



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms I Clarke

**Respondent:** Sussex Partnership NHS Foundation Trust

**Heard at:** London South (remotely by CVP)  
**On:** 8, 9, 10 and 11 April 2024, 12 April 2024 in chambers

**Before:**  
**Employment Judge Heath**  
**Ms N Beeston**  
**Ms J Jerram**

**Representation**  
Claimant: Mr S Tarling (Claimant's partner)  
Respondent: Mr J Jupp KC (Counsel)

## RESERVED JUDGMENT

The claimant's claims are not well-founded and are dismissed.

## REASONS

### Introduction

1. The claimant is an Occupational Therapist who worked at the respondent's hospital at the relevant time. The period the tribunal was focussing on was early 2020 and onwards during the height of the Covid-19 pandemic. The claimant has a disability which required her to shield and to work from home. This case essentially revolves around how the respondent handled issues of working from home, how it dealt with conflict in the team the claimant managed, how it supported the claimant and dealt with difficulties she raised with them. The claimant says she was directly discriminated against and harassed relating to her disability, that reasonable adjustments were not made and that the respondent cumulatively breached the implied term of trust and confidence such that she was constructively dismissed.

## Issues

2. The issues in the case had not been clarified at a case management preliminary hearing on 27 February 2023 as further particulars of the claimant's claim were required. EJ Wright provided a template of the sort of List of Issues the tribunal would require. The claimant provided further particulars, and the respondent prepared a List of Issues. We discussed this List of Issues with the parties at the start of the hearing, and after some discussion she and Mr Tarling agreed that these were the issues the tribunal had to determine. This List of Issues is annexed below.

## Procedure

3. The hearing was originally listed as an in-person hearing. However, a train strike scheduled for the first day of the hearing meant that the first day was converted, in advance, to a CVP hearing. At the start of the hearing the claimant was asked what adjustments she might need to address any difficulty she may encounter during the hearing. She requested that all people in the tribunal room for the rest of the hearing should wear face masks, or failing that, that she and Mr Tarling would wear them during the hearing. One of the panel members wears hearing aids, and partially lip-reads and would struggle to understand both the claimant and her representative (and anyone else) if they were wearing masks. There was further discussion of the issue, and by common consent the entirety of the hearing was converted to a CVP hearing. No further adjustments were requested.
4. We were provided with a 1005 page bundle. On day 3 the respondent sought to disclose a further 30 or so pages of documents. After reading the documents and discussing the matter no objection was raised by the claimant to admitting these documents, which were added to the bundle.
5. The following provided witness statements and gave evidence;

For the claimant:

- a. The claimant;
- b. Mr Tarling (claimant's partner);

For the respondent

- c. Ms G Dorer (Professional Lead Occupational Therapist - who line managed the claimant for most of the period under consideration in this case);
- d. Mr L Wintergold (former Lead Occupational Therapist - who provided professional supervision to the claimant for most of the period under consideration in this case).

6. We took time to read the witness statements and documents identified in them on the first day, and began to hear evidence from the claimant. We concluded hearing the evidence on day four, gave the parties time to prepare closing submissions, and on the afternoon of day four received written submissions and heard oral submissions from both parties. We indicated to the parties that there was no likelihood of the tribunal completing its deliberations, preparing and delivering an oral decision on day five. We indicated that we would deliberate the following day and send a reserved written decision to the parties.

## **Facts**

### The parties

7. The respondent is an NHS Trust which operates the Langley Green Hospital ("LGH"), an acute psychiatric hospital with four wards for adult patients. It provides care for patients experiencing a range of often severe and enduring psychiatric illnesses, some of whom are under compulsory detention under the Mental Health Act 1983.
8. The claimant has been an Occupational Therapist ("OT") for around 20 years. OTs provide support for people to manage their social, domestic and leisure activities (for example self-care, managing finances, hobbies and building social networks). Their input is vital in the care and treatment of psychiatric patients, including supporting their effective discharge from hospital into the community. The claimant was first employed by the Trust in 2014, and on 7 March 2017 she was employed as a Band 7 Clinical Speciality Occupational Therapist at LGH.

### Original arrangements

9. The claimant's line manager was Ms Drage until Ms Drage took maternity leave in September 2020. Her line management was then taken over by Ms Walker (Lead Nurse Manager ) until Ms Walker commenced a period of sick leave in February 2021. From that point, Ms Dorer a Professional Lead Occupational Therapist, took over temporary line management responsibility of the claimant. In addition to line management, the claimant had a professional supervisor, Mr Wintergold.
10. Mr Wintergold observed in evidence that the claimant was hard-working, conscientious and clinically skilled and that she had initiated a number of well-regarded initiatives and forged productive relationships with staff in hospital. We accept this evidence along with evidence provided by the claimant to similar effect.
11. The claimant's role would normally involve a significant element of patient-facing care, strategic work and line management of OTs.

Planned leave

12. On 29 January 2020 the claimant took planned leave for surgery on 14 February 2020.
13. Prior to the claimant going on leave she managed a team of four OT's. She was also part of the leadership and management team within LGH. The claimant worked four days a week (or sometimes three long days) physically in the hospital.
14. During the claimant's absence, line management of the team was undertaken by Mr Rowley, Acute Care Service Manager.
15. The COVID pandemic took grip in early 2020, and on 23 March 2020 a national lockdown was introduced. As is well known, this fundamentally changed the way many workplaces operated.
16. At some point in April 2020 the claimant's GP provided a letter to confirm that she was highly vulnerable and unable to attend work in person. This was early days in the lockdown, and we accept that, like other employers and indeed most of the people in Britain and elsewhere, this was uncharted territory. We accept Mr Wintergold's evidence that Ms Drage brought to his attention that false shielding letters were easily available online, and that she felt that it should be confirmed whether the claimant's letter was genuine. Mr Wintergold did not doubt the claimant's integrity and felt uncomfortable in taking steps to establish whether the letter was genuine. Nonetheless, he telephoned the claimant's GP to ask whether they had provided the shielding letter. The GP confirmed it was a valid letter. The claimant's GP told the claimant about the contact from her employer, and she felt that this called into question her integrity and good character.
17. An OH report of 18 May 2020 indicated that the claimant had been unable to work since 17 February 2020 due to surgery to her arm. It observed that she was also in "*the shielding group and therefore would need to work from home until the COVID 19 restrictions are lifted*". The report indicated the need for a display screen equipment assessment for her home environment, and that speech recognition software be provided for her, along with headsets.
18. On 12 June 2020 a further report indicated the claimant's recovery would be in months rather than weeks, and that a return to work would not be likely before August 2020.
19. On 8 July 2020 a long-term sickness absence meeting took place with the claimant, Mr Wintergold, Ms Drake and HR in attendance. The minutes of the meeting noted the claimant was continuing to shield until 1 August 2020 in line with government guidance, but that her consultant advised that she would continue to need to shield after that date. The need for speech recognition software and a headset was noted. It was agreed the claimant would return to work on 27 July 2020, but immediately take two weeks annual leave. She would begin

working from home on 10 August 2020, but the claimant said it was important to manage expectations of what she might be able to do. A phased 10 week return to work was discussed. Mr Wintergold suggested that the claimant should not return to her management role until she was working her full hours. The claimant agreed to this.

### Return to work

20. The claimant returned to work on 10 August 2020 on a phased return and not line managing her team. She undertook a range of work including working on projects and designing training and courses. Dragon software was ordered in early August 2020, but it would appear that there were difficulties implementing other IT requirements of the claimant.
21. On 8 October 2020 the claimant had a supervision with Mr Wintergold. It was discussed that there were ongoing IT problems which were causing pain and difficulty for the claimant. She was then working up to 20 hours a week, which she would stick to until the full equipment was in place.
22. While, as we have noted above, the claimant was a highly skilled and professional worker with many strengths, we accept the evidence given in paragraph 37 of Mr Wintergold's evidence, that prior to the events in question the claimant had had some challenging relationships with some team members. Mr Wintergold's observation is that the claimant had high standards. This attribute was to become apparent in the evidence that subsequently emerged. We note also, that the claimant could be direct in her communication, to the point that management helped soften her communication. We have little doubt that the claimant's remote working and the pressures staff came under during the pandemic led to further challenges. However, we do not find it likely that these problems came out of the blue. The pressures brought about by the pandemic, in all likelihood, compounded some existing potential for difficulty.
23. Towards the end of October 2020 the claimant began to engage with the OT team and on 4 November 2020 a virtual meeting (all meetings referred to are virtual unless otherwise stated) took place between the claimant and the OT Team. After this meeting the claimant emailed Mr Wintergold and Ms Dorer suggesting a three way meeting "*to address some of the feedback and concerns*". Mr Wintergold emailed them both to say that he had spoken to the claimant and had a helpful debrief about the meeting, primarily about one of the OTs, Ms Assiak, and how she had spoken to the claimant, as she had appeared quite stressed and angry. Mr Wintergold said that some of this appeared to be due to forthcoming changes in personal circumstances, and he envisaged working on a plan on how to work with Miss Assiak and the team. The following day the claimant emailed Mr Wintergold telling him of her plan to meet with Ms Assiak to address some of the issues.

24. The claimant said in evidence that Ms Assiak had made reference to her own ethnicity in relation to the question of shielding. Mr Wintergold did not recall such comment, and there is no reference to it in the contemporaneous documentation. We do not find that Ms Assiak made such a remark, and it is likely that the claimant is confusing things with an issue that arose with Ms Walker (see below).
25. On 11 November 2020 Ms Dorer emailed the claimant, Mr Wintergold and Mr Rowley about a secondment opportunity in an initiative called Home First. The claimant had previously been invited to a pilot meeting regarding this initiative on 28 October 2020. Ms Dorer had spoken to Miss Assiak, who was keen on pursuing this, and she invited the recipients to share their thoughts. The claimant responded that it she had concerns “*given recent observations and interactions*” and “*challenges around professionalism*”. Mr Wintergold said that he had a very long meeting with the team and “*they are very clear that [Ms Assiak] has provided substantial support to local leadership which they have found helpful*”. Mr Rowley, who had line managed the team for the past 11 months, observed that Miss Assiak had “*really progressed over the past 10 months; shown good leadership skills, good quality reports and interventions*”. He noted the claimant’s concerns, but believed that the secondment would be a good opportunity for Miss Assiak.
26. Also on 11 October 2020, another OT, Ms Goodson, emailed the claimant to suggest the OT’s have a group meeting with the claimant rather than individual ones. She said the OT’s had supported each other through Covid, worked well together, and had discussed and were all happy to have joint meetings. The claimant responded to say it would be better if she met the OTs individually, appreciating the challenges they had experienced together.
27. On 16 November 2020 the claimant had a supervision with Mr Wintergold and Ms Dorer where the claimant’s well-being, her return to work and a shielding meeting we discussed amongst other things.
28. On 19 November 2020, in response to an email from the claimant, Mr Rowley provided a handover note in relation to the team. In his covering email he noted that it had been a “*hard slog at LGH with Covid-19*” with a third of staff off, but “*the OT team, as it is now, have been great and you are lucky to have them*”. His handover note dealt with each member of the team, and with other points. Handover included the following:
- a. it noted that Miss Assiak “*worked really well in the team. Shown great leadership and provided calm*” in relation to conflict between two team members who had left.
  - b. All members of the team were up-to-date on training apart from PMVA training which had been cancelled.

- c. New members of the team completed their induction.
- d. A psychologist was running monthly reflective practice with the team.
- e. Scrubs were being worn by all staff when on the wards.

