



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103806/2022

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Reading Days 2 and 3 November 2023

Held in Glasgow on 6, 8, 9, 10, 13, 16, 17, 21 and 22 November 2023

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Members' Meeting on 13 and 26 March 2024

**Employment Judge C McManus
Members J Anderson and J Burnett**

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Ms R Montgomery

**Claimant
In Person**

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Grace Communion International

**Respondent
Represented by:
Mr S McCrossan -
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The unanimous judgment of the Tribunal is that:

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1. The claimant made a protected disclosure on 23 December 2021, with regard to the meaning of a qualifying disclosure in s.43B of the Employment Rights Act 1996.
2. The claimant's claim under section 47B of the Employment Rights Act 1996 is unsuccessful and is dismissed.
3. The claimant's claim for automatic unfair dismissal (under section 103A of the Employment Rights Act 1996) is unsuccessful and is dismissed.
4. The claimant's claim of unlawful discrimination under section 13 of the Equality Act 2010, based on her protected characteristic of sex, is unsuccessful and is dismissed.

5. The claimant's claim of unlawful discrimination under section 13 of the Equality Act 2010, based on her protected characteristic of disability, is unsuccessful and is dismissed.
6. The claimant's claim of unlawful discrimination under section 15 of the Equality Act 2010 is unsuccessful and is dismissed.
7. The claimant's claim of unlawful discrimination under section 20 of the Equality Act 2010 is unsuccessful and is dismissed.
8. The claimant's claim of harassment under section 26 of the Equality Act 2010, based on her protected characteristic of disability, is successful to the extent set out in this decision.
9. The claimant's claim of victimisation under section 27 of the Equality Act 2010 is unsuccessful and is successful to the extent set out in this decision.
10. The claimant's claim for payment under section 13 of the Employment Rights Act 1996 is unsuccessful and is dismissed.
11. The claimant is awarded the total sum of **£13,423.38 (THIRTEEN THOUSAND FOUR HUNDRED AND TWENTY THREE POUNDS AND THIRTY EIGHT PENCE)** in respect of the extent of her well – founded claims under the Equality Act 2010.

REASONS

Introduction

1. The complaints before us were:
 - (i) Automatic Unfair Dismissal (s.103A Employment Rights Act 1996 ('ERA');
 - (ii) Unlawful detriments related to protected disclosures (s.47B ERA 1996);
 - (iii) Direct Discrimination (on ground of the protected characteristics of (i) Disability & (ii) Sex (s.13 Equality Act 2010 ('EqA'));

- (iv) Failure to make reasonable adjustments (s.20/21 EqA 2010);
- (v) Discrimination arising from a disability (dyslexia) (s.15 EqA 2010);
- (vi) Disability related harassment (s.26 EqA 2010);
- (vii) Victimisation (s.27 EqA 2010); and
- 5 (viii) Claim under s13 ERA - Reimbursement of expenses (said to be £1,320 relating to GiANT Training)

2. By this Final Hearing ('FH'), the respondent accepted that the claimant has the protected characteristic of disability from her Dyslexia. The victimisation claim under s27 EqA is based on the claimant having raised an internal grievance. The respondent accepts that that was a protected act. The respondent denies any unlawful treatment of the claimant under the EqA, on either her protected characteristic of disability (dyslexia) or of sex (gender), or because of the protected act. The claimant did not have qualifying service for an unfair dismissal claim under section 98 of the ERA. The respondent's position is that the reason for the claimant's dismissal was her incapacity. The claimant's position is that her dismissal was an automatically unfair dismissal. She relies on having made protected disclosures to the respondent. The respondent did not concede that what the claimant relies on were qualifying disclosures. They denied that the claimant was put to any detriment or was dismissed for having made protected disclosures. By the FH, the respondent conceded that if the claimant had made qualifying disclosures, then these would be protected disclosures. It was further the respondent's position that some of the claims were timebarred, as set out below.

3. There were several case management hearings (CMPHs) in this case. Following a CMPH before EJ Macleod on 7 September 2022, the claimant had provided a 'Scott Schedule' (referred to as Further and Better Particulars ('FBPs')), in response to questions set out in the CMPH Note. At a CMPH before EJ McFartridge on 18 November 2022, it was the respondent's position that those FBPs introduced new claims and required an amendment application. That application was heard by EJ Robison at a Preliminary

Hearing (PH) on 21 March 2023 and the claim was allowed to be amended to incorporate those FBPs. It was noted at that time that there were some time bar issues. The claimant's claims are taken to be set out in her amended FBPs (JB1 / 132 – 151). This includes tables, now included and referred to within the List of Issues (Appendix A)

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4. These was also case management discussions at that PH on 21 March 2023. A further PH was arranged, to determine a number of preliminary issues, including in relation to a matter of legal privilege. That PH was heard by EJ Robison on 28 April 2023. The FH was arranged to start on 28 August 2023.
10 The FH did not commence on that date and instead the hearing on that date was converted to a CMPH. The List of Issues to be determined by the Tribunal at this FH was substantively agreed on 28 August 2023, as set out in the Note of Proceedings of that date.

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5. The factual matrix of this case was complicated by the claimant having a relationship with the respondent as a member of the church, and as a volunteer, as well as in her role as an employee, and the claimant's husband having been a member of and volunteer in that church. It was explained that the Employment Tribunal only has jurisdiction to determine the claims made in respect of the claimant's role as an employee of the respondent.

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6. Documents were relied on, included in Joint Bundle 1 ('JB1'), with pages 1 – 702, Joint Bundle 2 ('JB2'), with pages 1 – 30, and Joint Bundle 3 ('JB3'), with pages 1 – 58. The numbers in brackets in this decision refer to the particular Bundle, then the page number of the particular document in that Bundle (e.g. JB1 / 51, with the document referred to being at page 51 of Joint Bundle 1).

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7. Evidence was heard on oath or affirmation from the claimant, her husband Andrew Montgomery, Ian Woodley (Minister), Shirley MacLean (Minister) and Barry Robinson (Regional Pastor). For the respondent, evidence was heard from Gavin Henderson (Respondent's National Ministry Leader) and Alexis Luckoo (Office Administrator). Witness statements were provided and taken
30 as evidence in chief, for the reasons set out in the Note of Proceedings issued after case management discussions on 28 August 2023. It was agreed that

some content of the witness statements and some documents were not relevant to the issues to be determined and so would not be referred to in this decision. As an adjustment, the claimant's evidence in chief was taken to be set out in her revised witness statement of 29 August 2023 ('the claimant's witness statement') and also at JB1 / 688 – 692, which was the claimant's Schedule of Loss, and her position in support of that. The claimant's witness statement was structured chronologically, in numbered paragraphs 1 – 58.

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8. We made findings in fact which were material to the issues for our determination. These findings were based on the evidence before us, taking into account issues of credibility and reliability, as referred to below. Although the findings in fact are not a full chronology of events, in the circumstances of this case it was considered to be necessary to set out the content of some communications. This was because it was the respondent's position that some of the claims were timebarred because they were not a continuing course of conduct. The content of some communications was also set out because of our considerations on credibility. Where there appears to be a typo in a document before us, that is indicated by '[sic]'. Our decisions on the issues were taken on the application of the relevant law to our findings in fact. Our findings in fact were made on application of the applicable burden of proof.
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9. There are individuals named in this Judgment who were not witnesses at the Final Hearing. It was agreed by the parties that no anonymisation of individuals named in these reasons was required. There is some anonymisation in this Judgment, as considered to be appropriate by the Tribunal.
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10. At conclusion of the evidence on 23 November 2023, both the claimant and the respondent's representative took the opportunity to thank this Tribunal for our approach at this hearing.

Adjustments

11. The claimant is dyslexic and a number of adjustments were made by the Tribunal and the respondent's representative. We took into account the guidance in respect of dyslexia given in the Judicial Equal Treatment
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Benchbook. As agreed, the claimant indicated if there was anything she did not understand or required further clarification on, and when she required some additional time or breaks, and appropriate steps were taken.

Concessions by Respondent

- 5 12. The respondent made the following concessions:
- a. That the claimant has the protected characteristic of disability, within the meaning of the EqA;
 - b. In respect of the claim under section 27 of the Equality Act 2010 ('EqA'), that the claimant had done a protected act, by raising a
10 grievance verbally on 9 December 2021 and in writing on 2 January 2022; and
 - c. That if what is relied upon by the claimant was qualifying disclosures, then these are protected disclosures
13. As set out below, on the evidence, the claimant's protected acts were in fact
15 her grievance in writing on 8 December 2021 and in writing on 2 January 2022.

