic origin during the meeting, and it was therefore related to his race.

462. The claimant clearly considers this to be unwanted conduct. We find that strange, given that the claimant himself had included this in his reason for absence, however we accept that the claimant found it unwanted.

463. The conduct did not have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. There are no facts from which we could conclude, in the absence of any other explanation, that it had such purpose. We would add that we also accept the respondents' explanation for Mr Neild's treatment of the claimant: Mr Neild's purpose was clearly to understand and explore the reasons provided by the claimant himself for his absence so as to assess fairly whether those reasons were sufficient to justify his absence at short notice.

464. We have also considered whether the conduct nevertheless had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We do not in fact accept that it did: given that the claimant had himself raised Pashtoon culture we conclude that he cannot genuinely have found it to violate his dignity or create an intimidating, hostile, degrading or offensive environment for him when that was explored further with him. However, if we are wrong on that, then we conclude that it was not reasonable for the conduct to have that effect in circumstances where he had raised the matter himself and where it was being explored for the purpose of understanding whether this provided him with mitigating circumstances in the disciplinary investigation. This complaint fails.

6.1.8 On 31 January 2020 Alya Murtaza entered incorrect information into the Claimant's eportfolio in respect of his attendance at VTS training teaching sessions. The claimant says R1, R2 and R3 are responsible.

465. We do not know for sure whether the information entered by Ms Murtaza was correct or incorrect. We know that the claimant says it was incorrect but that Ms Murtaza's supervisor had said that the information was taken from the respondents' systems. The claimant has not shown on the balance of probabilities that it was incorrect. However, in any case, we address the issue further below on the basis that the information may have been incorrect.

466. The conduct was clearly unwanted. However, it should not have been unwanted to the extent portrayed by the claimant: at most it should have been mildly irritating to have to go through a process to request that the information be correctly.

467. As to whether the conduct related to race, the claimant accepts that he did not know Ms Murtaza and she did not know him. Whilst the claimant's name may have given some indication that he may not be white British, she did not know his actual race. Nor has the claimant put forward any reason why she would have acted as she did for a reason related to his race, nor have we seen any evidence to suggest that this might in any way be the case. The burden of proof has not shifted and this claim fails. We would add that this is a clear example of how the claimant simply assumes that everything he is unhappy about must be related to his race: on his own evidence, he had no basis for considering that her treatment of him was connected to his race yet that was the allegation he immediately made.

468. We would add that there is nothing to suggest that the purpose to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for him, and it would be entirely unreasonable for the conduct to have that effect in the circumstances.

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

7.1 Did the respondents do the following things:

7.1.1 Dr Kay Ling made a joke that the Claimant clerked patients slowly during his rotation on the stroke ward. 4 April 2019 – 4 August 2019. R1 and R3 responsible.

7.1.2 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

7.1.3 The claimants educational supervisor (Dr Mohanna) put the Claimant's personal e-mail onto his eportfolio. The date was 19 July 2019 and the claimant says R1, R2 and R3 are responsible.

7.1.4 On 23 July 2019 the Claimant's clinical supervisor (Dr Mukherjee) informed the Claimant he would have been removed from the GP training programme and that he needed to look for another job. The claimant says he was threatened with being removed from GP training, and would be looking for job in Walsall hospital The claimant says R1, R2 and R3 are responsible.

7.2 If so, was that unwanted conduct?

7.3 Did it relate to disability?

7.4 Did the conduct have the purpose of violating the claimants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

469. We address all of these allegations together as the factual complaints have all been addressed within the other issues above. We refer to our findings in relation to the equivalent issues above under Direct Race Discrimination, Direct Disability Discrimination and Harassment related to Race as to whether or not these incidents occurred as alleged. Where the incidents occurred, we accept that they were unwanted.

470. At to whether the unwanted conduct was related to disability, in relation to issue 7.1.1, we have not found on the balance of probabilities that the comment was made in the first place. We are also not satisfied that, if a comment was made, it was by way of a joke at the claimant's expense.