Return to management role

29. On 23 November 2020 the claimant resumed her managerial role. On this day she had a three way meeting with Ms Walker and Mr Wintergold. The claimant's return to work and a Covid risk assessment we discussed, which included a discussion of the claimant's shielding status. Ms Walker is Black and at the time was experiencing problems in her personal life which later led to her going off on bereavement leave. At this point in time evidence was emerging of the disproportionate impact Covid appeared to be having on people from BAME communities. Ms Walker made reference to her own shielding status at the time and, perhaps pointedly, commented that she was now able to attend the workplace.
30. Later that day the claimant emailed Ms Walker and Mr Wintergold medical documents she had previously sent to Ms Drage, Mr Wintergold and occupational health ("OH") confirming her shielding status. Ms Walker replied that she would like to gain a better understanding of the claimant's need to shield given that the claimant had provided a letter dated March 2020 covering the period to August 2020 when the shielding guidelines and shielding lists were different. The letter the claimant provided made reference to the claimant's surgery and anxiety, which was not covered in the shielding lists. She proposed meeting the claimant in person the following week and asked for further information in order to put a plan in place for the claimant's safe return to the hospital if she has not been advised to shield.
31. Mr Wintergold emailed the claimant later on 23 November 2020 to say that Ms Walker was being "*quite particular about the shielding stuff*" but said that the Trust had to be more accountable for identifying and supporting highly vulnerable staff, so she was right to be making sure they were doing that. On 24 November 2020 the claimant provided further information to Ms Walker and Mr Wintergold. The claimant also emailed expressing disappointment at Ms Walker's references to ethnicity and vulnerability which she found irrelevant, insensitive and lacking in empathy. It was not what she would expect from a manager and it did not inspire confidence about how her personal situation would be handled. Mr Wintergold emailed the claimant within minutes to say how sorry he was that things happened the way that they did, and said he would be catching up with Ms Walker hoping for a more sensitive and trusting way of working together. He said "*Don't let it get to you - it's not about you*". We accept Mr Wintergold's evidence that he felt Ms Walker had been insensitive, but the context of the emerging evidence concerning BAME communities and Covid, and Ms Walker's

personal circumstances meant that he did not feel it appropriate to challenge Ms Walker robustly at that point.

32. There was a sharp conflict in the evidence presented to the tribunal about the state of the service at LGH when the claimant returned to work. Broadly speaking, the claimant presents a picture of a service in disarray, with OTs not working on the wards, new staff not having been inducted, training not being up-to-date, with OTs working in a way that had the potential to compromise patient and staff safety. These assertions did not appear to be corroborated by the contemporaneous documentation. Mr Rowley's handover note presented a picture of the OTs working well (and on the wards) in difficult circumstances with their training up-to-date save where there had been cancellations. We accept the evidence Mr Wintergold gave to the tribunal that during his supervision of Mr Rowley, the latter had not raised issues of concern with him. While we would be prepared to accept that the OT team (in line with many NHS services during the pandemic) was under significant pressure, the service was not in chaos as suggested by the claimant.
33. On 30 November 2020 Mr Wintergold conducted a Shielding Review Meeting with the claimant. We accept the respondent's evidence that the NHS was responding to unprecedented pressures during the pandemic. There were staff shortages and extreme pressures on the ability to deliver care. LGH, being a frontline patient-focused service, had a requirement to ensure as many staff as possible were available to work at the hospital to deliver that care. There was accordingly a need continually to review the ability of staff to work within the hospital setting. The fact that it was taking longer than expected to resolve IT issues was discussed at this meeting. Most equipment had been provided, but the claimant was waiting for a camera. The claimant said that she felt the first couple of weeks had gone well and the team was accessing her appropriately.
34. On 20 January 2021 OH reported that, following a telephone assessment that day, the claimant's complex underlying physical health condition put her at risk of developing significant and serious illness if exposed to Covid. OH advised that, on the understanding from the claimant that she had been able to manage her role effectively from home, that homeworking arrangements continue until the risk of exposure to Covid was no longer a high risk.
35. Also on 20 January 2021 Ms Gasson, one of the OTs, emailed the claimant with a proposal regarding OT's being allocated to specific wards. The claimant responded thanking Ms Gasson for sharing her thoughts, but indicated that nothing would be considered until she received information about leave dates.
36. On 26 January 2021 the claimant had a supervision with Mr Wintergold. She said she was "*not feeling stressed by team*". She also made reference to the difficulty getting leave dates and issues with



compliance with training. She expressed the need to have a weekly workload review of the team.

The claimant and the team raise concerns

37. On 27 January 2021 the claimant had a supervision with Ms Walker. The claimant raised various issues which were later put into writing by Ms Walker. These included feeling unsupported by the team and Mr Wintergold. The claimant felt the team were using heavy workload as an excuse for not keeping things up-to-date. The claimant felt the team members were rude to her. The claimant felt that the team was not supporting the wards as much as they should and was spending additional time in their office. The claimant raised concerns about how Ms Assiak's Home First role within the team. For her part, Ms Walker commented that she had liaised with the leadership team who reported "*no concerns about the visibility of OT's on their wards and feel that over the past year they have re-established good communications and working relationships with the team*". In her note Ms Walker wondered whether "*some mediation could be arranged to help support the team as a whole*".
38. On 28 January 2021 the OT team met with Ms Cadman (Lead Nurse) in order to raise a number of concerns. Ms Cadman relayed these concerns to Ms Walker who made a note of them. The team expressed that they felt unsupported by both the claimant and Mr Wintergold. The team were struggling to work with a "virtual manager" whom they found it difficult to contact. The team felt that the claimant's management style was impacting on the team morale, and they felt they were not listened to and felt undermined and belittled. The team wished for clarity on the long-term plan for their line management. The team was leaning heavily on Mr Rowley their former manager. Collectively the team were considering taking their issues forward under the respondent's Dignity at Work ("DAW") policy. Ms Walker believed that some of these issues could be managed through the respondent's policies but felt that given the claimant was not likely to return to the workplace in the foreseeable future, some exploration of the OTs being "*re-aligned with the wards*" might provide the OTs with the support they feel they need.
39. On 1 February 2021 Ms Walker emailed Ms Dorer and Mr Forrester (Deputy Director North West Sussex Adult Mental Health Services) attaching a note of the concerns raised both by the claimant and the OT team. She observed that some of the concerns raised by the team had been escalated to Mr Wintergold in the past.
40. Mr Wintergold gave evidence that OT team members had made him aware that they were finding the claimant's management style to be brusque and direct, but in hindsight believed they were not confident in letting him know the extent of the difficulties they experienced in their relationship with the claimant. At the time he did not feel he needed to take a confrontational approach to resolve these difficulties, but to

support the claimant and the team to communicate with each other and work together better. For her part, the claimant was raising with Mr Wintergold that she believed Ms Assiak was unprofessional. This was not Mr Wintergold's experience and assessment of Ms Assiak and the feedback about her he received from others, and does not correspond with the expressed views of others we have seen in the documentation. For this reason we accept his evidence on this issue.

41. The claimant's case is that she was entirely unsupported by management as this conflict with the team began to emerge. We find that she was not unsupported by management. The contemporaneous documentation in the form of emails, supervision notes and the notes set out at paragraph 37 and 38 above suggest that the claimant was able to raise issues she was having with the team and that management were prepared to listen and offer constructive solutions such as suggesting mediation.
42. On 1 February 2021 the claimant had been made aware from Ms Walker that the OT team had raised concerns with her about feeling unsupported. She emailed Mr Wintergold mentioning this. She raised concerns about lack of transparency, respect and resistance. When she has highlighted priorities she encounters resistance and "attitude" and is told that the workload is overwhelming. She said "*I have taken on board feedback, I have been warm, patient, and flexible, providing ongoing support and understanding however, I am not been treated with the same*". She went on to describe the support she felt she was offering the team. She noted the team had been in reflective practice, which indicated they had been unsupported and she felt she was now taking the brunt of this. This email itself (with its reference to taking onboard feedback) indicates that Mr Wintergold had been advising the claimant on how to improve her communication with the team.
43. Mr Wintergold responded that he was sure they could work together to see how the team could work in a more supportive and helpful way. He suggested the possibility of involving an external facilitator, and indicated he would raise this with Miss Dorer. The claimant responded that this had a positive, that she felt she could do with a little kindness respect and professionalism in the team which she indicated were "*failing to respond professionally*" and she indicated continuing problems with IT.
44. On 3 February 2021 Ms Alliston, one of the OTs, emailed Ms Dorer mentioning the team's recent meeting with Ms Cadman. She said the team had raised problems with Ms Cadman about both the claimant and Mr Wintergold and could not go on as they were, and needed to escalate the matter to Ms Dorer as a professional lead.
45. On 5 February 2021 Mr Forrester, emailed Ms Dorer and HR about concerns raised around the OT team. He said there "*immediate plan is that line management responsibility for the OT's at Langley Green moves to the respective ward managers as of next week, Alice Parr*

*aware and in agreement*". He said that professional supervision would be provided by the claimant, but management supervision moving from Ms Walker to Ms Dorer.

46. The claimant was on leave at this point, but on 10 February 2021, on her return Ms Dorer emailed her to arrange a meeting to make the claimant aware of some temporary changes put in place to support the claimant and the team. It is right to say that the change in line management responsibilities was decided upon by senior management and communicated to the claimant rather than negotiated with her.
47. On 12 February 2021 Mr Forrester emailed Ms Dorer and HR explaining that he had met with the OTs and explained the policies applicable to their concerns, and that subsequently that they wished to engage in the process individually and formally. That is to say, raise DAW complaints.

#### 16 February 2021 meeting

48. On 16 February 2021 the claimant had a meeting with Ms Dorer, after which Ms Dorer emailed the claimant (cc Mr Wintergold) setting out "*a summary of the main points so that you can have time to reflect on them and discuss further with Lawrence [Wintergold] in supervision later today*". The meeting included discussion on the following points:
- a. The claimant was informed about the respondent's employee assistance programme.
  - b. The claimant was told how Mr Wintergold and Ms Dorer would alternate professional and line management supervision the claimant regularly. She was told she could contact either manager outside of these times.
  - c. The claimant's job tasks we discussed, and she was given time to reflect on the proposals and discuss them further with Mr Wintergold. These included dealing with Home First, and attending meetings concerning it. Line managing and supervising a bank OT. Attendance at leadership and other related meetings. Attendance at weekly OT huddles with Ms Dorer and Mr Wintergold present to maintain contact with the team. Remote clinical input to multidisciplinary team ("MDT") reviews.
  - d. The claimant was told that Ms Dorer would be contacting Mr Forrester and HR that day to ask for an update on the issues raised by the team.
  - e. The claimant was told to let Ms Dorer know if she had not set out the points discussed or she had anything to add.

49. The claimant had a supervision meeting with Mr Wintergold that same day. Mr Wintergold reiterated the offer of employment assistance

programme and encouraged the claimant to take care of herself. The claimant indicated that *“Ongoing IT problems – now sorted”*.

50. Also on 16 February 2021 Ms Dorer emailed Mr Forrester and HR to summarise the meeting she had with the claimant that day. She mentioned that she had met with the claimant who was understandably distressed and upset. The email included reference to the fact that Ms Dorer and Mr Wintergold would be leading the OT huddle on Wednesday mornings at which the team and the claimant would attend, and which *“should provide a safe space to ensure they can continue to work together”*.
51. On 17 February 2021 the claimant responded to Ms Dorer’s email the previous day to thank both Ms Dorer and Mr Wintergold for their support. She said she *“will work with you both to achieve the plan below [ie that set out in Ms Dorer’s email] and support this process”*. She expressed the hope that the process would bring to light the issues she had faced with the team in respect of dignity and their professional standards and conduct. She said she had worked hard with the team to try and address these issues but there were concerns about safety, efficiency and quality.
52. The claimant’s pleaded case, repeated in her witness statement and numerous times in oral evidence, was it she was suspended on 16 February 2021. She sometimes puts the word in inverted commas. It is clearly case that the claimant was not suspended in the way understood by all with a moderate degree of knowledge of employment relations. The word, or its cognates, appear nowhere in the contemporaneous documentation. The way all parties conducted themselves (with the claimant continuing to perform work for the respondent, as set out in the contemporaneous documentation) does not support the contention that she was suspended. We think it more likely than not that the claimant, a clearly intelligent person in a management position, would have understood what the term suspension meant, and are at a loss to understand why, from a certain point onwards, she continually asserted that she had been suspended.
53. What we find happened was that her line management responsibilities for the OT team, which was about to raise complaints about her, was removed from her. As set out earlier, this was a decision which was imposed rather than negotiated. That said, we accept the evidence we heard from the respondent’s witnesses that this was a protective measure for all concerned in a situation where both the team and their manager were experiencing significant difficulties with the other. We also note that the decision was discussed with the claimant at the earliest opportunity and that she was given the chance to put forward her views. The contemporaneous documentation shows that she *“supported”* the process and expressed an intention to work with management to achieve the plans discussed with her.