Issues determined by the Tribunal at the Final Hearing

14. The List of Issues at Appendix A was based on the draft prepared by the
20 respondent's representative. It includes reference to allegations set out in Tables A-E. To assist the claimant, numbering in that List was set out to be consistent with the claimant's FBPs (JB1/ 132 – 151).
15. At the stage of submissions, the respondent's representative introduced new
25 issues, in respect of the Tribunal's jurisdiction to hear the protected disclosure complaints, on the basis of timebar points. Those jurisdictional issues have been determined in addition to the issues set out in Appendix A and are set out in the decision section below.

16. This Judgment is lengthy because of the number of issues to be determined, including time bar issues, and the relevant findings in fact necessary to be made to determine the issues.
17. In our consideration, because of our findings in facts, the issues to be determined are not exactly as set out in Appendix A. The issues which have been determined are summarised as:
- Were the claimant's claims under the Equality Act 2010 brought within the period identified in section 123 of the Equality Act 2010, with regard to whether the acts complained of were 'conduct extending over a period' in terms of section 123(3)(a)?
 - What was the reason for the claimant's dismissal?
 - If the claimant made a protected disclosure, was that a significant influence to the reason for dismissal?
 - Did the claimant make protected disclosures within the meaning of section 47B Employment Rights Act 1996?
 - Did the claimant suffer a detriment in terms of Section 47B ERA on the grounds of having made protected disclosures
 - If so, were the claimant's claims for detriments on the grounds of protected disclosures (section 47B ERA) presented within the period identified in section 48(3)(a)-(b) ERA?
 - If not, was it reasonably practicable for the complaint to have been presented within the statutory three months period?
 - Was the claimant discriminated against on the grounds of her sex (gender) contrary to s13 EqA?
 - Was the claimant discriminated against on the grounds of her disability (dyslexia) contrary to s13 EqA?
 - Did the respondent fail in their duty to make reasonable adjustments contrary to sections 20 & 21 EqA?

- Was the claimant discriminated against because of something arising from her disability, contrary to section 15 EqA?
- Did the respondent harass the claimant by engaging in unwanted conduct that was related to the claimant's disability with the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, contrary to s.26 EqA?
- On the basis of the claimant having done protected acts in terms of s27 EqA, did the claimant suffer a detriment for having done so?
- Is the claimant entitled to reimbursement of expenses incurred in respect of access to GiANT training material.
- If the claimant is entitled to remedy, to what extent?

Findings in Fact

18. The following facts were not in dispute or found to be proven:
19. The respondent is part of the Grace Communion denomination, an international Christian church whose headquarters are in the USA. The respondent's UK headquarters are in Market Harborough. The respondent's Church has around 23 congregations throughout the UK and Ireland. The average size of these congregations is around 10 – 20 people. At the time the claimant was employed by the respondent, she was one of 7 employees in the UK.
20. The claimant was employed by the respondent as 'Communications Co-ordinator'. That employed role began on 26 October 2020 and ended on 10 March 2022. That employment was initially under a 1 year Fixed Term Contract. In terms of the Statement of Further Particulars for that position (JB1 / 181 - 198), the "normal working month will comprise of 100 hours" (JB 1 / 182). The claimant worked from home although could be required to travel to perform her work. Her gross pay was £15.50 an hour. The claimant believed that the role would be likely to be extended after the Fixed Term Contract expired because she believed that there would be a continuing need for the

Communications Co-ordinator role. The job description for the role at JB1 / 181 is based on a Communications Co-ordinator role within the respondent's organisation in the USA.

21. Prior to starting her employment with the respondent, the claimant worked with her husband (Andrew Montgomery) in their own business. Prior to that, the claimant had been an employee in several different roles. Until FCA rule changes, the claimant and Andrew Montgomery had operated a call centre, with 15 employees. After the FCA rule changes, the claimant '*went into people development and training*'. The claimant described her experience in the CV she presented to the respondent (JB1 / 206 - 207). The claimant's business was affected by the COVID lockdowns. The claimant had not been earning from that business immediately prior to commencing her employment with the respondent. In that business, the claimant used resources provided by 'GiANT'. GiANT resources are also used by the respondent. The respondent's Leader in the USA had produced a book with some content from GiANT.
22. The claimant has a long history with the respondent's organisation: she was brought up in the respondent's church and in her youth attended the respondent's residential youth venture camps (the 'Summer Education Programme' ('SEP')). After leaving for a period, the claimant returned to the church. When deciding to return, the claimant had believed that there had been some changes to the respondent's culture. Prior to, and in addition to being employed by the respondent as Communications Co-ordinator, the claimant was a Member of the church and also had a volunteer role as a Deacon. The claimant's husband (Andrew Montgomery) was also a member of the church, and also had a volunteer role as a Deacon. The claimant and Andrew Montgomery attended the respondent's Edinburgh congregation.
23. At the time of the claimant's employment with the respondent, the Pastor in the respondent's Edinburgh congregation was Peter Mill. He was supported by his wife, Jackie Mill, in a voluntary role as Joint Pastor. Peter Mill was also a Regional Pastor. Peter Mill, Jackie Mill, the claimant, Andrew Montgomery and Ian Woodly (Minister) were all members of the Edinburgh congregation

Pastoral Council. Jackie Mill had responsibility for the organisation and running of the SEP.

24. In 2018 the then National Director of the respondent in the UK, James Henderson, retired from that role. His role was replaced by a National Ministry Team ('NMT') comprising Gavin Henderson (Operations Manager), Barry Robinson (Ombudsman) and Peter Mill (Outreach Co-ordinator). The ecclesiastical leader of the respondent is US based. In 2020, there was a change to the respondent's organisational structure. Gavin Henderson became National Ministry Leader ('NML'). As NML, Gavin Henderson was effectively the respondent's Chief Executive Officer and became responsible for all of their churches in the UK. Prior to the National Ministry Team leadership, the leader in the UK had been James Henderson. James Henderson is the father of Gavin Henderson.
25. During the COVID lockdowns, the claimant and Andrew Montgomery, in their role as Deacons, had concerns about the pastoral care afforded to some members of the Edinburgh congregation by Peter and Jackie Mills. The claimant and Andrew Montgomery sought to raise these concerns with Peter and Jackie Mill.
26. Around 6 months prior to the claimant commencing her employment with the respondent, the respondent awarded a training contract to a female independent provider. The claimant believed that she had the skills to supply the respondent what was required under that contract. She was disappointed that she had not been invited to tender for that contract and concerned that the contract was awarded to Peter Mill's neighbour. Peter Mill had removed himself from the decision making process in respect of the award of that contract, because of that personal relationship.
27. Gavin Henderson and Alexis Luckhoo (Office Administrator) interviewed the claimant for the role of Communications Co-ordinator. At this interview the claimant was asked what her weakness are. In response, she referred to being dyslexic. She explained that as a result she would have difficulty inputting data, and explained difficulties in her experience in a former job in

banking in that context. The claimant was asked at that interview if she needed any support for her dyslexia. Her position was that she did not.

28. The claimant uses software tools to help with the challenges from her Dyslexia. During her employment with the respondent, the claimant used
5 'Otter', which puts spoken words into document format and 'Speak Aloud' which 'speaks' the words in PDF documents.

29. The duties and responsibilities of, and the expectations from, the role of Communications Co-ordinator were not made clear to the claimant by the respondent. The job description for that role is at JB1 / 181. That job
10 description states the hours as "*P/T (minimum 15 hours per week), 1 year fixed- term contract.*" What is set out in that job description for the Communications Co-ordinator role (JB1 / 181) does not accurately reflect what Gavin Henderson required from that role. That job description sets out the '*Main task*' of that role as:

15 "*Managing our social media accounts and websites. This involves sourcing (and / or generating) content in collaboration with our staff and volunteers as well as generating strategies to engage with our targeted audiences.*

Working with our local congregations and projects to help them use social media and take advantage of the new communication technology.
20 *Developing our in-house communication systems to encourage collaboration and communities of practice."*

30. There was a misunderstanding between the Gavin Henderson and the claimant on what was expected from the Communications Co-ordinator role. Gavin Henderson believed that an important part of the Communications Co-ordinator role was to communicate information on the youth camp, and
25 encourage participants to sign up for this. It was not clear to the claimant that as Communications Co-ordinator she was required to create interest in the youth camp and promote it, so to increase participation numbers. The claimant believed that the role of Communications Co-ordinator was in
30 respect of marketing and brand awareness, including use of social media communication platforms such as What's App and Facebook and also

'coaching'. The claimant believed that she had been employed in the role because of her experience and in particular her skills in building *'Communities of Practice'*.