471. If we are wrong on that, then this would be unwanted conduct and we accept that its effect would be to violate the claimant's dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment for him. In that case, we would need to consider whether the burden of proof shifts to R1 and R3 to show that it was not related to disability. In evidence the claimant himself said that he did not think that it was linked to disability (only to race).

472. We have no knowledge as to whether any other colleagues would also have been the subject of similar jokes. On the one hand, the claimant clearly was dyslexic at this time although neither he nor Dr Ling (nor the respondents) knew that. We also recognise that the concept of "related to disability" (harassment) is wider than "because of disability" (direct discrimination), and that knowledge is relevant but not conclusive. The recommendations made following the claimant's diagnosis of dyslexia and dyspraxia do suggest that he would work more slowly. However, we have also found that the claimant's issues with his speed of work did not relate only to dyslexia, but also to his language skills and his competency more generally.

473. Given that Dr Ling did not know that the claimant was disabled by reason of dyslexia and dyspraxia, given that the claimant himself in his evidence said that it was not related to disability, and given that the respondents also reported that the claimant struggled with his performance more generally and with his language skills (and for the avoidance of doubt we accept that to be the case, even if the claimant says it was not), we consider that there are not facts from which we could conclude, in the absence of any other explanation, that the reason for the treatment could be the claimant's disability.

474. Taking everything into account, we conclude that there are not facts from which the court could decide, in the absence of any other explanation, that the conduct (if it had occurred) was related to his disability.

475. In relation to issues 7.1.2, 7.1.3 and 7.1.4, we have already set out above our conclusions as to why this treatment occurred. There is no evidence whatsoever to support his assertion that the treatment in relation to these issues was in any way related to his race and these claims must fail.

8. Victimisation (Equality Act 2010 section 27)

8.1 Did the claimant do a protected act as follows:

8.1.1 A written complaint on 14 August 2019.

476. The claimant did make a written complaint on 14 August 2019.

8.1.2 A written complaint to R2 on 12 August 2020 about bullying in his eportfolio.

477. The claimant's written complaint on 12 August 2020 was to Ms Murtaza, and it did not reference discrimination so did not amount to a protected act. He did send a separate complaint on 13 August 2020 (i.e. not the date in the list of issues) to Dr Smith which did refer to discrimination. This would constitute a protected act.

8.2 Did the respondent do the following things: [see below for individual allegations]

8.3 By doing so, did it subject the claimant to detriment?

8.4 If so, was it because the claimant did a protected act?

8.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

478. We address each of the factual allegations in turn:

8.2.1 R1 commencing disciplinary proceedings against him on 19 July 2019.

479. Disciplinary proceedings were commenced against the claimant in respect of the 19 July 2019 incident, although it was not on 19 July 2019 that they were commenced. This did place the claimant at a detriment.

480. We next consider whether the claimant has shifted the burden of proof. The fact that there has been a protected act and a detriment is not sufficient on its own to shift that burden of proof to the employer to disprove discrimination, there must be something more. In this case, the something more is that there is an email in which the first respondent specifically refers to not having informed the claimant of the decision to proceed to disciplinary

so as not to appear as though the decision was taken because of his written complaint. In addition, there is a close proximity in time between the claimant's complaint and the disciplinary investigation being announced. There are therefore facts from which we could decide, in the absence of any other explanation, that the decision to take the claimant to disciplinary investigation was because of the claimant's complaint dated 14 August 2019. The burden of proof has shifted to the respondent to show that discrimination did not occur.

481. However, we are satisfied that the first respondent has provided a non-discriminatory explanation for the treatment. The reason for commencing a disciplinary investigation was not because the claimant did a protected act. It was because the claimant had not attended work on 19 July 2019 without a satisfactory reason for taking the time off at short notice. The first respondent was already considering disciplinary action before the claimant raised his complaint and it is clear that they had a valid basis for doing so. In fact, we would have considered it surprising if they had not started a disciplinary investigation in the circumstances. They commented on not informing him of the disciplinary investigation so as not to lead him to believe that they were connected but this was not because they were connected, it was because they realised that he might mistakenly say that they were. The reason for the treatment was not because the claimant had done a protected act.