54. On 23 February 2021 the claimant had a supervision with Ms Dorer. Discussion included the claimant raising concerns about the team not providing information the claimant had requested, and issues of safety and quality of service in that the team are not following processes around equipment and risk assessments. Ms Dorer noted that she and Mr Wintergold would review the issues in the huddle. The claimant also told Ms Dorer that she had been offered a secondment for one day a week with Christchurch University. After the supervision, Ms Dorer emailed the claimant to say that she and Mr Wintergold would support the claimant's secondment.
55. On 25 February 2021 the claimant emailed Ms Dorer and Mr Wintergold asking for a timeframe for the process concerning the team's complaints. It had been four weeks since she had been first notified that the team had issues with her, she was about to go on leave, she had no clarity about where things had reached as nothing formal had been submitted, and she was finding the situation stressful.
56. Ms Dorer responded later that day informing the claimant that she had asked the team that formal issues be raised by the end of the week. One team member was on annual leave and may not be able to do this until the following week. She explained that if formal complaints are put in an investigating officer and case manager would be appointed. She indicated to the claimant that she would escalate matters to Mr Forrester so that he was aware of the claimant's concerns if the claimant wished. The claimant responded that she would be happy for her email to be forwarded.
57. The claimant asserts that this showed Ms Dorer was "*inciting*" the team to make formal complaints against the claimant. The contemporaneous document does not support this narrative. Ms Dorer was responding to the claimant's understandable concerns about how the process was dragging on and affecting her, and attempting to inject some urgency into proceedings. This was to help and support the claimant.

#### Ms Alliston's DAW

58. On 2 March 2021 Ms Alliston raised a formal DAW against the claimant. She said that she was not comfortable working with the claimant any longer "*due to the effect this bullying has had on my well-being and confidence in my professional role*". She gave examples of the claimant insisting the team complete risk assessments for groups which were not being run at that time, when other managers carried out the risk assessments for their teams, and the team had a heavy caseload. She said the claimant did not listen to the team's ideas or clinical reasoning regarding assessments, stated the team should do things the way the claimant said and did not give opportunity to the team to talk about it. She said that the claimant consistently told team members how lucky they were to have her. She said the claimant told her that the team was not prioritising its caseload well enough. She said the claimant offered support, but did not provide significant

support to help the team with its overwhelming caseload. She said the claimant told her she was not working hard enough and could do so much better. She said that the claimant treats Ms Assiak as a Band 5 even though she had been promoted to a Band 6 role. There were various other critical remarks. In summary, she felt the claimant was bullying her and deliberately putting her down due to her views on the hierarchy of their role. She believed the claimant was persecuting the team and holding them to very high expectations but not giving them the opportunities to grow and develop professionally. She spoke out the claimant's treatment had detrimentally affected her well-being and stress levels. She said her confidence had been diminished which affected her ability to be effective in her role.

59. Ms Dorer had a further supervision with the claimant on 10 March 2021. Discussion included updating the claimant about the DAW process. The claimant wanted to know the content of the complaints against her. The claimant had raised that she felt unable to attend team meetings until she was clear on what issues the team may have raised against her, and Ms Dorer said she had escalated this to Mr Forrester and HR. The claimant said it she felt that team members had acted unprofessionally and was concerned about how they had communicated with other members of staff about her. Ms Dorer said that she would be having a meeting with Mr Forrester and HR to clarify a plan moving forward.

60. On 16 March 2021 Mr Wintergold emailed Ms Dorer cc the claimant forwarding an email he had sent the previous September concerning manual handling training. The claimant asserts this is evidence of her having been sidelined from discussions about this issue. We observe that Mr Wintergold's evidence that the claimant was "*brilliant*" at manual handling training and that she carried out this training before at the hospital. However, there were discussions about whether there should be a single adviser trust wide across all services. The claimant was in fact part of a working group around this issue and was not excluded from discussion. In fact, the email of 16 March 2021 was involving her in the discussion.

#### 23 March 2021 meeting and further issues

61. On 23 March 2021 the claimant had a supervision with Ms Dorer. The claimant's case is that Ms Dorer spent 45 minutes picking apart the text of a draft email the claimant was proposing to send the team regarding a patient we will refer to as Patient X. The claimant's evidence to the tribunal was that she was "*harassed*" and felt "*downtrodden*". The draft email is in the bundle, as are the minutes of the supervision. Under a heading "**Communication**" the minutes record "*Reviewed email that IC is sending team about [Patient X]. Overall very clear - minor amendments made to make IC's support to [Ms Assiak] and team clear. Discussed ways of adjusting tone to help communications land well.*" It is clear that the supervision covered a

number of other issues, and it is also clear that the amendment to the draft email was one of many issues covered in this meeting. We do not accept that Ms Dorer spent an inordinate amount of time harshly picking apart the claimant's email. The draft email itself is fairly direct, in comparison with the email that was later sent. We find that this was just one of many issues covered in the supervision and that Ms Dorer was supporting the claimant and trying to help her soften her communication with the team.

62. The management of Patient X became a point of issue. The claimant sent an amended email about this patient on 23 March 2021 to Ms Assiak, the team and the manager of the ward the patient was on, proposing that a comprehensive OT assessment be carried out as a priority. There was some further communication from the ward manager, and on 30 March 2021 Ms Assiak responded in the email chain that she had discussed the case extensively with the ward manager (included in the email chain) who had advised that Patient X could be discharged from the OT caseload as the original referral to OT was no longer applicable. On 6 April 2021, the claimant responded to say that a comprehensive OT assessment was needed for various reasons. On 7 April 2021 Ms Assiak responded that the bank OT, an experienced and senior professional, had worked extensively with the patient who had an existing care package in the community. She said she would discuss the case with the bank OT and provide a comprehensive update. Ms Dorer emailed to ask Ms Assiak to say when she expected the full OT assessment that the claimant had requested. On 13 April 2021 Ms Assiak responded that Patient X was transferred to her local area the previous day and would not need any more input. Ms Dorer told us, and we accept, that the transfer of Patient X would only have happened after a multidisciplinary team meeting involving the consultant psychiatrist responsible for the patient, nursing staff from the ward and other professionals. We also accept her evidence that she spoke to Ms Assiak about how she had approached the management of Patient X.
63. The claimant's case is that Ms Assiak was not following instructions, which undermined her authority, and that she was not supported by management in dealing with this. We can understand the claimant's frustration that a team member was apparently not following instructions. However, we do not see any insubordination or undermining of authority here. There were open discussions and email chains involving a number of people involved in the patient's care, and Ms Assiak was transparent in her approach. Nonetheless, Ms Dorer had words with her about how better to handle the situation.
64. On 24 March 2021 Mr Forrester emailed the claimant to advise her that two DAW complaints had been received and that one would be investigated. Mr Forrester also emailed the team that same day to suggest that he proposed engaging an external facilitator to work with

the team to help establish enough mutual trust, respect and confidence to be able to work together.

65. On 30 March 2021 the claimant wrote a lengthy email to Mr Forrester copied to Ms Dorer, Mr Wintergold, her trade union representative and HR. She set out a history of the issues she had experienced. She said she felt she was being treated less favourably through having to shield because of her complex physical health/disability, and that she was unsupported by management in dealing with concerns about her team. She insisted on a clear plan of action as to how the problems can be dealt with and resolved, and explained that the situation was seriously affecting her mental and physical health.
66. Also on 30 March 2021 an OT planning meeting took place between the claimant, Ms Dorer and Mr Wintergold. The aim of the meeting was to establish a clear action plan for improvement of key OT governance issues following concerns previously having been raised by the CQC. Issues of training, the need for equipment orders to be agreed with management until training completed, risk assessment and other matters were discussed.
67. Also on 30 March 2021 the claimant emailed Mr Forrester in response to his email of 24 March 2021. She pointed out that it had been eight weeks since she had been first advised that the team had raised issues about her and she asked for clarity about what been alleged against her.
68. Ms Dorer responded to the claimant's email to Mr Forrester sent 30 March 2021 on 1 April 2021 recognising and sympathising with the claimant's difficult experience. She set out in bullet points the measures management were taking to attempt to support the claimant, which included weekly supervision, referral to the employee assistance programme, proposing facilitated sessions with the claimant and the team, providing clear guidance the team regarding expectations, addressing governance concerns regarding the team by establishing an improvement meeting to work with the claimant to develop plans to address issues, supporting the claimant to retain her leadership role by attendance and various meetings and supporting her secondment. Ms Dorer supported Mr Forrester's suggestion of a four-way meeting with HR to discuss further anything the claimant might find helpful.
69. On 1 April 2021, Ms Jones from HR emailed Ms Dorer (in an email chain in which Ms Dorer had sought advice on the wording of the email that same day she proposed sending the claimant) to enquire about the claimant's likely return to work. She observed that this was "*an important consideration because her working from home appears to be at the heart of the matter*". She observed that HR had not been invited to any formal sickness meetings, as would be the norm, and she was not certain why the claimant has to remain working from home. She observed that the most recent government advice was that staff who had been shielding should continue to work from home possible, but if



not from that day they were able to return to the workplace with the right assessments. Ms Jones said she discussed with this with the claimant who said she could not return to work, but gave no reason for it. Ms Jones enquired whether Ms Dorer was aware of the reasons. She wondered whether the claimant had been sending any letters around her shielding status to Ms Dorer.

Ms Assiak's DAW and further issues

70. On 6 April 2021 Ms Assiak put in a DAW complaint. She set out how she felt unsupported by the claimant in a number of ways, and how she believed the claimant had intentionally belittled her in front of colleagues. She pointed out that the team morale had been really low under the claimant, who did not take their views into consideration in making decisions. She said that bullying behaviour by the claimant left colleagues in tears.
71. On 6 April 2021 the claimant had a supervision with Ms Dorer. Included in the discussion was the change in government guidance and shielding. The claimant said her medical situation had not changed and that she needed to continue working remotely. OH had done a report which suggested the claimant should continue working from home after shielding was lifted but Ms Dorer and Mr Wintergold did not have a copy of this. The claimant consented to Ms Dorer requesting this. There was a discussion about whether challenges of remote working may be connected to the current issues around communication and respect in the team. The claimant said she would not be able to come into facilitated sessions with the whole team. Ms Dorer said a facilitator had been identified. Ms Dorer said a four-way meeting had been arranged with herself, Mr Wintergold and HR. There was a discussion about leadership support to the claimant, which centred on issues the claimant raised about Ms Assiak (including concerning Patient X). The minutes of this discussion made clear that Ms Dorer was supporting the claimant in her dealings with Miss Assiak. Ms Dorer also proposed that Mr Wintergold should pick up issues the claimant raised in his supervision of Ms Assiak to agree competencies and expectations for her role. It was made clear that the claimant could discuss issues as they arose with Ms Dorer and Mr Wintergold.
72. Ms Dorer followed up the supervision with an email on the same day in which she said that it was important that management support the claimant to maintain connection with the team and for the team to be able to get the claimant's feedback from leadership team meeting she attended. Ms Dorer said that she or Mr Wintergold would always be present at such meetings to ensure that it was a safe and respectful space for all team members.
73. On 15 April 2021 the claimant received what she described as an "*out of hours call*". The evidence at the hearing at the tribunal established that this phone call was very shortly after 4 PM when the claimant

stopped work. We note the claimant is a Band 7 manager, and consider that she was making more of this than was warranted.