31. Churchsuite is a programme used for communications by many churches.
5 The claimant understood that Churchsuite was a data system, holding information on church members. She did not understand Churchsuite to be a communication system. The claimant was concerned that some of the information held by the respondent on the Churchsuite system was inaccurate, e.g. that some individuals on the database were no longer living.
10 She was also concerned that consent had not been given by individuals for the respondent to use their data in this system. For those reasons, the claimant was reluctant to use Churchsuite in the course of her employment with the respondent.

32. On the claimant commencing her role as Communications Co-ordinator, she
15 attended Market Harborough for an *'onboarding'* induction process. At that time, an emergency situation arose in respect of some content in communications made as part of the respondent's *'Day to Day'* project. The claimant's induction was affected by that emergency situation. That emergency situation impacted on the time spent by Gavin Henderson with the
20 claimant, explaining what was required in the role. That emergency situation also impacted on the scope of the Communications Co-ordinator role. The claimant was asked to take on some duties in respect of the *'Day to Day'* project. Those duties had not been initially envisaged by Gavin Henderson to be part of the Communications Coordinator role. Barry Robinson had
25 overall responsibility for the Day to Day project. Following her appointment as Communications Co-ordinator, the claimant worked with Barry Robinson on that project. That project was rebranded and changed to the *'Word of Life'* project. Barry Robinson was pleased with the claimant's work on that project. The time spent by the claimant on that project impacted on the working hours
30 she had available to work on the other duties which were part of the role of Communications Co-ordinator.

33. In December 2020, Gavin Henderson required to take a sabbatical from his role as NML. That sabbatical was not planned and was taken on an emergency basis. Barry Robinson became the claimant's line manager while Gavin Henderson was on sabbatical. That unplanned sabbatical and lack of handover was a significant factor in the miscommunication and lack of clarity which then developed in respect the duties of the role of Communications Co-ordinator. While Gavin Henderson was on sabbatical, much of the claimant's working time was spent on rebranding the Day to Day project and changing this to 'Word of Life'. The nature of the sabbatical meant that there was no communication between Barry Robinson and Gavin Henderson during this sabbatical. Barry Robinson knew that one of the matters that Gavin Henderson wished to be progressed during his sabbatical was the youth camp. Barry Robinson did not know the detail of what Gavin Henderson had expected, either in respect of the youth camp, or in respect of any wider duties of the Communication Co-ordinator role. Gavin Henderson had expected that steps would be taken to encourage participants to sign up for the youth camp, which was due to take place in summer 2021, having not run since 2019. Gavin Henderson expected the claimant in her role as Communications Co-ordinator to create interest in the youth camp, so as to increase the numbers signing up for that event. Neither the claimant nor Barry Robinson were aware that the claimant was expected to do that.
34. The claimant believed that by identifying and working with a small group of young people (a 'community of practice'), she could use her skills to develop the young people's feedback into a strategy for the future of the SEP camp. The claimant believed that she had been employed to use those skills with the young people. The claimant believed that by identifying and working with a small group of young people, she could use her skills to develop their thoughts into a strategy for the future of the youth camp. She believed that the young people had to be involved in developing the strategy and that it was not appropriate to just *"tell them what the strategy was"*.
35. On 27 January 2021, the claimant emailed Jackie Mill about 'SEP/Youth Leadership Team' (JB1 / 218 – 219). With that email, the claimant set out

her draft announcement to seek participants in the 'youth leadership team'. That draft was copied to Barry Robinson. In that email to Jackie Mill the claimant stated:

5 *"If there are any concerns then please do come back to me but my thought process is that this is just another community of practice that I am setting up, just like coaching and Word of Life."*

Jackie Mill's reply to that email (JB1 / 220 – 221) was generally positive but Jackie Mill's position was that the leadership advert should be delayed for a week to allow further discussion. Her email ended *"I look forward to hearing your ideas on the leadership training and feel we will be able to work together to deliver it for our young people."*

10 36. In the claimant's reply to Jackie Mill on 28 January 2021 (copied to Barry Robinson) (JB1 / 222 – 223), the claimant expanded on her plan to create a strategy with the youth. Jackie Mill replied by email on 29 January (copied to Barry Robinson) (JB1 / 224). That email stated only *"Thank you for your email. Please don't take any further actions at the moment. Kind regards."* The development of that 'youth strategy' was then effectively put on hold until Gavin Henderson's return.

20 37. During Gavin Henderson's sabbatical, James Henderson was Interim Operations Manager. During that sabbatical, given James Henderson's position as Interim Operations Manager, Barry Robinson contacted James Henderson about an email to Barry Robinson from Ian Woodley in respect of a 'conflict within the Edinburgh church'. Ian Woodly had asked Barry Robinson *'to host a facilitated discussion with a view to effecting reconciliation'*. That 'conflict' was between Jackie and Peter Mills ('the Mills') and the claimant and Andrew Montgomery ('the Montgomeries'). Ian Woodly considered Barry Robinson to be the appropriate person to act as facilitator because Barry Robinson had a role within the respondent's organisation as Ombudsman.

30 38. On 8 February 2021, James Henderson sent an email to Peter Mills (copied to Barry Robinson (JB2 / 15-16)). In that email, James Henderson informed

the Mills of this contact from Ian Woodley. At that time, James Henderson did not contact the Montgomeries, or the claimant individually, about that email., or any aspect of the issue raised by Ian Woodly. In his email to Peter Mills of 8 February, James Henderson stated *'In my view there is potential conflict of interest in that you and Barry are peers. Therefore, following some discussion, we agreed that Barry's further involvement might be problematic'*. James Henderson's email went on to describe the facilitation process which could be offered. It also stated *"Please share this message confidentially with the other parties involved, and request they keep this process confidential."*

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10 39. On 9 February 2021, (JB2 / 15) Peter Mill forwarded James Henderson's email of 8 February to the claimant and Andrew Montgomery, copied to Jackie Mill, James Henderson and Barry Robinson. The claimant was upset that James Henderson's contact about this matter had come to her via Peter Mill. The claimant was also upset that her husband Andrew Montgomery had been
15 copied into an email about what the claimant believed to be an employment issue between her and Peter Mill.

40. On 12 February 2021, James Henderson sent an email to Andrew Montgomery, Jackie Mill, Peter Mill and the claimant (JB1 /225 - 226 & JB1/ 519 - 520), copied to Gavin Henderson and Barry Robinson. That email was
20 in respect of setting up a *'Facilitation Process'* to resolve differences between the couples. In that email, reference was made to quotations from the New Testament and the importance of people seeking to resolve conflict between themselves, following the principle of *'going to your brother alone'*. That is an important principle in the respondent's teachings.

25 41. Gavin Henderson returned from sabbatical on 15 February 2021. He met with the claimant on 18 February 2021. They discussed the steps taken to promote the youth camp. Gavin Henderson had some concerns that that claimant was not effectively promoting the youth camp, so as to increase the numbers attending. He did not effectively communicate those concerns to the
30 claimant.