482. Nor was it because the first respondent had believed that the claimant might do a protected act. The first respondent was well used to the claimant raising complaints of various types, he had been doing so throughout his employment to date. Given the nature of the claimant's conduct, it is clearly appropriate that this formed part of a disciplinary investigation and we conclude that it is clear that it was the claimant's conduct on 19 July 2019 which led to the disciplinary investigation.

483. For the avoidance of doubt, the disciplinary investigation could not have been because of his complaint on 12/13 August 2020, as it pre-dated those complaints. This complaint fails.

8.2.2 R1 taking disciplinary action against the claimant.

484. The first respondent did take disciplinary action against the claimant, in December 2022, over two years after the protected acts. The disciplinary action would amount to a detriment.

485. However, there are not facts from which the court could decide, in the absence of any other explanation, that it was because the claimant did a protected act. In relation to the written complaint in August 2019, by this time it was over 2.5 years since his written complaint, and the disciplinary action followed a thorough investigation. If we are wrong on that and the burden of proof did shift to the respondent, we concluded that first the respondent has shown that there was a non-discriminatory reason for the treatment i.e that the treatment was because of his conduct on 19 July 2019 and for no other reason, for the reasons we have set out above in relation to issue 8.2.1.

486. In relation to the written complaint about bullying in his e-portfolio, it was again over two years after the event that disciplinary action took place and although the initial investigation would have started soon after the claimant raised his complaint, this was simply because the claimant's complaint and the disciplinary matter arose out of the same circumstances. That in itself is not in our view sufficient to constitute facts from which, in the absence of any other explanation, we could decide that discrimination took place. If we are wrong on that, we conclude that the first respondent has shown that the reason for the disciplinary action was not because of his complaint, but because he sent inappropriate emails to Ms Murtaza and to Ms Slater. The claimant's conduct was clearly inappropriate and it is obvious from the first respondent's initial reaction to the claimant's tone in his emails that the first respondent had genuine concerns about this. This complaint fails.

8.2.3 R1 and R2 commencing an investigation against the Claimant.

487. This issue does not identify which investigation is being referred to (i.e. the one into the 19 July 2019 incident or the one into the 12 August 2020 incident). In either case, this did occur and amounted to a detriment.

488. In relation to the 19 July 2019 incident, we repeat our conclusions on issue 8.2.1.

489. In relation to the 12 August 2020 incident, we conclude that there are not facts from which the court could decide, in the absence of any other explanation, that it was because the claimant did a protected act. We repeat our conclusions above in relation to issue 8.2.2. Again, it is true that the investigation into the 12 August 2020 incident closely followed his complaint, however that is simply because the claimant's complaint arose out of the same incident that the disciplinary investigation related to: it was therefore inevitable that they would be in close proximity in time. Again, if we are wrong on that, the first respondent has shown that the reason for the investigation was genuinely because of the claimant's conduct and not because of his complaint, for all the reasons set out above. This complaint fails.

8.2.4 R1 conducting a disciplinary hearing on 12 December 2022 in the Claimant's absence and giving him a final written warning.

490. In relation to the disciplinary sanction itself, we repeat our conclusions at issue 8.2.2 above. In relation to the hearing being conducted in his absence, this did happen and it was a detriment.

491. However, the Tribunal has been shown no facts which indicate in any way (whether directly or by way of inference) that the decision to hold the hearing in the claimant's absence may have been in any way related to his protected acts. Rather, the disciplinary matter relating to 19 July 2019 had been ongoing for over three years and the August 2020 matter had been ongoing for over two years, and the first respondent reasonably determined that the matter needed to be brought to a close. This complaint fails.