74. On 19 April 2021 there was a four-way meeting between the claimant, Ms Dorer, Mr Wintergold and Ms Jones from HR. Ms Dorer summarised the meeting and actions in an email sent to all participants on 22 April 2021. The meeting included a discussion of support for the claimant during the DAW process, agreement about current roles and responsibilities, and the claimant's request for support from management with the behaviours of the team. The claimant asked when her management roles would be restored to her as she felt changes to rules could be perceived as blaming her. Ms Dorer clarified that this was a temporary move made by Mr Forrester means protecting all staff. All agreed it would be helpful to have some sort of indication when the line management arrangements would be reviewed.
75. The claimant said that she would not attend Home First meetings as she felt there was no transparency about who had said things about her. Ms Dorer said this was an expectation of the claimant's role and this was reiterated by HR. The claimant asserts that, in effect, management were being heavy-handed in their insistence she do certain things. We do not find this was the case. We find that management were entitled, even in a difficult and sensitive situation, to set out what the expectations of the claimant's role were.
76. The claimant gave examples of feeling unsupported by Ms Dorer and Mr Wintergold. She mentioned Ms Assiak not responding to a request for a clinical assessment of Patient X. Ms Dorer and Mr Wintergold explained how they had emailed and met with Ms Assiak regarding the issue. The claimant requested feedback on the meetings they had had. Management agreed to provide it. The claimant raised an issue of another staff member failing to complete mandatory training. HR advised that the claimant may need to have an informal discussion that if training is not completed by a certain date disciplinary action would follow. The claimant was urged to follow this issue up with Miss Dorer and Mr Wintergold in the OT improvement meeting. Ms Dorer and Mr Wintergold encouraged the claimant to keep providing specific issues so that they could support her. She also said that facilitated sessions with the team could focus on this to support client care delivery.
77. On 21 April 2021 the claimant had a supervision with Ms Dorer. As promised, Ms Dorer gave feedback about her meeting with Ms Assiak on the Patient X issue. The claimant did not agree with Ms Dorer and considered Ms Assiak had been insubordinate and this was an ongoing issue. Ms Dorer advised the claimant to give specific feedback on situations as they arose so these can be raised in supervision and followed up appropriately if required, if necessary using performance and capability procedures. The meeting also discussed the claimant's attendance at leadership meetings, OT team huddles and Home First

meetings. Ms Dorer explained that attendance at these meetings was part of the claimant's role and that the matter would be discussed further if the claimant did not attend. She reiterated that she or Mr Wintergold would be present at such meetings. The claimant wanted to talk to her trade union representative and HR about attending meetings. Ms Dorer advised the claimant that the respondent required written evidence from her medical team all GP that she had been advised to continue shielding. The claimant asked Ms Dorer to re-refer her back to OH for this.

78. On 21 April 2021 Mr Forrester emailed the claimant, all of the OT team and Ms Parr, Clinical Lead Nurse Manager. He indicated that he had commissioned some organisational development work to ensure the OT team was able to provide the best service to patients. He indicated how this would be taken forward. He concluded his email "*Lastly: please don't muddle this up with the dignity at work process. Until both the separate pieces of work have been concluded the current supervision structures remain*". The claimant says that this was a breach of confidentiality by referring to the DAW process. Exploring this issue during the hearing, it would appear that apart from Ms Parr, everyone else would have been aware already of the DAW process. We also note that the process was mentioned but no one was named. We do not consider that this was a breach of confidentiality.

#### The claimant's grievance

79. On 22 April 2021 the claimant emailed Mr Forrester, cc'ed to a number of people including her trade union rep and HR, to say that she would be raising a grievance. She said "*I appear to have been suspended from part of my role*" without due process, and that she had been "*discriminated against on grounds of my need to shield and have not been involved and included in changes that appear to have taken place in my physical absence*". She alleged that her managers had allowed the team to meet with other parties to discuss her management of the team without discussion with her. The following day her trade union representative again referred to the claimant's "*suspension or part suspension*".
80. A further OT improvement planning meeting took place on 22 April 2021. Issues around governance and assurance around equipment prescribing, training and risk assessments were dealt with. The claimant's case is that issues she had raised were being ignored. The contemporaneous documentation, including minutes of this and other OT improvement meetings demonstrate that this is not the case.
81. On 23 April 2021 the claimant was notified that Ms Assiak had raised a DAW.
82. Also on 23 April 2021 Mr Forrester emailed the claimant's trade union representative and numerous others to sympathise with the difficulties the claimant has experienced. He set out that there was now a

grievance, DAW, and a sickness process in play. He referred to having commissioned an organisational development practitioner. He set out that no one in the team felt particularly safe at that point and he had made the decision temporarily to move line management supervision to the ward managers “*as a protective measure for all at this difficult time*”. He said that in weighing up whether to do this he also considered a review which had taken place the previous year which had recommended aligning OT’s with individual wards. He clarified “*Isabel is not suspended*”.

#### Investigating Ms Alliston’s DAW

83. On 29 April 2021 a DAW investigation meeting took place with Ms Alliston. She elaborated on the complaint she had made and set out how her perceived treatment by the claimant had affected her self-esteem and confidence.
84. The claimant was interviewed as part of Ms Alliston’s DAW investigation, and addressed the complaints as they were put to her. In brief, she set out that she had sought to address issues, but had been supportive and professional.
85. On 7 May 2021 Ms Dorer emailed the claimant to inform her that they needed to conduct a Covid 19 risk assessment which is being completed for all staff.
86. On 11 May 2021 there was an investigation meeting with Miss Assiak concerning Ms Alliston’s DAW complaint. She gave her perspective.
87. On 13 May 2021 Ms Assiak attended an investigation meeting into her own DAW complaint. She elaborated on her complaint, and commented how team morale was low prior to the claimant going off sick. Mr Rowley stepped in and morale began to improve and peak, with everyone working well together to the best of their abilities. She said things started well when the claimant came back to work but they became bogged down with their caseload and other demands including risk assessment. She felt belittled, demotivated, unsupported and discouraged. She indicated that the breakdown in the relationship could in part be due to the claimant being a “*virtual manager*”.
88. Also on 13 May 2021 Mr Wintergold was interviewed regarding Ms Assiak’s DAW complaint. He said that he had never witnessed any bullying or discrimination. He observed that the claimant had high standards and could pick up on things that may be perceived as “over management”. He had spoken to the claimant “*as a fairly constant theme*” about how to give feedback without people feeling criticised.
89. On 27 May 2021 Ms Cusdin, a Lead Occupational Therapist, submitted a report into Ms Alliston’s DAW complaint. She did not uphold the complaint. She concluded that communication between the claimant and Ms Alliston were “*formal and operationally focused with less focus*”.

on professional development which meant [Ms Alliston] perceived the claimant's feedback to be negative and not compassionate to the clinical challenges and practical concerns in the light of the COVID 19 pandemic". She concluded that the claimant's communication style and ability to manage a collaborative working relationship with the claimant were impacted by the pandemic. This was a root cause of Ms Alliston disconnecting with the claimant as her operational manager. The culture in the hospital highlighted the difficulties and expectations of remote working for staff in operational management roles. She concluded that this was not a disciplinary issue but a teambuilding one focusing on effective communication and leadership development for the claimant. It was recommended that the claimant received training to develop her leadership and people management skills in the context of virtual management responsibilities. Also, that facilitated teambuilding should support the whole OT team with relationship building and open effective communication. This outcome was delivered to the claimant on 14 June 2021 in a meeting with Ms Saab the case manager and Ms Jones of HR. The outcome was followed up by letter of 17 June 2021. The letter made clear that there was no DAW case to answer, but the investigation highlighted a number of mitigating circumstances around communication and relationships in the team. The claimant had asserted that the complaints were malicious and vexatious, but Ms Saab considered that the evidence showed the complaints were made in good faith without malicious intent. The claimant was told she could take up this issue with her union representative.

90. On 1 June 2021 the claimant submitted a formal grievance. She set out a lengthy timeline and background and asserted that:

- a. *"I appear to have been suspended from my role... With no recourse to proper process or procedure before any complaints were formally made"*.
- b. The process had taken an inordinate length of time.
- c. The substance of the complaints did not justify complaints under the DAW or warrant investigation.
- d. No issues had been raised informally by the team or management giving her the opportunity to respond.
- e. A conflict-of-interest was ignored. The claimant was not kept informed and no timescales were agreed. The effect of the suspension and the length of time to complete the process impacted on her authority, professional reputation and dignity.

#### Investigating Ms Assiak's grievance

91. On 1 June 2021 the claimant was interviewed as part of Ms Assiak's DAW complaint. She gave her account and indicated that she

considered the complaint to be vexatious. During the course of the interview it was again confirmed whether that at no point had anyone said she had been suspended.

92. On 10 June 2021 Ms Cusdin submitted her report into Ms Assiak's DAW complaint. She did not uphold the complaint, and made very similar conclusions and recommendations to those she had made in Ms Cusdin's complaint. It is to be noted that in respect of neither DAW complaint, did the investigator conclude that the allegations were made in bad faith or were vexatious. Ms Cusdin's outcome was relayed to the claimant by letter from Ms Saab, the case manager, in which she made clear that the complaints were not made in bad faith or with malicious intent. The claimant was advised she could take this issue up with her union representative.
93. On 15 June 2021, Ms Jones from HR again confirmed to the claimant's trade union representative that the claimant had not been suspended. She suggested that managers may have used the wrong word, but that their actions clearly indicated that there had been no suspension. We note that this email appeared to be some sort of extrapolation of the events by Ms Jones, probably without having spoken to the people who actually were at the meeting (who do not recall using the word). We reiterate, we do not find the claimant was suspended, and doubt that the word was ever used.
94. On 15 June 2021 Mr Forrester provided a statement in respect of the claimant's grievance. He explained that he had met the OT team on 11 February 2021, having been aware of a previous meeting they had with Ms Cadman. Having had their complaints he told them that the available policy open to them to take forward formal or informal complaints would be the DAW. Having discussed the matter with Ms Dorer, he decided as a protective measure for all concerned, and in line with a previous service review, to shift line management to the ward managers while any complaints process was followed. He set out how team members took forward their complaints.
95. On 16 June 2021 Ms Dorer provided a statement in respect of the claimant's grievance. She set out a lengthy timeline in which she explained:
  - a. How she felt she had responded to all the issues raised by the claimant in a timely fashion once made aware of them.
  - b. How she never suspended the claimant. How she regularly took advice and guidance from HR and OH.
  - c. How she had tried to be open and transparent in her communication with the claimant.

- d. How she recognised the stress and distress situation because the claimant, and how she tried to respond in a sensitive and supportive manner.
- e. That she had listened to and noted all governance and performance issues raised by the claimant and actioned them appropriately.
- f. How she and Mr Wintergold worked closely together to keep the claimant involved in team service development.

96. Mr Wintergold prepared a statement on 23 June 2021, which set out his account.

97. A Management Response, incorporating a timeline and narrative response to the complaints, was prepared.

98. On 30 June 2021 Ms Saab sent the claimant an outcome into the DAW complaint raised by Ms Assiak. She set out that there was no case to answer. She felt that the case should have been addressed sooner and not referred to the DAW policy. However, there was no suggestion that the complaints were malicious or vexatious.

#### Investigating the claimant's grievance

99. On 30 June 2021 a meeting was held, chaired by Ms Hillman, Operational Director of Adult Services, to consider the claimant's grievance. Before this the claimant sent in a lengthy submission setting out an opening statement, what she wanted to achieve from the grievance, her responses to management and her answers to general questions.

100. The meeting was adjourned and reconvened on 5 July 2021. The claimant was given a grievance outcome on 19 July 2021. The decision outcome letter included the following:

- a. The claimant had not been suspended, but her changing duties been implemented to safeguard all parties. Not upheld
- b. The process was impacted by the pandemic, but was not concluded within an ideal timeframe. Partially upheld.
- c. Although the DAW complaints were not upheld, it was not for management to prevent staff in raising them. It was unfortunate that the problems could not have been dealt with formally. Not upheld
- d. Mr Wintergold had offered to meet the team but this was not followed through, which was unfortunate. Giving team members a timescale to respond may not have been helpful. Not upheld

- e. Mr Forrester generally did not believe there was a conflict of interest at the point the claimant's grievance was raised, however on reflection he recognised this and appointed an alternative case manager. Partially upheld
- f. There had been regular communication between the parties about timescales. Not upheld
- g. The claimant was not suspended. Not upheld
- h. management did not fail to keep the claimant involved in consulted decision-making inappropriately. Not upheld.
- i. The claimant was not ignored when she raised issues of governance, risk assessment and professional standards. Not upheld.
- j. While there was no evidence that the claimant had been discriminated against, she was disadvantaged by the failure of IT equipment which caused her stress and frustration. Partially upheld.