42. Gavin Henderson knew that the claimant was using GiANT and '5 Voices' tools in the course of her employment with the respondent. The claimant used these tools in her work in building communities of practice. The claimant understood that she required to log on to GiANT using a particular level of credentials. The claimant had that level of credentials personally, through having used those tools in her own business. The claimant's business had effectively ceased during the COVID lockdown. The claimant had purchased that level of GiANT credentials through her business but was no longer using them for her business. As part of her work for the respondent in building communities of practice, the claimant used her personal log on details to access the GiANT tools, at the level she understood to be appropriate. The claimant believed that she required to use her personal GiANT log on credentials. Gavin Henderson knew that the respondent had purchased a general use credential level from GiANT. Although this was not the up to date package, Gavin Henderson considered it to be appropriate for use by the claimant. He did not tell the claimant that it was expected that she use those log on credentials. The claimant proceeded on the basis that she required to use her personal GiANT log on credentials. The claimant believed that the respondent ought to cover the outlay of GiANT membership because she used that membership in pursuit of the work she did for the respondent and because at that time she was not using those credentials to pursue her own business. During the course of her employment with the respondent, the claimant did not agree the basis of her access to GiANT material. During the course of her employment with the respondent, the claimant did not claim expenses from the respondent for the cost incurred by her in respect of these GiANT credentials. The claimant was aware of the expenses claim procedure and used this to claim other expenses, such as travel costs.
43. Following the meeting on 18 February 2021, the claimant sent an email to Gavin Henderson. In that email the claimant stated "*As promised I have enclosed the coaching slides that I did for the session I facilitated. These were made up on the basis of questionnaires I sent out and it came from questions of uncertainty that were highlighted.*" (JB1 / 233). Gavin Henderson's reply did not indicate that he had any concerns about the way

the claimant was progressing. His email response on 19 February 2021 (JB1 / 234) stated *'It was good catching up and the slides look good. Thanks for forwarding them.'*

44. The respondent's ways of working were impacted by the COVID measures and lockdowns. Much of their meetings took place via Zoom rather than in person. Gavin Henderson sought to take steps to try to address communication issues arising from the COVID lockdown measures. On 2 March 2021 Gavin Henderson sent an email to the 'Team' with a summary of action points from that day's meeting. That email ended:

10 *"How can the team better support each other*

- *Help ensure clarity in communication and that there is consistency between what we say and what we do*

- *Ensure that team members are kept in the loop and have the information they need*

15 - *Look to develop our relationship in the team and get to know each other*

- *Call each other periodically to check in with how they are doing (as opposed to have a specific agenda / reason for calling)*

- *If you have any other ideas, please share them!*

20 *Warm regards."*

45. On 2 March 2021 Gavin Henderson also sent a personal email to the claimant to arrange a Zoom meeting with her (JB1 / 237). At that meeting, it was agreed that the respondent would pay for counselling for the claimant. The claimant sent an email to Gavin Henderson on 5 March 2021, with the subject *'Counselling'*. In that email the claimant stated *"Thanks for the chat today, it was helpful on many levels."* And *"I truly appreciate this, as it is something I want to nip in the bud"*. In that email the claimant was expressing to Gavin her thanks for the support he was showing her in relation to stress she was experiencing at that time. In particular, the claimant was expressing her

thanks for Gavin Henderson having agreed that the respondent meet the cost of counselling for the claimant. Gavin Henderson replied to the claimant on the same day, again expressing support and including *“If there are other ways I can support you, please let me know.”* (JB1 / 239).

- 5 46. As a result of the COVID restrictions, the claimant and her husband were experiencing financial hardship. In April 2021, Peter Mill contacted them to seek to assist. The claimant sent an email to Peter Mill on 21 April 2021 beginning *“Thanks for the call tonight. It is truly appreciated.”* The claimant discussed her financial hardship with Gavin Henderson. On 23 April 2021
10 Gavin Henderson emailed the claimant (JB1 / 246). He stated:

“Following our discussions today I just want to say that the Church is very keen to help you relieve the debt pressures you are under. As your employer, we want to ensure our employees are looked after and we understand that debt pressure can negatively affect your employment.

- 15 *We have a general assistance fund, but we are unable to help you from this fund because as an employee [sic], as there are tax and charity law implications with making benefits to employees (or employee’s families). Instead we would like to offer you an interest free loan from the Church to cover the full amount of £3,289.99 to be repayable at a later date. The aim of
20 this loan is very much to help relieve some of the financial pressure you are under and any future discussions with yourself regarding repayment of the loan will very much bear this in mind.*

- If you are happy to proceed with this, please can you let me know ASAP and I will try and work it out in today's payroll. If there are other options or actions
25 we can take to help you, please do not hesitate to let us know.*

You very much have our support.

Warm regards.”

47. In April and May 2021 there was email communication between James Henderson and Andrew Montgomery in relation to concerns raised by Andrew
30 Montgomery relating to the Edinburgh congregation. (JB1 / 250 – 253; 257 –

260; 263 - 265). In his email to James Henderson of 28 May 2021, Andrew Montgomery wrote *"This church has given Rachel and I so much across the time since coming back, which I value immensely."* (JB1 / 265).

48. On 19 July 2021, the claimant and Gavin Henderson had a lengthy meeting, lasting most of that day. Gavin Henderson took photographs of the flip chart notes discussed at that meeting (JB1 / 667 - 672). There were discussions about the claimant's performance, in the context of what Gavin Henderson expected from the role of Communications Co-Ordinator. At that July meeting, Gavin Henderson sought to set out what he expected from the claimant in that role. He sought to set out to the claimant what the priorities in her role should be. Gavin Henderson did not give clear information or directions to the claimant in respect of her required duties. Following that meeting, there was no written communication between Gavin Henderson and the claimant to provide any confirmation or clarification on what had been discussed at the meeting with regard to the scope of the job role. At that meeting the claimant was asked to conduct a '5 Voices' assessment with a new Pastor. That was not within the scope of the original job description for the Communications Co-ordinator role. There continued to be a miscommunication on the duties required of the claimant by the respondent and a difference of understanding between Gavin Henderson and the claimant in respect of what was expected from that role.

49. On 27 July 2021, the claimant emailed Gavin Henderson, attaching her draft 'Coaching Plan' and draft 'Best Practice' documents (JB1 / 267). That email began:

"I just wanted to touch base before tomorrow to make sure I'm prepared. Are you happy with me taking 5 -10 mins to explain broadcast culture vs learning culture, and communities of practise and how coaching is a learning community? This would give a framework for you to underline the overall WHY? Is this what you have in mind?"

In that email, the claimant then set out some detail of what she intended to include in the coaching plan. Her e-mail ended:

“All documents are very rough just now and most are on pen and paper but before I proceed I wanted to check I'm on the same wavelength as you. Free if you need to call me.”

In his reply to this email, Gavin Henderson stated:

5 *“Regarding the plan, maybe we can pick this up more later in the week or next week. I have some thoughts but I do not have the time at the moment to go into them in detail.*

10 *The best practices document is not quite what I was looking for. I think you have come at this from the perspective of what we are expecting from our coaches - which is something we can tackle, but I think what would be more helpful for our coaches at this stage, is an expectations document of what our coaches and coachees can expect of each other. In some places this is sometimes referred to the coaching covenant or coaching agreement.*

15 *In this sense, it is a document that clearly defines the boundaries of the coach / coachee relationship. i.e. it would cover confidentiality, punctuality of meetings, how to respectful of each others time [sic], the expected session length, how to contact each other, that the focus of coaching is on ministry, etc.”*

20 In that email, Gavin Henderson then directed the claimant to where she could find examples of what he was looking for. His email ended:

“I think this will be helpful because I think it will help our coaches to feel equipped to begin coaching people. They have a framework with which to start with. Give me a call if you need more info.”

50. From 27 to 29 July 2021 there were further emails between the claimant and
25 Gavin Henderson about what was required re the coaching plan (JB1 / 270 – 273). The claimant's email of 27 July includes *“OK, thanks for that, it's given me a clearer picture. Happy to pick up the plan next week as the topics need fleshed out more with the 'how' being built around each section. It's a start at least.”*

51. Gavin Henderson's reply (JB 1 / 272) stated:

"Because the coaches are volunteers, and new to coaching, I think the best practices document comes across as being quite intimidating. I know that a number of the coaches are questioning why they are involved in coaching. This is why I think the agreement is more important as it helps them understand the time commitment we are asking of them in a more concrete way.

The information on the slides is good, but I think you need to spread it over more slides – it is too small and a lot of information at once. I will incorporate it into what I am doing and plan on introducing you for a 10 minute slot on them.

Thanks."

52. These emails in July 2021 showed no sign of animosity or a strained relationship between the claimant and Gavin Henderson at that time. Gavin Henderson had no real management experience outside of the respondent's organisation. He had not received any management training from the respondent. Gavin Henderson was busy in the duties for his role for the Respondent. That was recognised by the claimant in her email to him of 3 August 2021 (JB1 / 276), where she stated:

"Just wondering if we are still sending out something to the coaches? I had an e-mail from Ray quiring [sic] it, as we said we would send them something at the end of last week / start of this week. Would it be advisable to send what I've done already as a draft (done is better than perfect, to keep the promise of being in touch with them) [sic], to give them an idea of what we are looking at with a reminder of the coaches e-mail? Might take a bit of pressure off your workload? Best regards."