8.2.5 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

492. We refer to our conclusions above that it was the claimant's choice not to attend an appeal hearing on this matter. Clearly, given that it was the claimant's choice, it cannot have been a detriment and it cannot have been because of his protected acts. This complaint fails.

9. Remedy for discrimination or victimisation

493. As we have not found discrimination to have occurred, this is not relevant.

10. Unauthorised deductions

10.1 Did R1 make unauthorised deductions from the claimant's wages and if so, how much was deducted?

The Claimant says he was entitled to be paid 6 months full pay and six months half pay whilst on sick leave between the following dates: June and July 2020 and March 2022 to May 2022. He alleges that R1 unlawfully deducted pay he should have received while he was off sick.

494. The question here is whether the amounts paid to the claimant were less than was properly payable to him by way of sick pay. As we have found above, the claimant was underpaid sick pay during these periods. However, once the matter was brought to the first respondent's attention it was investigated and the shortfall repaid to him.

495. The claimant says that the first respondent's calculations are incorrect. However, the claimant has failed to demonstrate to the Tribunal that additional sums are owed to him. The burden of proof is on the claimant to demonstrate on the balance of probabilities that he has been paid less than he was owed. He has not done so. We prefer the first respondent's evidence which demonstrates that a number of employees reviewed the calculations and provides a table showing those calculations and how the sums have been reimbursed to the claimant.

11. Remedy

496. As the claimant has not succeeded in his unauthorised deductions claim, there is no remedy to consider.

Time limits

497. As the claim has not succeeded on any ground, it is not necessary to consider time limits. However, for completeness, the claimant has not put forward any explanation as to why his claim was not brought within three months (plus early conciliation extension) of any act complained of (save to argue generally that there was ongoing bullying and discrimination which continued to the date of his written submissions), and therefore if we are wrong on any of his claims, we conclude that any matters which occurred outside of that period and which were not conduct extending over a period,

were not brought within the required time limits and we would not exercise our discretion to extend time. Although the claimant did have periods of ill health, he has not argued that this prevented him from bringing claims and his ill health was not continuous in any event. We also note that no allegations have been raised by the claimant in respect of 2021 prior to his dyslexia diagnosis and therefore there is a clear break of over three months between any acts preceding that date and the later acts of alleged discrimination.

498. For all the reasons set out above, the claimant's claims are dismissed.

Employment Judge EdmondsEdmonds

4 May 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

7th May 2024

Karl Frankson

FOR EMPLOYMENT TRIBUNALS

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Annex A – List of Issues

The claimant's comments within the list of issues are shown in italics. Spelling mistakes have been retained so that the list accurately reflects exactly what was agreed between the parties.

1. **Time Limits**

1.1 Given the date the claim form was presented and the dates of early conciliation, the respondent submits that any complaint about something that happened before 25 January 2022 may not have been brought in time.

1.2 Were the complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Claimant disagree with all below points claim was made on time, claimant is not legal expert tribunal will decide which law will apply?

1.3 Were the complaints for unauthorised deductions made within the time limit in section 23(2) of the Employment Rights Act 1996? The Tribunal will decide:
1.3.1 Did the deductions form part of a series of deductions?
1.3.2 Have the complaints in respect of the deductions being brought within three months (plus early conciliation) of the last deduction, or series of deductions?
1.3.3 If, in respect of any of the complaints for unauthorised deductions they have not, was it reasonably practicable for the complaints to have been submitted in time.
1.3.4 If the Tribunal finds that it was not reasonably practicable for the complaints to have been submitted in time were the complaints presented within such further period as the Tribunal considers reasonable?

2. **Disability**

2.1 The respondent has accepted that the claimant was disabled at all relevant times by reason of diabetes.

2.2 The Tribunal will decide whether the claimant had a disability as defined in section 6 of the Equality Act 2010 by reason of anxiety and stress, and dyslexia and dyspraxia.