#### DSAR and grievance appeal

101. On 22 July 2021 the claimant submitted a Data Subject Access Request ("DSAR") in respect of information in relation to the four DAW complaints made about her.

102. On the same day she formally appealed her grievance outcome, setting out grounds of appeal, and desired outcomes. The final sentence of her email is as follows:

*"I do not believe the severity of this grievance has been appreciated by RH and that the actions of JF et al have led to an irreparable relationship and untenable situation. The erosion in trust and confidence therefore cannot be restored through facilitation."*

103. On 5 August 2021 Ms Walker emailed the claimant asking if she was happy for her to make a referral to OH as per the trust guidance for staff who continue to shield. Ms Walker was now the claimant's line manager. The claimant was assured that this was nothing to do with any of the HR processes currently in place, and purely as a result of trust guidance. The claimant responded on 9 August 2021 that she was content if this was required.

104. On 31 August 2021 the respondent's Data Protection, Compliance & Health Records Manager emailed the claimant to apologise for not providing documents in time pursuant to the claimant DSAR. The claimant was asked to complete another form, which she did that day.

#### OH referral



105. On 13 September 2021 Ms Parr emailed the claimant about a conversation they had previously had when the claimant had said that Ms Walker mentioned referring the claimant to OH. She said that OH had advised that the claimant had not evidenced her condition with the claimant's GP despite her having given permission. She said that OH needed to contact the claimant's medical advisers for proof of her health condition which prevents her from physically returning to work. The claimant responded on 20 September 2021 that she had spoken to occupational health who advised this was not the case as they had all the necessary information. She said that she would not be consenting to a referral.
106. On 20 September 2021 Ms Jones of HR wrote to the claimant and her trade union representative telling her that there had been "*a bit of a mix-up over occupational health referral*". She appreciated that the claimant did not wish to share details of her health condition, and assured the claimant that the Trust was not asking to see medical records or private or confidential information. She explained that now that Covid shielding came to an end some time ago staff in patient facing roles were generally back in the workplace. The Trust was therefore looking at individual cases where staff were working from home to understand how this could be managed with reasonable adjustments and supportive measures. She understood from OH that they had not received confirmation from the claimant's medical advisers that she had a condition that prevented her from returning to the workplace. Some months ago they had been supplied with a copy of the government shielding letter, but as shielding was no longer in place they needed to confirm from the claimant's medical advisers if she needed to continue to work from home. This was not something that was particular to the claimant, but to all staff who were in the same situation. Ms Jones said she had been wrongly advised that the claimant would need to be referred to see an OH doctor who would then contact the claimant's medical advisers to confirm the position. Ms Jones acknowledged that she had been given the wrong information; the claimant did not need to be referred as long as she completed a consent form for OH. The trade union representative saying "*that's really helpful*". The claimant also thanked Ms Jones.
107. On 5 October 2021, the claimant was provided with what were mistakenly described as "*health records*" pursuant to her DSAR. The covering letter explained that redactions had been made to conceal third-party information, content that third party individual had specifically asked not to be shared and was provided in confidence, and staff names and/or contact details. The claimant was informed that if she was unhappy with the way her request had been processed she could complain internally, and was provided with contact details for the Information Commissioner's Office ("ICO").
108. The same day the claimant responded to say she had not requested health records. She said the Trust had withheld information

they were required to supply. She said she had not been supplied unredacted the actual complaints made against her.

109. On 14 October 2021 the claimant was written to by the Head of Information Governance & Health Records to apologise the letter should have said “*records*” rather than health records, which was due to an issue with template letters. She told the claimant that the Trust did not have consent from the individuals to disclose the information to the claimant, and so they could not be disclosed. She advised that nothing further could be done unless under direct instruction from the ICO.

#### Grievance appeal and further discussions

110. On 14 October 2021 the claimant grievance appeal hearing commenced chaired by Ms O'Brien, Director of Integration and Partnerships. The hearing reconvened on 15 November 2021.

111. On 16 November 2021 the claimant was sent an outcome letter. The claimant's appeal was upheld. The letter went through each appeal ground in turn, and at times it is difficult to what exactly was upheld and what the basis for that decision was.

112. Under the heading “Desired Outcomes” Ms O'Brien began “*I accept there has been a fundamental breakdown in trust and you indicated during the appeal hearing that you did not see how you could return to Langley Green Hospital given the damage to your reputation*”. She indicated that it she supported redeployment to another part of the trust Band 7 OT practitioner/manager role. While this was being done the trust would continue to support her secondment to enable her to work from home. If the claimant changed her mind, she would be supported to remain in post at the hospital. She said the Trust would be very willing to discuss any other options the claimant might consider suitable. She said that she and another senior HR colleague could be contacted discuss this matter or any other options.

113. On 22 November 2021, the claimant had a meeting with Ms Locks, Director of Allied Health Professions, to discuss redeployment. Ms Locks stated that her aim was to support the claimant to find another role. The claimant confirmed that she could not return to Langley Green Hospital or work with Ms Dorer and Mr Wintergold. The claimant indicated she may be interested in working other areas at a Band 7 role working from home. Ms locks asked the claimant “*to think about what her dream job would look like*”.

114. There was further correspondence between the claimant, Ms O'Brien, HR and others querying the appeal outcome. The claimant appeared to be pressing for action to be taken against named individuals in respect of harassment and discrimination. She was told this was outside the appeals process.

115. On 8 December 2021 a further meeting with Ms Locks took place, with Ms Jones of HR in attendance. Ms Locks asked the claimant about job vacancies which had been sent to her. The claimant wanted to know what action would be taken against people she raised a grievance against. She wanted them to be investigated further. The claimant was told that there were time limits involved in the redeployment process and the claimant needed to be ready to engage with the process. The claimant said that she would like to have a without prejudice conversation as she did not think she could consider redeployment with other issues outstanding. Ms Jones followed up this meeting with an email the next day giving further information about the redeployment process.
116. We understand there were conversations between the claimant and the respondent which we were, rightly, not given any detail about.
117. On 14 December 2021 the ICO determined that the respondent had “*more work to do*” but made no order.

### Resignation

118. On 27 January 2022 the claimant emailed her resignation “*due to constructive dismissal and disability discrimination*”. The full text is as follows:

*You should be aware that I am resigning in response to disability discrimination, fundamental breach of contract, and mistreatment, therefore I consider myself constructively dismissed.*

*Since upholding my grievance appeal on 16th November 2021 I have endeavoured to gain clarity around the appeal outcome and remedial actions required to address the matters raised. As SPFT have failed to address the issues raised concerning my mistreatment, disability discrimination and breach of contract which have made it impossible for me to continue to work for you, I consider my position at SPFT untenable, leaving me no option but to resign.*

*Please arrange for return of my personal possessions held at LGH and the collection of trust property from my home address.*

119. The claimant began the ACAS early conciliation procedure that day and presented her claimant to the tribunal on 2 February 2022.

### **The law**

120. In respect of direct discrimination, Section 13(1) of the Equality Act 20210 (“EqA”) provides as follows:

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

121. Section 23(1) of the EqA deals with comparisons, and provides:-

*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.*

122. In a direct disability claim, the comparator is someone who shares the same physical or mental limitations as the claimant, but does not have her disability (*Boesi v Asda Stores Limited* [2023] EAT 49).

123. The burden of proof provisions (which apply equally to harassment) are set out in section 136 EqA 2010:-

*(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.*

124. When considering direct discrimination, the tribunal must examine the “reason why” the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned (*Amnesty International v Ahmed* [2009] IRLR 884). The protected characteristic need not be the only reason why the individual acted as they did, the question is whether it was an “effective cause” (*O’Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor* [1996] IRLR 372).

125. Guidance on the application of the burden of proof provisions of the Sex Discrimination Act 1975 (which is applicable to the EqA) were given by the Court of Appeal in *Igen v Wong* [2005] IRLR 258.

126. Tribunals are cautioned against taking too mechanistic an approach to the burden of proof provisions, and that the tribunal’s focus should be on whether it can properly and fairly infer discrimination (*Laing v Manchester City Council* [2006] ICR 1519). The Supreme Court has observed that provisions “will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other” (*Hewage v Grampion Health Board* [2012] UKSC 37).

127. The Court of Appeal has emphasised that “*The bare facts of a difference in treatment, without more, sufficient material from which the tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination*” (*Madarassy v Nomura International plc* [2007] IRLR 246). “Something more” is needed for the burden to shift. Unreasonable behaviour without more is insufficient, though if it is unexplained then that might suffice (*Bahl v Law Society* [2003] IRLR 640).

### **Indirect discrimination**

128. Section 19 EqA provides:

(1) *A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

(2) *For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

(a) *A applies, or would apply, it to persons with whom B does not share the characteristic,*

(b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

(c) *it puts, or would put, B at that disadvantage, and*

(d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*

### **Harassment**

129. Section 26(1) EqA provides: -

*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.*

130. Section 26(4) EqA sets out factors which tribunals must take into account: -

(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.*

131. Section 212(1) EqA provides that conduct amounting to harassment cannot also be direct discrimination.

132. The Court of Appeal in *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 stated:-

*“an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so....We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”*

133. The Court of Appeal again emphasised that tribunals must not cheapen the significance of the words of section 26 EqA as *“they are an important control to prevent trivial acts causing minor upsets being caught up by the concept of harassment”* (*Land Registry v Grant* [2011] ICR 1390).

134. In *Betsi Cadwaladr University Health Board v Hughes* [2014] UKEAT/0179 the EAT observed:

*“The word “violating” is a strong word. Offending against dignity, hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.”*

## **Victimisation**

135. Section 27 EqA deals with victimisation and 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;

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

136. A person suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11. An unjustified sense of grievance is not sufficient (Barclays Bank plc v Kapur (No. 2) [1995] IRLR 87 and *EHRC Employment Code*, paragraphs 9.8 and 9.9).

### **Reasonable adjustments**

137. Section 20 EqA sets out the duty to make reasonable adjustments, which comprises three requirements, the first of which is: -

*“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”.*

138. “Substantial” is defined in section 212(1) as meaning “more than minor or trivial”.

139. Section 21 EqA provides that a failure to comply with any of the requirements in section 20 is a failure to comply with the duty to make reasonable adjustments. A person or body subject to the EqA discriminates against a disabled person if they or it fails to comply with that duty in relation to that person.

140. EqA Schedule 8, Part 3 paragraph 20(1)(b) provides: -

*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) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.*

141. What is required for knowledge is the for the employer to know of the facts of the disability (the impairment, the long-term substantial adverse effect on the ability to carry out day to day activities). There is no need for the employer to know of a cause or diagnosis (*Gallop v Newport City Council* [2014] IRLR 211, *Urso v Department for Work and Pensions* [2017] IRLR 304, *Jennings v Barts and the London NHS Trust* [2011] All ER (D).)

### **Constructive dismissal**

142. In order for there to have been a constructive dismissal there must have been:-

- a. a repudiatory or fundamental breach of the contract of employment by the employer;
- b. a termination of the contract by the employee because of that breach; and
- c. the employee must not have affirmed the contract after the breach, for example by delaying their resignation.

143. In *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, CA, it was said;

*“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed”.*

144. An employee can rely on breach of an express or implied term of the contract of employment. In cases of alleged breach of the implied term of trust and confidence the test is set out in the case of *Malik v Bank of Credit and Commerce International Ltd* [1998] AC 20; namely, has the employer, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee? The test of whether there has been such a breach is an objective one (see *Leeds Dental Team Ltd v Rose* [2014] IRLR 8).