53. On 6 August 2021, Peter Mill sent an email to the claimant (JB1 / 277). He stated:

"Thanks for setting up our Leadership Development WhatsApp group. Given that you and Andrew do not wish to be part of that group at this time, could

you please make us admins of the group and remove yourself for now? Thanks.”

The claimant replied (JB1 /278):

“Morning Pete,

5 *Just to repeat what Andrew has said in the e-mail he sent to you, (in which he made it clear it wasn't just for one session) the developing leaders group is not the right group for him.*

10 *With regards to myself I had explained to Jackie in a phone call right back at the start that I wouldn't be part of the group as a developing leader, similar reasons to Andrew. To repeat from yesterday's meeting, I am facilitating it for you to run for developing leaders. Best regards.”*

In Peter Mill's reply to the claimant of 6 August 2021 (JB1 / 279), he quoted from Andrew Montgomery's e-mail to him and stated:

15 *“So I would say that doesn't make it clear whether it was for one session or the whole thing. You could read it either way, and I did. It can be dangerous to make assumptions.*

Gavin has asked us to run our leadership groups ourselves, so thanks for the offer, but no need to facilitate the group. Best.”

20 54. On 6 August 2021, the claimant and Gavin Henderson met and discussed the coaching plan. After that meeting, the claimant emailed Gavin Henderson with her revised presentation slides and coaching agreeing. Her email (JB1 / 280) began *“Thanks for yesterday, I came home feeling refreshed....weird I know but that's just me, I get my energy from changing my environment.”* Gavin Henderson replied (JB1 / 281) *“Thanks. I will have a look, make some*
25 *tweaks and send it out. Warm regards.”* These emails show no signs of animosity between the claimant and Gavin Henderson.

55. In August 2021, the claimant and Alexis Luckoo were in text communication about concerns in working practices within the respondent and how Gavin Henderson's way of working was impacting them (JB1 / 281 – 286). The

claimant advised Alexis Luckhoo to speak to Barry Robinson. The claimant was becoming increasingly concerned and stressed about the Edinburgh situation. She emailed Alexis Luckoo about this (JB1 / 290 – 292).

56. By September 2021 there was increasing friction in the working relationship between the claimant and Peter Mill. Peter Mill had management responsibilities for the claimant in some areas. Peter Mill raised an issue with Barry Robinson (JB1 / 298)
57. On 7 September 2021 the claimant emailed Gavin Henderson with the subject heading 'Workplace Gaslighting' (JB 293). That was a grievance against Pete & Jackie Mill. That email began *"I am hoping I have got a safe space to share this with you. After some emails I have received this morning yesterday's team meeting, on top of events at Carronvale and indeed our team strategy meeting then it would be detrimental to myself and the organisation as a whole if I didn't share"* That email included *"The subject of gaslighting in the workplace is the topic I'd like to bring to your attention because if this is something I'm suffering then others my [sic] also be suffering as this is something that happens vertically and horizontally in management. For that reason I can't stay quiet although I am fully aware of what I'm risking in doing so."* The claimant included a website link to a page 'Gaslighting at work how do you manage it', stating *'An article that sums up my experiences is within this link'*. The claimant named individuals in that email, (Peter and Jackie Mills) ending *"I trust this will stay confidential just now and as this is regarding Pete and Jackie then it will not be taken to them as I think this would put me at higher risk."*
58. On 9 September 2021, the claimant discussed in a Zoom meeting with Gavin Henderson and Alexis Luckoo what she had raised in her email of 7 September. That was the first discussion between the claimant and Gavin Henderson about the claimant's grievance raised on 7 September 2021.
59. On 14 September 2021 Gavin Henderson and Barry Robinson met to make a decision on whether to renew the claimant's contract. At that time, Gavin Henderson and Barry Robinson were aware that the claimant was carrying

out coaching sessions (JB1 / 334 – 335). The photograph at JB 1 /352 is of the flip chart used at that meeting. That flip chart reflects that there was discussion on 5 options, A- E. Those options were as set out at JB 1/ 350 – 351 being, in summary:

- 5 A - Not to extend the claimant’s contract of employment
- B - To extend the contract and seek to change her job to working solely on Word of Life, and possibly social media
- C - Extend the contract for 4 – 6 months to give time to ‘*exit the Word of Life commitment and focus on the Communication Coordinator job*’
- 10 (JB1 / 351)
- D - Look for a different role within the Church for the claimant
- E - Not to extend the claimant’s contract and instead to ‘look for someone else’ (JB1 / 351).

60. On 18 September 2021, the claimant raised with Gavin Henderson that she

15 was concerned that Peter Mill had decided that a church service would take place in the Mills’ house, rather than via Zoom. The claimant did not feel comfortable about attending a service at the Mills’ house while she had raised a grievance about them. Gavin Henderson suggested to the claimant that she miss church that weekend.

20 61. On 4 October 2021, Gavin Henderson sent an email to the claimant referring to the meeting on 9 September (JB1 /294). He stated:

“.. I hope you found that initial conversation helpful. It has helped me to better understand your concerns.

It would seem to me that your concerns are much wider than the employment

25 *relationship you have with Pete. You made several references to Pete and Jackie as a couple and the concerns you have raised about the Edinburgh congregation are also not issues I can investigate if I solely focus on your concerns at work. My proposal is therefore to investigate your concerns*

holistically [sic], looking at your relationship with Pete in the workplace as well as within the church (and including Jackie).

I will be the person carrying out the investigation. I wanted to reassure you on this since you referred to feeling intimidated by the Board / European Superintendent being involved previously.

Please could you confirm that you are happy with this approach? If at any point you want to raise a formal grievance focusing solely on your employment, please let me know. I may need to ask somebody else to become involved should that happen, so that you are aware.

As I mentioned at the time, because of the celebrations (Galway, Paignton and Bridlington, I have not had much of a chance to progress my investigation, but I hope to make more progress now. Once I have had an opportunity to speak to others involved, I will be in touch again.

Warm regards.”

15 62. The claimant replied to that email within minutes of it being sent (JB1 / 295), stating:

“Thank you for coming back to me and reassuring me, it was good to just be able to talk about my concerns.

I'm happy with the holistic ”[sic] approach as this isn't just about me. I made a promise to look after and protect the congregation and I do take that seriously enough to step right out with my comfort zone at this time on this matter.

I know it takes resources that are already stretched to do this so I'm not doing it lightly. Thank you for taking the time to do this. I appreciate it.

Speak soon.

Best regards.”

63. Later on 4 October 2021, the claimant sent an email to Gavin Henderson asking for her Church funded counselling sessions to be continued (JB1 / 296), which was then agreed to, to the end of the year (JB1 / 305)

64. On 5 October (JB1 / 306) Gavin Henderson emailed James Henderson asking for information on the relationship between the Montgomeries and the Mills at the conclusion of the conciliation which James Henderson had mediated earlier that year. James Henderson's reply (JB1 / 309) ended *"At the end of the discussions the parties appeared to have re-established an improved level of communication and a more reconciliatory approach to each other. They committed individually and collectively to continue to work on their relationships for the sake of the Edinburgh congregation. In discussions some apologies for misunderstandings were proffered and questions arose re fresh start. I pointed out that sometimes not everything is resolved, and that we might have to accept non-resolution of some issues and move to live more peacefully with one another in the spirit of Christian love and forgiveness.*

Going forward, I ended my involvement in the sessions by stressing that the participants need to continue regular communications in order to avoid misunderstandings, that the participants should continue to pay attention to the points listed in my e-mail mentioned above, and that all of them should consider an approach of reconstruction and of re-imagining reactions and actions. From my perspective, all of the involved appeared to acknowledge and value those comments. From my perspective, all of the involved appeared to acknowledge and value those comments."