2.2.1 Did he have a physical or mental impairment: anxiety and stress, and dyslexia and dyspraxia.

2.2.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

2.2.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.2.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.2.5 Were the effects of the impairment long term? The tribunal will decide:

2.2.5.1 Did they last at least 12 months, or were they likely to last at least 12 months?

2.2.5.2 If not, were they likely to recur?

2.3 Did the Respondents know or could they reasonably have been expected to know, that the Claimant was a disabled person by reason of diabetes, and the alleged disabilities of anxiety and stress, dyslexia and dyspraxia? If so, by what date?

Claimant comment – yes respondents know.

3. **Direct race discrimination (Equality Act 2010 section 13)**

3.1 Did the respondent do the following things:

3.1.1 R1 failed to recognise the Claimant's previous NHS experience for the purposes of his salary entitlement before 22 April 2022. From 1 August 2018 – ongoing.

3.1.2 R1 and R2 failed to issue the Claimant with an NHS smart card or ESR card. 1 August 2018 – November 2019.

3.1.3 R1 and R3 failed to provide the Claimant with a proper induction in his first training rotation in Paediatrics. 1 August 2018 – 4 December 2018.

3.1.4 R3 (Mr Muogno) and/or R2 (Fiona Sellens) failed to investigate a dignity at work complaint made by the Claimant in August 2018.

3.1.5 The Claimant's clinical supervisor (Mr Muogbo) provided an unfair report for the Claimant's ARCP assessment in July 2019 without the Claimant's input. 28 May 2019 (date report prepared). R3 responsible.

3.1.6 R1 suspended the Claimant from GP training on 19 October 2018 until 30 November 2018.

3.1.7 The Claimant was prevented by R1 from seeing patients between 4 December 2018 – 3 April 2019

3.1.8 In February 2019 Dr Hankin (R1) wrote to the Claimant's clinical supervisor, educational supervisor and other staff about a GMC investigation concerning the Claimant

3.1.9 R1 and R2 provided to the GMC emails from the Claimant (including a request to transfer the Claimant's training, and the Claimant's complaints of bullying and harassment). Claimant unable to confirm date but he became aware of this on 22 August 2022.

3.1.10 The Claimant was only provided with his rota on the stroke ward on 3 April 2019 one day before the start of his rotation instead of eight weeks before the start of his rotation. R1, R3.

3.1.11 The Claimant was only provided with his rota on the respiratory ward on 4 August 2019 one day before the start of his rotation instead of eight weeks before the start of his rotation. R1, R2, R3 responsible.

3.1.12 The Claimant was not allocated / left without an educational supervisor by R2 between 1 August 2018 – February 2019.

3.1.13 The Claimant was informed by Dr Mohanna (R2) on 13 February 2019 he would be treated differently because of the GMC investigation the Claimant was subject to.

3.1.14 Dr Mohanna (R2) wrote irrelevant information in the Claimant's e-portfolio in 2019 specifically that the Claimant's wife and child visited Pakistan.

3.1.15 Dr Kay Ling made a joke that the Claimant clerked patients slowly during his rotation on the stroke ward. 4 April 2019 – 4 August 2019. R1, R2 and R3 responsible.

3.1.16 R2 arranged the Claimant's ARCP hearing to take place on 1 August 2019 when the Claimant had only completed 6 months of training and had been suspended and prevented from seeing patients for a period of time.

3.1.17 The Claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

3.1.18 The Claimant's educational supervisor prepared an educational supervisor's report in May 2019 without the Claimant's input. R1, R2 and R3 responsible.

3.1.19 The Claimant's educational supervisor assessed the Claimant as unsatisfactory in the educational supervisor's report. The date is July 2019 and C says R1, R2 and R3 are responsible.

3.1.20 The Claimant's complaint to R2 in June 2019 about his educational supervisor's report was ignored.

3.1.21 The Claimant's educational supervisor (Dr Mohanna) put the Claimant's personal email onto his portfolio. The date was 19 July 2019 and the Claimant says R1, R2 and R3 are responsible.