145. The EAT in *Frenkel Topping v King* UKEAT/0106/15/LA set out that simply acting in an unreasonable way is not sufficient to satisfy the test. The employer



*“must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term”.* (See also *Eminence Property Developments Limited v Heaney* [2010] EWCA Civ 1168.)

146. It is open to an employee to rely on a series of events which individually do not amount to a repudiation of contract, but when taken cumulatively are considered repudiatory. In these sorts of cases the “last straw” in this sequence of events must add something, however minor, to the sequence (*London Borough of Waltham Forest v Omilaju* [2005] ICR 481).

147. The employer’s breach must be an effective cause of the resignation (*Wright v North Ayrshire Council* [2014] ICR 77).

148. On the question of waiving the breach, the *Western Excavating* case makes clear that the employee

*“must make up his mind soon after the conduct of which he complains; if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract”.*

### **Limitation EqA claims**

149. Section 123 EqA governs time limits and provides: -

*(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.*

...

*(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 contrary, 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.*

## Conclusions

150. The structure of the List of Issues was to set out, first, the issues of limitation, then the issue of disability (which was conceded by the respondent), then to set out the alleged treatment, followed by the causes of action, which make reference to the alleged treatment. We will approach our conclusions by dealing with each item of alleged treatment in turn, making conclusions about whether such treatment amounted to the unlawful conduct alleged. We will then turn to the issue of constructive unfair dismissal, and then to limitation. The numbers at the start of each heading below refer to paragraph 4, and its subparagraphs, of the List of Issues. We will refer in the heading to the cause of action(s) relating to the allegation. The protected characteristic in respect of allegations of direct discrimination and harassment is at all times disability.

### **Direct disability discrimination and disability-related harassment**

#### 4.1 Telephone call about shielding letter (harassment, direct discrimination)

151. Our findings of fact are at paragraph 16 above.

152. Dealing with harassment, the conduct was admitted, and we find that it was unwanted, and the respondent concedes that it related to disability. It was not suggested to Mr Wintergold, or to us, that his purpose was to violate the claimant's dignity or create what we will term (for shorthand) the requisite environment to establish harassment. The issue for us is whether such conduct had that effect, and we take account of the claimant's perception, other circumstances of the case and whether it is reasonable for such conduct to have that effect.

153. We remind ourselves of the observations in the authorities about the strength and seriousness of the words within section 26 EqA.

154. We have found that the claimant felt her integrity was being questioned by this inquiry, and we find that this reaction was understandable. In terms of relevant surrounding circumstances we do have regard to the fact that this was the early days of lockdown, the respondent was providing frontline medical services to patients and was assessing the requirements of certain staff to work remotely. We take account of the fact that the claimant was someone who was able to articulate a sense of grievance (and we say this without any criticism) and did so when, for example, Ms Walker made observations relating to her own ethnicity and vulnerability during the pandemic.

155. The real question for us is whether the effect of the conduct, which we found created an understandable sense that her integrity had been questioned crossed the threshold into a violation of her dignity or created the requisite environment. We gave considerable scrutiny to this question.

156. While we note that the claimant has used the term “humiliating” in her witness statement in describing this episode, we have concluded that this conduct falls short, but only just so, of crossing the threshold. There is no evidence that the claimant conveyed to the respondent any criticism of the respondent at the time, and did not set out the depth of feeling she articulated in these proceedings.
157. In terms of direct discrimination, we have heard from Mr Wintergold that the reason why he approached the GP was that he was seeking confirmation that the letter was genuine in circumstances where there was evidence to suggest that false letters could be obtained. There was nothing from which we could conclude that the approach to the GP was because of the claimant’s disability. Someone without the claimant’s disability, but who had produced a shielding letter in the same circumstances, would have been subject to the same inquiry.
158. We do not find that the claimant was subjected to disability-related harassment or direct disability discrimination.
159. These claims are not upheld.

#### 4.2 Not providing IT equipment (direct discrimination)

160. We refer to our findings at paragraphs 20-21, 33 and 49. There undoubtedly were certainly difficulties in fully setting up the claimant with the IT hardware and software needed to carry out her role. She resumed non-managerial work from August 2020 and managerial work from late 2020. There is no evidence from which we could conclude that the reason why there were delays was anything to do with the fact that the claimant was disabled. There is nothing from which we could reach the conclusion that someone in the same circumstances as the claimant (working at home requiring IT equipment) would not have experienced the same frustrating delays.
161. These claims are not upheld.

#### 4.3 Questioning the claimant’s need to shield (harassment, direct discrimination)

162. Our findings on this issue are at paragraphs 29-31 above. Again, this conduct was both unwanted and related to disability, so the issue for us is whether the purpose or effect of it crossed the threshold to amount to harassment.
163. We have regard to the context of the conversation. Ms Walker was of a community apparently disproportionately impacted by the Covid pandemic and was experiencing difficulties in her personal life. While we did not hear from her, there is no evidence to suggest that she was deliberately setting out to violate the claimant’s dignity or create a hostile etc environment. In terms of the effect of the conduct, we had the benefit of seeing the claimant’s emails with Mr Wintergold about how she was affected by Ms Walker’s remarks. She said she found

them “*irrelevant and insensitive*” and “*disappointing*” and lacking in empathy warmth and kindness.

164. The contemporaneous evidence suggests, first, that the claimant did not interpret Ms Walker’s conduct as having the purpose of (for the sake of shorthand) harassing her. It also suggests that the effect of it was that she was disappointed and was not confident that her manager would deal sensitively with her personal situation. Again, while we have considerable sympathy with the situation the claimant found herself in, the evidence at the time does not suggest that the effect of the conduct crossed the threshold into a violation of dignity, hostile etc environment.

165. These claims are not upheld.

#### 4.4 Attitudes and behaviours of team members (harassment, direct discrimination)

166. In her witness statement the claimant describes the unwelcome attitudes and behaviours, unwillingness to engage and lack of consideration respect and professionalism of her team. She describes their apparent hostility, “*sarcastic facial expressions, comments, eye rolling, slouching with crossed arms, pushing the camera away, pursing of lips, inappropriate tone, chatting, ignoring my presence and talking over me amongst themselves*”. She attributes this to their negative reaction to her need to shield due to her health condition.

167. There is no doubt that the claimant’s relationship with her team broke down. Each side of this argument has a different story. From the claimant’s perspective, the team’s behaviour was driven by their negative reaction to her need to work remotely. From the DAW material, it appears the team felt unsupported, belittled and by bullied by the claimant.

168. Two of the team’s DAW did not proceed and two were not upheld. On the other hand, the lack of professionalism, for example, that the claimant alleges against Ms Assiak is not something anyone else familiar with her work recognised. Ms Assiak could have handled her dealings with the claimant over Patient X better, but the documentation would suggest her behaviour fell well short of the insubordination the claimant saw. The likelihood is that, in the course of a breaking down relationship, that both sides were flawed in their perceptions and created not particularly reliable entrenched narratives. The fact that the claimant worked remotely almost certainly contributed to the poor relationships and lack of understanding between the parties, though to what extent is difficult to say.

169. We conclude that the team members almost certainly made their frustration apparent at times. We conclude that the reason why they did this was their frustration and difficulty with the way they perceived claimant was managing them. She undoubtedly had high standards and they probably felt that she was, at times, focusing on process-

related issues such as training and risk assessments when they were struggling to deal with their caseload. The irritation they expressed was unwanted conduct. We do not find that it related to the claimant's disability, but if we were wrong, in that the claimant's remote working had connection with communication difficulties, we do not find that the effect of the team's behaviour crossed the threshold into creating the requisite environment.

170. Further, we do not conclude the team behaved as it did because of the claimant's disability. They acted as they did because of their frustration at the way they perceived the claimant was managing them. There is nothing from which we could have concluded that the reason why the team exhibited these behaviours was because of the claimant's disability. There would have been a similar breakdown in the relationship if the team had been managed by someone in the same material circumstances as the claimant but without her disability.

171. These claims are not upheld.

#### 4.5 Being excluded from decisions regarding her team (harassment, direct discrimination).

172. The evidence does not support the claimant's contention that she was excluded from decisions regarding her team. For example, she was kept in the loop about decisions relating to Ms Assiak's secondment to Home First, including attending the pilot meeting. She was copied into emails about Trust-wide manual training and she was included in meetings concerning the therapeutic improvement plan. In terms of the line management of her team being removed from her and OTs being assigned to wards, this was both a protective measure decided upon by Mr Forrester in the context of a breakdown in relationships, and was something which had been proposed in a previous review.

173. The decisions made may not have been wanted by the claimant. However, there is no evidence from which we could conclude that such conduct was related to or because of the claimant's disability.

174. These claims are not upheld.

#### 4.6 Ignoring concerns about colleagues' failing to comply with instructions

175. The focus of the evidence here was Ms Assiak's conduct in respect of Patient X, and our findings are at paragraphs 61-63.

176. We do not find that the claimant's concerns were ignored. Ms Assiak had not carried out a comprehensive OT assessment as the claimant had asked, but it appears she had her reasons for not doing so which she articulated in widely copied emails. The claimant was supported by Ms Dorer during this episode (in supervision discussion, by assistance drafting emails etc.), and Ms Dorer ensured that Ms

Assiak was spoken to in supervision about how she had approached the issue.

177. The claimant may well have wanted the issue to have been approached differently, probably involving disciplinary process, but there is no evidence to suggest that management's approach had anything to do with the claimant's disability. It did not relate to disability and was not because of disability.
178. These claims are not upheld.

#### 4.7 Being suspended from her role (harassment, direct discrimination)

179. The claimant was not suspended from her role, but her line management responsibilities were removed. Our findings are at paragraphs 43-53 above.
180. The reason why the line management responsibilities were removed by Mr Forrester was as a supportive measure to both the claimant and the team in the context of the whole team indicating that they were raising, essentially, bullying complaints.
181. This may not have been wanted by the claimant, but it had no relation whatsoever to her disability. Even if it was related in some way, the decision to remove line management was not intended to and did not create the requisite harassing environment. Indeed, it was a process she said at the time that she supported.
182. The decision would have been made in exactly the same way had a non-disabled person found themselves in the same circumstances. The reason why the decision was made was not because of disability.
183. These claims are not upheld.

#### 4.8 Ms Dorer making unreasonable demands of the claimant (harassment, direct discrimination)

184. The period the claimant sets out in the List of Issues is March to April 2021. Findings relevant to this issue are at paragraphs 61, 71, 73 and 75-77.
185. The demands the claimant appears to focus on are demands to attend certain meetings. In terms of criticism, this appears to be the allegations about picking apart an email for 45 minutes.
186. We do not accept the claimant's account of the criticism of the email as it is not supported by the contemporaneous documents. We accept that Ms Dorer was actually trying to assist the claimant to communicate with the team in the context of a relationship that had broken down. It was not unwanted conduct. It had nothing to do with disability. There is no evidence from which we could conclude that it did. The conduct, even if it was unwanted and related to disability did

not approach the threshold of harassment in terms of the environment created. Ms Dorer would have acted the same way with a non-disabled person in the same circumstances.

187. In terms of the demands to attend meetings, our findings are that Ms Dorer and HR merely set out to the claimant what was expected of her role. The evidence suggests that the claimant was withdrawing from both the Home First meetings and senior leadership meetings. We see nothing wrong with management setting out the requirements of the role. There is not evidence from which we could conclude that articulating this had anything to do with disability. In similar circumstances a non-disabled person would have been treated in the same way.

188. These claims are not upheld.

#### 4.9 Repeatedly ignoring the claimant's concerns about her treatment (harassment, direct discrimination).

189. Findings relevant to this issue appear at paragraph 54-57, 59, 62, 65-68, 71-72, 74, 76-7 and 82. It is clear that the claimant did raise certain concerns in emails and in supervision. However, an examination of the contemporaneous document shows that when she did raise concerns, either about her team or about management, management engaged with her. They certainly did not ignore her, although they may not have taken the action the claimant would have wanted. In most ways, it appears that management were actively attempting to support the claimant.