65. On 7 October 2021 Gavin Henderson sent an email to the claimant and Andrew Montgomery asking to visit them the following day. In that email (JB1 / 307) he stated: *"My hope is at this meeting we can discuss your complaint, Rachel, and the wider issues affecting you both and the Edinburgh congregation. As I mentioned previously to Rachel, I feel these issues are connected and the best approach is to handle these holistically."*[sic] The claimant's reply (JB1 / 308) was *"We are happy in your approach as we feel it does need to be dealt with holistically [sic] as the issue is far wider and affects more than just us. Thank you for taking the time to do this, considering*

all that you've got on, it's appreciated! Safe travels, it's a bit wet and wild this morning. Best regards." Gavin Henderson visited the claimant and her husband at their home on 8 October 21, to discuss the issues. On 9 October 21, the claimant sent a text message to Gavin Henderson, referring to that meeting. That text included *'Thank you for all your time and patience' and 'we appreciate all you do.'* (JB1 / 310)

66. The claimant set out her *'Overview of Complaint'* (JB1 / 311 – 316), which was given to the Gavin Henderson. On 15 October 2021, Gavin sent an email to Andrew Montgomery and the claimant (JB1 / 317). It stated:

"Thank you for meeting with me last weekend, I really appreciated your hospitality and I have been working my way through your supporting documents. As I mentioned at our meetings, I am in Switzerland this weekend, and it is half term this coming week, but I am keen to come back to you as soon as I can after that.

At our meetings I discussed some temporary decisions that I want to make to try and avoid the situation deteriorating further while these issues are being investigated.

One of these decisions is a request that, given the congregation is not keen to return to Gilmerton, the Edinburgh congregation moves to Zoom services until this matter is resolved. This means that, should this matter result in any permanent change to the leadership structure in Edinburgh, the decision on a new location is made by the new structure.

The second decision is that the wider leadership team is disbanded until this matter is resolved. This means that the sole leadership structure is the Pastoral Council consisting of Peter Shepherd, Peter Mill and Jackie Mill. As I have mentioned to those I met on the weekend, whatever happens going forward, I do not see this team as a sustainable structure long term as I do not feel it is a wise idea for a married couple to serve on a pastoral council. This decision also reflects to some degree the current reality, with both Ian Woodley and Andrew Montgomery stepping back from the leadership team because of their concerns with the leadership of the congregation. Following

on from these two decisions, I am also asking Pete Mill to send out the links for services for the time being.

These are not decisions that I feel need to be announced to the congregation but I will be emailing Ian Woodley, Peter Shepherd, Peter Mill and Jack Mill so that everyone who was on the Pastoral Council /Leadership team is clear about this.

Please note, that none of these changes are intended to be permanent and their sole purpose is to reduce the possibility of tensions arising in the short term while keeping the congregation functioning. If you have any concerns about these measures, please let me know.

Thank you for your patience while I look to address your concerns.

Kind regards.”

67. Andrew Montgomery replied to that email on 15 October. The claimant was a party to that email reply (JB1 / 318 – 319). That reply stated:

“Hi Gavin, thanks for taking the time to email.

On reading, I wanted to email to confirm receipt, and to confirm we see these measures as sensible and unavoidable. We have no concerns about this email. Lastly, I can confirm we also have no concerns about your intended interim measures.

We appreciate your update, and wish you safe travels and an enjoyable time in Switzerland, and of course a rewarding half-term.”

68. The ‘interim measures’ suggested by Gavin Henderson were put in place.

69. On 25 October 2021, Gavin Henderson informed the claimant that her employment contract was being extended for 6 months and that she should be ‘exiting’ the Word of Life project. That discussion was in line with option C in JB1 / 350 – 351. The claimant did not gain any impression from Gavin Henderson at that time that he had any concerns about her performance. It was agreed that there would be more discussion on what was required by the

claimant within that 6 month extension period. That further discussion was arranged to be via Zoom on 11 November 2021, then changed to 16, then 18 November 2021, as set out at JB1 / 351.

5 70. Alexis Luckhoo emailed the claimant on 28 October 21 (JB1 / 52). The claimant's reply is at JB1 / 53 and JB1 /320. In her email, Alexis Luckhoo did not instruct the claimant to attend training on Churchsuite, direct her to the Churchsuite website, inform her where she could find training videos on the Churchsuite system or set out that it was considered important that the claimant develop the use of Churchsuite. The claimant's response indicates
10 surprise at the mention of Churchsuite training, but a willingness to participate in this training. At that time, it was not clear to the claimant that she was required to attend Churchsuite training, or that she was required to develop the respondent's use of what that system could offer. The claimant did not attend Churchsuite training. She considered that she was too busy at work
15 to attend that training. The claimant's use of Churchsuite was logging in and accessing data using that application. There was a lack of clear communication to the claimant on any requirement for her to attend Churchsuite training or on the scope of Churchsuite. The claimant did not know that Churchsuite had wider uses or that in the role as Communication
20 Co-ordinator she was expected to maximise the respondent's use of Churchsuite. Alexis Luckhoo's email to the claimant of 28 October 2021 (JB1 / 321 – 322) shows that there was communication and agreement between them about the need for a 'datacleanse' and the need for the updating the database.

25 71. On 5 November 2021 the claimant sent an email to Gavin Henderson (JB1 / 323). In that email the claimant raised some concerns about what had occurred in a Zoom meeting the previous evening. That email stated:

"I just wanted to get in touch after last night. I thought it went really well and it lacked the usual comments of we've tried that and it didn't work.

30 *I was perturbed however at the fact it was mentioned that I was overseeing the website and that that information wasn't corrected.*

It has left me feeling puzzled that it wasn't corrected, in regards to a website that has not been completed. The possible consequences of this might well result (and viewing last night's comments, already have resulted) in a negative perception of my abilities. That is more than just a frustration for me. Can this please be corrected, especially at board level as there were four members that I could see present.

What happened last night led me to revisit my job description and within that I realised that no appraisal forms have been requested to be filled in during my employment. I am going to take the time this weekend to fill it in as I now feel it's imperative to have things down in black and white to avoid any misrepresentation of what I do and the results I achieve. Ironically, when it comes to websites, I have noticeably been absent from attending so much as a meeting pertaining to it. I will make this clearer on the form.

I have to make it clear that despite the challenges I face on the work front I really love the role and really love working with the majority of the team. I am saddened by the fact I had to raise a complaint on the 9th of September and I have to say that it is deeply worrying that since I have done that, my contract has only been renewed for six months, alongside a proposal to remove me from a project that's working. I always get a project running to a hands-off, eyes-on stage, freeing me up for other things, so a proposal to remove me more completely leaves me feeling puzzled, and uneasy. With regards to only renewing my contract for six months, my understanding was that my contract after a year would be permanent so long as I show results, which I've done. I'm sure you understand that in my current position while a complaint is live it is an extremely worrying time. This has been compounded by the fact that I am, as a default of the position of the complaint, excluded from being able to go to church safely; I've had normal tasks removed from me (and the congregation can see that); I've had no guidance in the past few weeks in regards to attending meetings with the people I have put the complaint in about, nor even told if they are aware that there is an investigation (or anything really). Bearing in mind I have shared my apprehension regarding stability, and with this in mind Pete has been allowed to contact me even though clear

guidance of what he should be doing was given. There seems to be two different sets of rules and expectations running concurrently here.

I will get the form filled in over the weekend and hopefully it might give clarity for moving forward, in a role that I really love and a denomination I have a heart to help. Best regards.”

5

72. On 8 November 2021 Gavin Henderson sent an email to the claimant (JB1 / 324 – 325). In that email, Gavin Henderson gave an explanation why the claimant’s contract was being extended for 6 months and set out that the claimant was required to exit the Word of Life project and focus ‘*on the other aspects of your job*’. He stated:

10

“Regarding your renewal, in the job advertisement for the Communication Coordinator role, your job description and your contract it was clearly for a one year fixed term contract. Due to the current financial uncertainty about the impact of the liturgical changes, the decision has been made to take on new employees only on a fixed term contract basis and the Communication Coordinator role was not designed to be a permanent post (this is why there is a focus on establishing systems, new communication platforms and communities of practice in your job description). The extension of your contract by 6 months reflects both that there is more work we would like you to do in the Communication Coordinator role and the financial realities we need to plan for next year.

15

20

Your involvement in the World of Life project was never meant to be as time consuming as it has been over the last year. Day by Day entered into a crisis in-between your successful job interview and you starting the post, and the issues that followed have meant that it has taken up much more of your time than planned. When I came back from my sabbatical, I highlighted that you needed to reduce your involvement in Word of Life. This was also something that I raised in our meeting on the 19th of July where I stressed the need to re prioritise away from Word of Life. Asking you to exit this project stems from the fact that we really need your skills and expertise focused on the other aspects of your job.