3.1.22 The Claimant was removed from GP training on 23 July 2019. R1 and R3 responsible.

3.1.23 The Claimant was awarded an outcome 3 at his ARCP on 8 August 2019. R2 responsible.

3.1.24 The Claimant's appeal against ARCP outcome 3 was refused. The date is December 2019 and C says R2 is responsible.

3.1.25 R1 and R2 failed to investigate or stopped investigating the Claimant's complaint made on 14 August 2019.

3.1.26 R1 and R2 failed to share the investigation report concerning his complaint made on 14 August 2019 with the Claimant.

3.1.27 R1 failed to appoint an independent investigator to investigate the Claimant's complaint made on 14 August 2019.

3.1.28 R1 reduced the Claimant's salary by 50% in June 2020 and July 2020.

3.1.29 R1 reduced the Claimant's salary on 28 March 2022 to June 2022 without notice to the Claimant.

3.2 Was that less favourable treatment?

3.3 If so, was it because of race?

3.4 Did the respondent's treatment amount to a detriment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

4. **Direct disability discrimination (Equality Act 2010 section 13)**

4.1 Did the respondent do the following things:

4.1.1 Dr Kay Ling made a joke that the Claimant clerked patients slowly during his rotation on the stroke ward. 4 April 2019 – 4 August 2019. R1 and R2 responsible.

4.1.2 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

4.1.3 R1 and R2 failed to investigate or stopped investigating the Claimant's complaint made on 14 August 2019.

4.1.4 R1 and R2 fail to share the investigation report concerning his complaint made on 14 August 2019 with the Claimant.

4.1.5 R1 failed to appoint an independent investigator to investigate the Claimant's complaint made on 14 August 2019.

4.1.6 R1 reduced the Claimant's salary by 50% in June 2020 and July 2020.

4.1.7 R1 reduced the Claimant's salary on 28 March 2022 to June 2022 without notice to the Claimant.

4.2 Was that less favourable treatment?

4.3 If so, was it because of disability?

4.4 Did the respondent's treatment amount to a detriment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

5. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

5.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date? Did each respondent know yes or could they have been reasonably expected to know that each PCP (where applicable) would put the claimant at a substantial disadvantage in comparison to non-disabled persons?

5.2 A "PCP" is a provision, criterion or practice.

Did the respondent have the following PCPs:

5.2.1 A requirement by R1 and R3 to work nightshifts. NB: the claimant's case is that he was still put on the rota to work night shifts even though OH had advised that he should not.

5.2.2 A practice of not allowing legal representation at disciplinary hearings.

5.2.3 A requirement to write notes during patient consultations.

5.2.4 A requirement to work shifts without regular breaks.

5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

5.3.1 The claimant struggled to do nightshifts, in particular due to his need to control his diabetes with insulin.

5.3.2 The claimant struggled to focus and take notes and deal with the hearing without legal representation.

5.3.3 The claimant struggled to write notes in the time usually expected for patient consultations.

5.3.4 The claimant struggled to cope on shift without regular breaks.

5.4 Did the lack of an auxiliary aid, namely those set out in the occupational health report dated 3 March 2023 and computer software to assist with making notes, put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

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

5.6 What steps could have been taken to avoid the disadvantage? The claimant suggests:

5.6.1 Not requiring the claimant to work nightshifts.
5.6.2 Not requiring the claimant to work past 10pm.
5.6.3 Allowing the claimant to have a legal representative at the disciplinary hearing which took place on 12 January 2022.
5.6.4 Increase the time of patient consultations to at least 15/20 minutes.
5.6.5 Give the claimant computer software to assist with making notes.
5.6.6 Allow the claimant regular breaks on shift.

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

5.8 Did the respondent failed to take those steps?

6. **Harassment related to race (Equality Act 2010 section 26)**

6.1 Did the respondents do the following things:

6.1.1 On 19 July 2019 the admin staff at R3 told the Claimant to contact his clinical supervisor.

6.1.2 On 19 July 2019 the Claimant's clinical supervisor (R3) shouted at the Claimant and used rude language towards him.