190. Although we have not found evidence to support the claimant's allegation that she was ignored, there is no evidence from which we could conclude that the way management engaged with the claimant when she raised concerns had anything to do with disability. There was no evidence from which we could conclude that it was related to or because of disability.

191. These claims are not upheld.

#### 4.10 Failing to deal with DAWs within timeframes (harassment, direct discrimination).

192. The respondent accepts that the DAW complaints were not held within the timescales. Findings relevant to this issue are at paragraphs 38, 55-57, 59, 64, 67-8, 70, 81-84, 87-89, 91-2 and 98.

193. What is clear is that the respondent was dealing with a complex set of allegations raised by the whole team. The evidence suggests a possible reticence by the team to formalise complaints and attempts by the respondent to explore a solution through mediation and organisational development. The situation was complicated by a grievance by the claimant. We also have regard to the background of

the pandemic and the fact that the respondent was an NHS Trust at the frontline of the response to the pandemic. We also do not lose sight of the fact that having allegations hanging over the claimant was having a significant impact on her.

194. What we do not find, however, is evidence from which we could conclude in the absence of an explanation, that the failure to deal with the complaints within appropriate timescales (clearly unwanted by the claimant) had anything to do with disability. It was unrelated to it, and was driven by the complexity of the situation. If we had found that the timescale of the respondent's response to the DAWs was in any way related to disability, we would not have concluded that such passed the threshold into creating the requisite environment.
195. We further conclude that a non-disabled person in the same complex situation as the claimant (whole team complaints in the pandemic etc.) would have experienced the same delays.
196. The complaints are not upheld.

4.11 Harassment at supervision on 6 April 2021 (harassment, direct discrimination).

197. Our findings on this issue appear at paragraph 71. If it is the case that the claimant has put the wrong date in the List of Issues, and that she is talking about the supervision on 23 March 2021, our findings are at paragraph 61.
198. In neither case have we found that Ms Dorer was harassing the claimant or otherwise treating her inappropriately. In relation to the 23 April 2021 supervision we have not accepted the claimant's account that Ms Dorer was mistreating the claimant in any way to do with the email amendments. To the contrary, we find that she was helping her soften her communication style, which was in all likelihood part of the problem that the claimant was experiencing with the team.
199. In the supervision of 6 April 2021 it is also clear from the contemporaneous record that Ms Dorer was attempting to support the claimant with the Patient X issues and other matters.
200. There is no evidence from which we could conclude that the, on the face of it, supportive management offered by Ms Dorer on these occasions was anything to do with disability. There is reference in the 6 April 2021 supervision minutes to a discussion about whether remote working may have been contributing to the problems the claimant experienced. However, if this means that there is conduct relating to disability, it would be difficult to see how such conduct was unwanted or reached the threshold of creating the requisite environment. The context of this discussion was Ms Dorer's attempts to support the claimant. Furthermore, we conclude that Ms Dorer would have acted in



the same way to someone in the same circumstances without a disability.

201. These claims are not upheld.

4.12 Harassing the claimant at meeting of 19 April 2021 with HR (harassment, direct discrimination)

202. Our findings relevant to this issue are at paragraphs 74-6 above.

203. In short, we do not accept the claimant's account of this meeting. The email summarising it indicates that the claimant did raise concerns, which were addressed by Ms Dorer and Mr Wintergold. It is right to say that Ms Dorer and HR did have to set out aspects of the role that the claimant was expected to carry out, and that this would have been unwelcome to the claimant who appeared to be withdrawing from attending certain meetings. However, there is nothing from which we could conclude that the approach taken by management and HR had anything to do with the claimant's disability. The unwanted messages and approaches were unrelated to her condition and did not reach the threshold of harassing conduct. Had someone without the claimant's disability but otherwise in the same material circumstances been withdrawing from meetings, we have no doubt that management would have delivered the same messages about the requirements of the role.

204. These claims are not upheld.

4.13 Harassment from Ms Dorer on 21 April 2021 (harassment, direct discrimination).

205. Our findings relevant to this issue are at paragraph 77 above.

206. Ms Dorer was delivering two messages that the claimant found unwelcome. First, that Ms Assiak's conduct was not considered insubordinate. Second, that she was expected to attend certain meetings as part of her role.

207. We conclude that management was entitled to deliver both of these messages. The contemporaneous emails suggests that Ms Assiak had not carried out a full assessment of Patient X as the claimant had asked her to, but had done (or not done) what she did in consultation with senior colleagues and been transparent about her approach. Ms Dorer felt the need to address this issue with Ms Assiak, but the contemporaneous evidence shows conduct well short of insubordination. As set out above, we consider management were entitled to set out expectations around attending meetings.

208. Having these unwelcome messages delivered to her no doubt fed the claimant's sense of dissatisfaction. She has created a narrative suggesting that Ms Dorer's conduct was harassing no doubt because of this. But the evidence does not support this narrative.

209. We find that Ms Dorer's approach at that supervision entirely unrelated to disability, and everything to do with trying to navigate a way forward in difficult circumstances. It did not come near to the threshold of harassing conduct, and a person without a disability would have been treated the same in the same or similar circumstances.

#### 4.14 Raising a second or third DAW in April 2021 (victimisation)

210. The respondent accepted that by raising a grievance on 22 April 2021 the claimant did a protected act.

211. Our findings in relation to the victimisation detriment issue are at paragraphs 70, 79 and 81.

212. It is right that the claimant indicated she was putting in a grievance on 22 April 2021 and the following day she was informed that a further DAW had been put in by Ms Assiak.

213. We conclude that this was just a coincidence in timing. Ms Assiak had been voicing concerns about her treatment, along with the rest of the team since January 2021. She had actually formally submitted a DAW on 6 April 2021. The fact that this was communicated to the claimant the day after she put in a grievance had nothing to do with the grievance. It was not because she had done a protected act.

214. This claim is not upheld.

#### 4.15 Failing to investigate why unfounded DAWs had been progressed (harassment, direct discrimination).

215. Findings relevant to this issue appear above at paragraphs 89, 92, 98 and 100(c).

216. There was no investigation about why DAWs had been progressed. The fact of it was that four team members made DAW complaints, two were investigated and neither was upheld.

217. We do not consider the fact that they were not upheld makes them "unfounded". It is clear from the DAW investigation reports and the outcome letters that the respondent did not find that the complaints were vexatious or malicious. On the available evidence this was a finding we consider was open to them.

218. The claimant pursued a grievance, part of which concerned her assertion that the DAW complaints did not warrant investigation, appealed the findings and the respondent upheld her appeal. It considered under the formal grievance process the complaints about this issue that the claimant raised. It is difficult to see what more the respondent could do, other than to find that the complaints were malicious and vexatious, which the evidence did not bear out. There is no evidence from which we could conclude that the approach the respondent took to this issue was in any sense related to, or because

of the claimant's disability. The conduct (even if it did relate to disability) came nowhere near the threshold of harassment, and we conclude that the respondent would not have acted any differently towards a person in the same circumstances who did not have the claimant's disability.

219. These claims are not upheld.

4.16 Failing to uphold parts of the claimant's grievance (direct discrimination).

220. Our findings in relation to this issue are at paragraphs 99-100 above.

221. Some of the grievance was not upheld and some was partially upheld. The claimant's case boils down to an assertion that the reason why parts of it were not upheld was because she was disabled. There is simply no evidence from which we could conclude that disability was at all a factor in deciding whether to not to uphold certain aspects of the grievance. The fact that the appeal against the grievance conclusion was upheld (albeit with opaque reasoning) does not shed light on this particular issue. There is nothing from the reasoning of either grievance outcome or the appeal which could lead to the conclusion that the decision-making was influenced in any way by the claimant's disability.

222. These claims are not upheld.

4.17 On 13 September 2021 demands being made of OH to prove the claimant's health condition prevented her from attending work (harassment, direct discrimination).

223. Our findings in relation to this issue are at paragraphs 105-6.

224. As we have set out, the Trust was delivering frontline healthcare during the pandemic. It was responding to changing Government guidance about shielding and seeking to balance the need to ensure those who could attend the workplace with supporting those who needed to work from home for medical reasons.

225. We have some sympathy for the claimant, who understandably wished the details of her medical conditions to remain private. Her feelings that the earlier approach to her GP had been intrusive and Ms Walker's comments in November 2020 had been insensitive were also understandable.

226. However, the respondent was entitled to seek evidence from the claimant's GP about her need to work from home in circumstances where the national provisions about shielding had come to an end and all the respondent had was a shielding letter. The mistake the respondent made, was in initially telling the claimant she would need to be referred to an OH doctor rather than simply provide her consent for OH to contact the GP. This mistake was as a result of

miscommunication between HR and OH and was swiftly corrected, for which the claimant and her representative were grateful.

227. The initial mistaken request to refer the claimant was probably unwanted and related to her disability in that her need to work from home arose from it. However, having regard to the factors set out in the preceding paragraph we do not conclude that the effect of this conduct came anywhere near the threshold of creating the requisite environment for harassment.

228. We also consider that the treatment complained about, arising as it did from a miscommunication, would have happened to someone in the same circumstances as the claimant (i.e. needing to shield for reasons other than a disability, with the respondent only having a shielding letter when national provisions for shielding had come to an end). There is nothing from which we could conclude that the claimant's disability was the reason for the request.

4.18 Failing to address issues in the grievance appeal on 14 October 2021 (direct discrimination).

229. We have taken the claimant's case on this issue to be as set out in her witness statement that following the grievance appeal decision "*There was no discussion about any further action against those who had discriminated against me or treated me unfairly*". Our findings relevant to this issue appear at paragraphs 112-118 above.

230. The claimant had appealed the outcome of her grievance and this had been upheld. This meant that the grievance process was at an end. She did press for action to be taken against those who she said had harassed or discriminated against her, but was told this was outside the appeal process. Thereafter, the respondent sought to engage the claimant meaningfully on how she might be supported to be redeployed in the Trust as she had indicated in no uncertain terms that her working relationships with Ms Dorer and Mr Wintergold and her team were untenable.

231. She puts her claim as one of direct discrimination. In effect she is putting forward that the reason why the respondent did not take action against those who she saw as having discriminated against her was because she was disabled.

232. We have not have the benefit of hearing from the upper management of the Trust, but there simply does not seem to be any evidence from which we could conclude that the respondent was treating her the way that it did for this reason. There is no background information which would enable us to infer this. All the correspondence suggests that the respondent was seeking actively to engage with the claimant to retain her valued services. The respondent had not concluded that individuals had discriminated against the claimant, so it is difficult to see what sanction they would be expected to apply. We do

not accept what must be the premise of the claimant's case, ie. that if someone in the same material circumstances as the claimant, but not disabled, had been pressing for an investigation of Ms Dorer and Mr Wintergold the Trust would have carried one out. We conclude the respondent would have acted in the same way as it did with the claimant.

233. We do not uphold this complaint.

### **Reasonable adjustments**

234. The claimant relies on the PCP "*The respondent requiring and managing all personnel to physically return to the workplace*". She also relies on the physical feature of the respondent's workplace as "*The layout of the workplace meant that the claimant could not isolate in the workplace*".

235. The claimant says that she was substantially disadvantaged by her inability to physically return to the workplace because of her disability.

236. The claimant suggest the reasonable steps the respondent should have taken were:

- a. The provision of IT equipment and software.
- b. Supporting the claimant in remote working and managing the service.

237. The respondent concedes the application of the PCP and the disadvantage.

238. In terms of IT, we have set out conclusions above relating to direct discrimination and harassment, referring to relevant findings. We conclude that the respondent did take steps to address the disadvantage. Equipment and software was ordered and provided, albeit slower than was ideal. We have regard to the background of the pandemic and difficulties in procuring and providing equipment.

239. Regarding support offered to the claimant to assist with remote working, we have set out in various places our assessment that the claimant was offered support.

240. The respondent did appear to be alive to the possibility that remote working was a factor in the deterioration of the claimant's relationship with her team, and team members were candid in their assessment that they struggled to work with a "virtual manager". Undoubtedly this was a difficult situation for many.