25

30

I understand that we have not had a chance to do a written appraisal over the last year and this is something that we could look to do in the near future and I'm happy to talk about this more on Thursday when we have our Zoom meeting scheduled."

5 73. In that email, he also stated:

10 *"When we met on Zoom on the 9th of September, I informed you that to actively investigate your concerns, I would need to inform Pete and Jackie of your concerns and you indicated you understood this was necessary and this has happened. We also discussed at that time if immediate steps needed to be taken, for example with team meetings and you indicated that you did not think team meetings would be a problem. If this is now a problem, please let me know, and if it is an issue for this morning meetings, just give me a call / text ASAP."*

15 74. In the claimant's reply by email to Gavin Henderson of 9 November (JB1 / 326 – 328) she stated:

"I thought I'd come back to you in writing, however, more than happy to chat and talk things through things. I'm trying to avoid anything getting lost in translation by putting it in writing first as the severity of the situation I find myself in I don't think has been realised." The claimant states in that email:

20 *"You said during the meeting that Pete and Jackie were on holiday. I assumed this was an appropriate measure you had put in place. Obviously the sharing of the gospel zoom and yesterday's team meeting has demonstrated that no measures have been put in place for my safety. At the moment Pete and Jackie have been allowed to function freely, speak to whomever they wish while an investigation is going on against them. Andrew clarifying this with you on his call with you on Friday, as expectations of not speaking to congregational members or outside contacts about us has been given to Pete or Jackie [sic]. This is a very dangerous situation for us and Andrew tried unsuccessfully to highlight that to you. Dignity at work is a law that came in in*
25
30 *2001 and I know I had to implement it when I employed people and I naturally*

expect it to be applied in this situation. Creating a situation where victimisation can happen is something the policy outlines should be avoided.

Obviously I'm happy to chat about any aspect of this but I hope this gives some sort of clarity to the situation I'm finding myself in. The weekend was a blur of unbelief and relief, God is truly almighty and he alone resolved something that was unjust which has given us hope for the future to cling on while we journey through the remaining burdens we are experiencing.

Look forward to catching up on Thursday.”

75. The decision not to renew the claimant's fixed term contract, and so to terminate the claimant's employment, was made by Gavin Henderson before 12 November 2021. On 12 November 2021 (at JB1 /329 – 330) the respondent's solicitors sent an email to Gavin Henderson (privilege waived) stating:

“I strongly recommend creating a confidential internal document that will record decisions that I understand have already been made and the rationale, for example, that the contract will not be renewed after the 6 months. It is unlikely Rachel will ever see it, but it will help protect you (if ever needed), from an argument that the decision was made in response to anything she does in future....

You won't need that internal document for the purposes of the Tuesday meeting, but it will help show decisions were made before anything Rachel may say at that meeting.

With regard to that internal document, my basic understanding is that the extension was because Rachel was undertaking tasks other than the one she was originally recruited for, so the original task has not been completed. If she is focused upon it, we expect it to be completed in six months. At that point, unless we identify another role matching her skill set, her fixed term would end. If the task has not been finished, it could be extended further, but there would be a concern about why it has not been finished - if Rachel has disregarded instructions to focus on the task we want rather than the tasks

she prefers to do, then extending it further would not be appropriate. If it has not been finished for some other reason outside her control, e.g. health then a further short extension may be appropriate, but in light of the general performance concerns we would not be looking to employ her beyond two years.”

5
76. Gavin Henderson replied to that email, on 12 November 2021 (JB1 /331) (privilege waived) stating:

10
“I have pushed back the meeting with Rachel to Thursday (2pm) next week and my aim for this meeting has always been what you have suggested even before Rachel sent the e-mail I forwarded).

15
I will begin on the internal document. I discussed the decision at the time with Barry Robinson (who is effectively my deputy and oversees the Word of Life project Rachel has been working on). Your understanding below about the extension is broadly correct, although finances are also a very real concern.
20
Rachel's role was not intended to be permanent for financial reasons (hence the one year fixed term contract). We have been facing an expected drop in income since before the role was created (this is minuted in our Board minutes in 2020 well before the job was conceived or advertised). This drop is expected in the next two years and is a major reason in why the role was fixed term and why the job was designed to help us communicate smarter and better rather than to fulfil ongoing duties. Rachel is aware that we are expected or income to drop and the reasons for it (though she did not know this before starting the job, it was something discussed as soon as she started in 2020).”

25
77. On 15 November 2021 the claimant spoke on the phone to Simon Williams (JB1 / 332 – 333).

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78. An ‘internal document’ was prepared by Gavin Henderson on 18 November 2021 and is at JB1 / 350 (redacted version at JB2 / 17 – 18). The document at JB1/ 350 includes an accurate summary of discussions between Gavin Henderson and the claimant on 19 July 2021 and between Gavin Henderson

and Barry Robinson on 14 September 2021. That internal document sets out the 5 options discussed, A – E and the following:

“For a number of reasons, Rachel has been unable to fulfil her job role in the one year fixed term contract. These include:

- 5 1. *The collapse of the Day by Day project, requiring Rachel to step in and develop Word of Life. (outside of Rachel's control.)*
2. *Gavin Henderson's unplanned sabbatical between mid-December and mid-February. (Gavin Henderson is Rachel's line manager) (outside of Rachel's control).*
- 10 3. *Rachel pursuing interests in the job outside her job description, (e.g. the Word of Life podcast, coaching <A D>, giving GiANT training to Young Adults, presentations at Bridlington.)*
4. *Her failure to significantly engage with developing new systems for communication and creating communities of practice.*
- 15 5. *A focus on doing the communication herself instead of equipping and supporting others.”*

79. There were no clear lines between the work the claimant was required to do in her role as Communications Coordinator and her duties from voluntary roles within the respondent’s church. The claimant was a speaker at the respondent’s event in Bridlington and Nottingham. That was not part of her role as Communications Co-ordinator.

80. On 18 November 2021 the claimant met with Gavin Henderson, via Zoom. Gavin Henderson had set out to the claimant in his email to her of 17 November (JB1 / 336) that Alexis Luckoo would take notes of that meeting and “..my hope is to discuss your employment and the six month extension to your contract.” Alexis Luckoo’s notes of the meeting on 18 November 2021 are at JB1 / 353 – 355. Those notes accurately reflect that there was discussion at that meeting on the claimant’s performance in the role of Communications Co-ordinator. The claimant was told at that meeting that her

contract of employment with the respondent would be extended for 6 months and would then be ended. The notes were sent to the claimant on 19 November (JB1 / 357). Those notes include a record that *“Gavin highlighted some elements of the work Rachel had done which while good and positive had come as a surprise to him as these were not in the job description for example, seminars and worship at the Bridlington celebration and then more recently coaching work ...”*. They record that *“Rachel said the lines for Bridlington were a bit blurred between voluntary and work”* and *“Gavin said that while Rachel was qualified to do coaching it is not why she was hired.”* It records *“Both agreed there had been misunderstandings along the way.”* Those Notes set out what it was agreed *‘needs to be accomplished over the next six months.’* (JB1 / 354). The notes end:

“Gavin asked Rachel if there was anything she needed to help her fulfil her role. She said the keeping in touch meetings would be helpful and that she needs clarity when working on the projects. Gavin said he would be happy to pay for training that Rachel felt would help her accomplish the objectives over the next six months.

Gavin confirmed that the contract would come to an end in six months and that this was always intended to be a fixed term contract. He said that should another role come up, it would be worth discussing then.”