6.1.3 On 19 July 2019 the Claimant's clinical supervisor (R3) told the Claimant to contact his educational supervisor.

6.1.4 The Claimants education supervisor (Dr Mohanna) put the Claimant's personal email onto his eportfolio.

6.1.5 On 23 July 2019 the Claimant's clinical supervisor (Dr Mukherjee) informed the Claimant he would have been removed from the GP training programme and that he needed to look for another job. The claimant says he was threatened with being removed from GP training, and would be looking for a job in Walsall hospital The claimant says R1, R2 and R3 are responsible.

6.1.6 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

6.1.7 Mr. Geff (R3) asked the Claimant questions based on his ethnic origin during an investigation interview on 18 September 2019.

6.1.8 On 31 January 2020 Alya Murtaza entered incorrect information into the Claimant's eportfolio in respect of his attendance at VTS training teaching sessions. The claimant says R1, R2 and R3 are responsible.

6.2 If so, was that unwanted conduct?

6.3 Did it relate to race?

6.4 Did the conduct have the purpose of violating the claimants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

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

7.1 Did the respondents do the following things:

7.1.1 Dr Kay Ling made a joke that the Claimant clerked patients slowly during his rotation on the stroke ward. 4 April 2019 – 4 August 2019. R1 and R3 responsible.

7.1.2 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

7.1.3 The claimants educational supervisor (Dr Mohanna) put the Claimant's personal e-mail onto his eportfolio. The date was 19 July 2019 and the claimant says R1, R2 and R3 are responsible.

7.1.4 On 23 July 2019 the Claimant's clinical supervisor (Dr Mukherjee) informed the Claimant he would have been removed from the GP training programme and that he needed to look for another job. The claimant says he was threatened with being removed from GP training, and would be looking for job in Walsall hospital The claimant says R1, R2 and R3 are responsible.

7.2 If so, was that unwanted conduct?

7.3 Did it relate to disability?

7.4 Did the conduct have the purpose of violating the claimants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

8. **Victimisation (Equality Act 2010 section 27)**

8.1 Did the claimant do a protected act as follows:

8.1.1 A written complaint on 14 August 2019.
8.1.2 A written complaint to R2 on 12 August 2020 about bullying in his eportfolio.

8.2 Did the respondent do the following things:

8.2.1 R1 commencing disciplinary proceedings against him on 19 July 2019.

8.2.2 R1 taking disciplinary action against the claimant.

8.2.3 R1 and R2 commencing an investigation against the Claimant.

8.2.4 R1 conducting a disciplinary hearing on 12 December 2022 in the Claimant's absence and giving him a final written warning.

8.2.5 The claimant was not given an appeal hearing in respect of his appeal against his first written warning which expired on 12 January 2023.

8.3 By doing so, did it subject the claimant to detriment?

8.4 If so, was it because the claimant did a protected act?

8.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

9. **Remedy for discrimination or victimisation**

9.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

9.2 What financial losses has the discrimination caused the claimant?

9.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

9.4 If not, for what period of loss should the claimant be compensated?

9.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

9.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that? The Claimant alleges he suffered a MI, heart attack, caused due to constant bullying, and work related stress and anxiety and because disability adjustments were not provided. *Most Likely.*

9.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

10. **Unauthorised deductions**

10.1 Did R1 make unauthorised deductions from the claimant's wages and if so, how much was deducted?

The Claimant says he was entitled to be paid 6 months full pay and six months half pay whilst on sick leave between the following dates: June and July 2020 and March 2022 to May 2022. He alleges that R1 unlawfully deducted pay he should have received while he was off sick.

11. **Remedy**

11.1 How much should the claimant be awarded in total?

11.2 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

11.3 Did the respondent or the claimant unreasonably fail to comply with it?

11.4 Is it just an equitable to increase or decrease any award payable to the claimant?

11.5 By what proportion, up to 25%?