241. Relationship breakdowns are invariably complex issues, and, when viewed with the benefit of hindsight, it is often easy to identify things which could have been done better.

242. The question for us is whether the respondent failed to take such steps as was reasonable to avoid the disadvantage the claimant suffered by not being able to return to the workplace. For reasons as are set out in our findings and conclusions elsewhere, we do not find that the respondent was in breach of this duty. In short:

- a. The claimant was provided regular supervisions with both Ms Dorer and Mr Wintergold (paragraphs 41, 54 etc above);
- b. Ms Dorer intervened to speak with Ms Assiak about the Patient X issue (paragraphs 62-3);
- c. She was offered mediation (paragraph 37);
- d. Commissioning an external facilitator was explored (paragraph 43);
- e. Help was provided to soften communication with the team (paragraph 61);
- f. An OT planning meeting was set up which considered issues the claimant had with the team (paragraph 66);
- g. Efforts were made to clarify what support could be given in respect of the claimant's leadership role (paragraphs 68, 71-2, 74);
- h. The claimant was encouraged to continue to raise issues she had with the team as they arose (paragraphs 76-7);
- i. Organisational development initiatives were put in place (paragraph 78);
- j. Governance issues raised by the claimant were addressed (paragraph 80).

243. When the contemporaneous evidence is examined, it appears that the respondent recognised the difficulties experienced by the claimant and attempted to provide support to her.

244. We do not find that there was a breach of the duty to make adjustments.

### **Indirect discrimination**

245. The claimant sets out the PCP as "*The respondent requiring and managing all personnel to physically return to the workplace*".

246. The wording of section 19(1) EqA is worth repeating: “A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant characteristic of B’s”.

247. In closing submissions the respondent conceded that it “operated” that PCP. It is not apparent to us, however, that it “applied” that PCP to the claimant, in that it did not require her to return to the workplace at any time. The respondent conceded also that the PCP was applied to non-disabled persons.

248. If it is the case that there is a valid concession that the respondent applied the PCP to the claimant, we have to go on to consider whether both a group disadvantage is experienced by disabled persons and a particular one by the claimant.

249. Group disadvantage, in all but the plainest of circumstances (such as that experienced by women, who plainly experience a group disadvantage relating to child-caring commitments) must be established by evidence. There was no such evidence here.

250. In terms of the particular disadvantage experienced by the claimant, she expresses it at page 70 of the bundle (an email pursuant to an Order of Employment Judge Wright) as “*This put the claimant at a disadvantage because of her disability and inability to physically return due to her disability*”. This does not identify the disadvantage. We further have difficulty in understanding how she was in fact disadvantaged in circumstances where she was not actually required to attend the workplace.

251. Further, we would regard it a legitimate aim of the respondent to require clinical staff to attend the workplace, and consider that the respondent acted proportionately in operating a system for determining who was required to shield and to allow them to continue to work from home. The claimant, on providing evidence of her need to shield, was allowed to continue to work from home.

252. We do not uphold these complaints.

### **Constructive unfair dismissal**

253. The claimant has identified in the List of Issues breaches of certain policies that amounted to a breach of the implied duty of trust and confidence. It is right to say that the DAW complaints were not dealt with within the timeframe envisaged by the policies (as we have set out above). It is also right that the ICO stated that the respondent had more work to do. In terms of the breaches of the Equality, Diversity, Inclusion and Human Rights Policy it is assumed that this refers to her allegations of discrimination. We also assume that the breaches of the Grievance Policy refers to the allegations within paragraph 4 of the List of Issues that relate to grievances.

254. Broadly speaking, we have considered that, in the absence of specific detail on the breaches of the policies, it is safe to assume that the allegations she puts forward as direct discrimination, harassment, indirect discrimination and breach of the duty to make reasonable adjustments constitute the conduct which the claimant asserts to have destroyed or seriously damaged the relationship of trust and confidence. For the avoidance of doubt, we do not consider the fact that we have not upheld each allegation as amounting to discrimination or victimisation means that the conduct alleged cannot amount to a breach of the implied term of trust and confidence. We have considered them as factual allegations.

255. As will have become clear from our findings and conclusions, we have often not accepted that things happened in quite the way that the claimant has asserted. We do not consider cumulatively that the respondent has acted without reasonable or proper cause in respect of the allegations the claimant levels at it. We certainly do not find that such conduct was either calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent.

256. As we have found that there has not been conduct which would amount to a breach of the implied term of trust and confidence we do not need to consider arguments about affirming the contract.

### **Limitation**

257. The final point to make is that as we have not upheld any of the EqA claims, we do not need to go on to make any determination on limitation.

### **Overall conclusion**

258. We find that none of the claims is well-founded, and they are dismissed.

Employment Judge **Heath**

03 May 2024



**Public access to employment tribunal decisions**

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

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

**ANNEXE**

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL CASE NO:  
2300349/2022

BETWEEN:

ISOBEL CLARKE

Claimant

-and-

SUSSEX PARTNERSHIP NHS FOUNDATION TRUST

Respondent

---

**PROPOSED LIST OF ISSUES (LIABILITY ONLY)**

[drafted by Respondent]

---

**JURISDICTION**

1. Are any of the claims under s. 13, s. 19, s. 26 and s. 27 *Equality Act 2010* (EqA) out of time in accordance with s. 123(1)(a) EqA?
2. If so, is it just and equitable to extend time?

**THE EQUALITY ACT 2010 CLAIMS**

*Disability, s. 6(1) EqA*

3. Was the Claimant disabled at the material time between March 2020 and January 2022 by reason of bone marrow failure and being immune suppressed. *The Respondent admits the Claimant was disabled and that it had the requisite knowledge.*

*The Alleged Treatment*

4. The Claimant relies on the treatment below (numbers in [ ] refer to rows in the Table p48 and details of claim at p13 to p16) (**the Alleged Treatment**).

- (1) Laurence Wintergold telephoning the Claimant's GP in April 2000 regarding genuineness of a shielding letter provided by the Claimant; [3].
- (2) Not providing IT software and equipment that the Claimant required between 21 April 2020 and 8 October 2020; [4].
- (3) On 23 and 24 November 2020, Caroline Walker questioning about the Claimant's need to shield; [5].
- (4) Between 4 to 25 November 2020 team members and colleagues, including Evelyn Assiak, Daisy Alton, Darcy Gasson, Anne Godson, Lawrence Wintergold and Gemma Dorer, making sneering comments, engaging in inappropriate attitudes, and belittling behaviours; [5] and [6].
- (5) Between November 2020 and 16 March 2021, the Claimant being excluded from management decisions regarding her team; [6].
- (6) Between October 2020 and May 2021, Lawrence Wintergold ignoring the Claimant's concerns about her colleagues' failing to comply with her reasonable management instructions and to follow clinical guidance; [7] and [13].
- (7) On 15 February 2021, the Claimant being suspended from her role; [9].
- (8) Between 10 March 2021 and 21 April 2021, the Claimant feeling persecuted by Gemma Dorer making unreasonable demands and criticisms of her; [8].
- (9) Between February 2021 to May 2021, Lawrence Wintergold and Gemma Dorer ignoring repeated concerns raised by the Claimant about her treatment; [10].
- (10) Between 15 February 2021 and 5 May 2021, failing to deal with the Claimant's dignity at work complaints within the relevant time periods provided for in the Dignity at Work Policy; [11].
- (11) Harassing treatment of the Claimant at a supervision meeting on 6 April 2021 by Skype with Gemma Dorer; [14].
- (12) Harassing treatment of the Claimant at a meeting with HR on 19 April 2021 by Lawrence Wintergold and Gemma Dorer; [12].
- (13) Harassing treatment on a Skype call on 21 April 2021 by Gemma Dorer;

[16].

- (14) The raising of a second (or third) dignity at work complaint against the Claimant in April 2021; [19].
- (15) From 22 July 2021 to 26 January 2021, failing to investigate why the earlier unfounded dignity at work complaints had been progressed [20].
- (16) On 19 July 2021, failing to uphold parts of the Claimant's grievance; [21].
- (17) On 13 September 2021, demands being made to OH to prove the Claimant's health condition prevented her from attending work; [22].
- (18) Failing to address issues in the Claimant's grievance appeal on 14 October 2021; [24].

**Harassment, s. 26 EqA**

- 5. Was the Claimant subject to the Alleged Treatment set out in sub-paragraphs 4 (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), 15), and (17) above.
- 6. Was the treatment referred to in paragraph 5 unwanted conduct?
- 7. Was the treatment referred to in paragraph 5 related to the Claimant's disability?
- 8. Did the treatment referred to in paragraph 5 have the purpose or, alternatively, the effect, of either violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 9. If so, was it reasonable for the conduct to have that effect?

**Direct discrimination, s. 13 EqA**

- 10. The Claimant relies on a hypothetical comparator.

11. Did R subject C to the treatment set out in the Allegations at sub-paragraphs 4(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (15), (16), (17), and (18) above.
12. Did the treatment referred to in paragraph 11 above constitute less favourable treatment?
13. Was the reason for the treatment referred to in paragraph 11 above the Claimant's disability?

**Victimisation, s. 27 EqA**

14. Was the Claimant's grievance of 22 April 2021 a protected act?
15. Was the Claimant subjected to the treatment at sub-paragraph 4(14) above?
16. Was this a detriment?
17. Was the reason for this treatment that the Claimant had done the protected act?

**Failure to comply with the duty to make reasonable adjustments, s. 20 EqA.**

***The PCPS***

18. Did the Respondent operate the following provision criterion or practice (**the PCP**): The Respondent requiring and managing all personnel to physically return to the workplace.
19. If so, did the Respondent apply the PCP to the Claimant?  
***The physical feature of the Respondent's workplace***
20. The layout of the workplace which meant that the Claimant could not isolate in the workplace.

*Substantial disadvantage*

21. Did the PCP or physical feature of the workplace put the Claimant at a substantial disadvantage compared to non-disabled persons because of her inability to physically return to work due to her disability.

*Adjustments*

22. Would the Claimant's suggested reasonable steps have alleviated the alleged substantial disadvantage of the Claimant?
23. The reasonable steps the Claimant advances are:
- a. The provision of IT equipment and software.
  - b. Supporting the Claimant in remote working and managing the service.

**Indirect Discrimination, s. 19 EqA**

24. Did the Respondent operate the following PCP: The Respondent requiring and managing all personnel to physically return to the workplace.
25. Did the Respondent apply this PCP to persons who were not disabled?
26. Did the PCP put disabled persons at a disadvantage compared to nondisabled persons?
27. Did it put the Claimant at a disadvantage?
28. Has the Respondent shown it to be a proportionate means of achieving a legitimate aim?

**UNFAIR (CONSTRUCTIVE) DISMISSAL**

29. Did the Respondent breach its:
- c. Dignity at Work Policy (Managing Bullying and Harassment Grievances) on the following dates: 15/02/21, 25/02/21, 10/03/21, 24/03/21, 30/03/21, 06/04/21, 12/04/21, 21/04/21, 23/04/21, 04/05/21, 01/06/21, 14/06/21, 28/06/21.

- d. Equality, Diversity, Inclusion and Human Rights Policy on the following dates: 15/2/21, 16/2/21, 23/2/21, 10/3/21, 18/03/21, 23/3/21, 31/03/21, 19/04/21, 21/04/21
- e. Subject Access Request Policy on the following dates: 26/08/21, 05/10/21, 15/12/21, 13/01/22, 26/01/22
- f. Individual Collective Grievance Policy on 3/12/20.

30. Did these breaches of policy or any of them amount to a breach of the implied term of trust and confidence?

31. Did the Claimant resign on 27 January 2022 in response to the breach of contract?

32. Had the Claimant waived any breach of contract and/or affirmed her contract of employment prior to resigning?

33. What was the reason for this dismissal?

34. Was it a potentially fair reason within s. 98 ERA?

35. Was the dismissal fair or unfair having regard to the matters set out in s.98(4) ERA?