81. On 19 November 2021, Gavin Henderson sent an email to the claimant and Andrew Montgomery (JB1 / 358) with his findings on the claimant’s *“grievance of gaslighting against Peter and Jackie Mill.”* His ‘Grievance Findings Report’ (now referred to as the ‘Findings Report’) attached to that email is at JB1 / 359 – 366. He concluded *“Although I have not been able to uphold the grievance, there are a number of lessons to be taken forward”*. The claimant was informed that she had a right to appeal that his decision. It stated *“Any appeal must be in writing, sent to the National Ministry Leader, and received within 5 working days of the original decision. It must set out the full grounds of appeal. Appeals submitted after then may still be considered where there is a reasonable explanation for the failure to appeal on time.”*

82. The claimant and Andrew Montgomery were very upset with the content of the Findings Report. On 19 November 2021 Andrew Montgomery sent an email to Gavin Henderson and the claimant (JB1 / 367 – 368). In summary, the position in that email was that it had been expected that more clarification would have been sought, that Gavin Henderson’s notes from his investigations had not been provided, that the grievance *was ‘not limited to gaslighting and was certainly not designed to be based on a criterion that you seemed to have pulled from the internet on ‘gaslighting’,* and that an appeal was being made, with fuller grounds to come and an expectation that there would be an extension of the 5 day period for that. Later on 19 November, Gavin Henderson sent a separate email to the claimant in relation to *‘the team meeting, Christmas meal and our person team meeting on the 29th’.* In that email (JB1/ 369), Gavin Henderson stated *“I understand that following your grievance not being upheld, attending these events could be stressful as Jackie and Pete will be present. If you would prefer not to attend any of these meetings I understand and I will instruct Alexis to take notes that can be shared with you instead. You are in my thoughts and prayers. Kind regards.”* The claimant was extremely upset at receiving that email. She felt excluded and very distressed, as set out in her emailed reply to Gavin Henderson (JB1/373). Gavin Henderson replied (JB1 / 374) stating *“I did not make this offer to exclude you, and to be clear, I am not requesting you not to attend these meetings. I just do not want you to feel forced into attending these meetings if it will be difficult for you. If you did choose not to attend the physical team meeting, I still think it would be helpful to attend the meeting we had planned for Tuesday with Barry and would of course cover your mileage. I am sorry you feel hopeless – you are very much in my prayers. Kind regards.”*
83. Also on 19 November, Gavin Henderson sent an email to Ian Woodley to inform him that his Findings Report had been sent and informing him of some action steps that he had recommended in that report (JB1 / 370 – 372). Those steps included some *‘To help re-integrate those involved into the workplace’,* to be reviewed after 3 months.

84. On 21 November 2021, Andrew Montgomery sent an email to Gavin Henderson (JB1 / 376 – 377). In that email, it was his position that he should not have been sent the Findings Report as *‘there are workplace specifics that have absolutely no relevance to me’*. In that email, Andrew Montgomery raised what he called a ‘serious complaint’ and *‘in regards to vexatious behaviour / concerns / complaints made against me in July by Peter Mill and Jackie Mill, and including yourself, Gavin Henderson’*. In that email, Andrew Montgomery mentioned Gavin Henderson’s visit to the Montgomery’s home on 9 October 2021, stating *“...in that visit, you clearly stated ‘you’d known since July’, which caused huge upset here for me and Rachel, and raised serious concerns for Rachel which she voiced there and then about her grievance”*. Andrew Montgomery stated *“Meantime, I expect fully that communications between any of the three of you, with Rob, that involve myself or Rachel’s information or lives continues to desist.”*
85. On 22 November 2022, the claimant sent an email to Gavin Henderson lodging her appeal of his Grievance findings (JB1 / 379). That email, included: *“I do however note that you have advised me of an appeals process that is neither available or visible, and therefore I am disadvantaged.*
- I have noted that my workplace grievance has been included with the Edinburgh congregation grievance and information on findings, specifically work related ones, have been distributed to more than myself, therefore breaching confidentiality. I agreed that you were dealing with matters holistically [sic] and that would mean you were going to investigate all situations, meaning you were going to be able to make fully informed decisions. At no point did I agree or give permission for the outcomes to be bundled up as one and confidentiality to be broken. You yourself made it clear at the start of my employment about organisational confidentiality, especially with spouses who weren't employed. The meetings that took place on the 9th and 10th did not cover my workplace and that was covered in the meeting I had on Thursday the 9th of September at 3:00 PM with Alexis present taking notes (and not the 7th as stated), meaning they were being treated separately.[sic]”*

86. Also on 21 November 2021, the claimant sent an email to Gavin Henderson informing that she would be attending the team meetings and Christmas dinner. In that email (JB1 / 378) the claimant stated: *“I expect the NML to now put the appropriate measures in place when I attend these meetings and to follow all procedures that have not been followed in the past couple of months.”*
87. There was some further email correspondence on 22 November 2021. the claimant sent an email to Gavin Henderson headed ‘Grievance findings’ (JB1 / 379). That email includes: *“I have noted that my workplace grievance has been included with the Edinburgh congregation grievance and information on findings specifically work related ones have been distributed to more than myself, therefore breaching confidentiality. I agreed that you were dealing with matters holistically [sic] and that would mean you were going to investigate all situations, meaning you were going to be able to make fully informed decisions. At no point did I agree or give permission for the outcomes to be bundled up as one and confidentiality to be broken. You yourself made it clear at the start of my employment about organisational confidentiality, especially with spouses who weren't employed. The meetings that took place on the 9th and 10th did not cover my workplace and that was covered in the meeting I had on Thursday the 9th of September at 3pm with Alexis present taking notes (and not the 7th as stated), meaning they were treated separately..... the links enclosed are broken so preventing me from access the information you wish me to read. To avoid any double-tongued behaviour might you be clearer on what is being implied here so I can take this on board and inform my actions moving forward. I look forward to hearing from you on all aspects of this email.”*
88. Also on 22 November 2021, the claimant emailed Alexis Luckoo (JB1 / 380), expressing concern about the notes of the meeting on 18 November 2021. Gavin Henderson was copied into that email and replied to the claimant, in Alexis Luckoo’s absence (JB1 / 382). Separately, Gavin Henderson emailed the claimant acknowledging her appeal and that he *‘will come back to you in due course about this and the rest of your email’* (JB1 / 381). The claimant

emailed Gavin Henderson (JB1 / 383), including stating *“I have been left very confused by the meeting and upset at the lack of support following the unexpected outcome. I was told we were going to be discussing reducing my input on WofL so you were able to use my skills and expertise in other projects. Instead, it looks as though I'm being moved to something that I don't have expertise in, will need training in, and my dyslexia may impact its success. It is not a strength within the paper that I wrote.*

I would like to state that the part that reads Rachel and Gavin agreed on what needs to be accomplished over the next six months is not my understanding and is somewhat previous. We need to have meetings first to understand what's feasible and I need to explore training in an area out with my area of experience and with data that does need cleansed, a high proportion of the database don't even come to our church anymore.

I think I really need another meeting to get clarity and understanding. When can that happen so as I can have clarity in my working week.”

89. Further to that email, on 30 November 2021, the claimant met with Gavin Henderson in relation to her role of Communications Co-ordinator. Alexis Luckhoo was present at the meeting, as the respondent's note taker. Barry Robinson was present as the claimant's notetaker. Alexis Luckhoo's notes are at JB1 / 392 – 397. Barry Robinson's notes are at JB1 / 400 – 411. The claimant was concerned about what she saw as changes to the role. It was Gavin Henderson's position that coaching was not part of the role's job description. It was not in dispute that the work the claimant had carried out in her role was beneficial to the respondent, or that the claimant had carried out some coaching in this role. The claimant was therefore unclear about what was required. Both sets of notes record there being some discussion about a six month period. This is referred to in Barry Robinson's notes as 'a 6 month plan'. This is referred to in Alexis Luckhoo's notes (@ JB1 / 395) as *“Rachel asked if it was normal to effectively give six months notice by making it clear her contract would not be renewed. Gavin replied that Rachel had made it clear that she had expected her role to be made permanent after 1 year, and he did not want to give her false hope. Gavin confirmed that he felt work could*

be done within the six months that after her contract would come to an end unless another suitable role came up.” Barry Robinson’s notes of that meeting record that Gavin Henderson said “*It was discussed with you that it was an extension, and I didn’t want to give you any expectation of permanency’* and
5 “*..but looking forward it has to be what you were employed to do. If anything is not clear you could always check with me.*” Both sets of notes record Gavin Henderson offering support / adjustments in respect of the claimant’s dyslexia. Alexis Luckoo’s notes record ‘*Gavin agreed to more written communications of his expectations’* and “*In closing Gavin offered more meetings with Rachel, to consider reasonable accommodations for her*
10 *dyslexia, and highlighted his open -door policy to her via email, Zoom or telephone. He stressed that they communicate as much as possible.*” Barry Robinson’s version records Gavin Henderson saying ‘*We have meetings scheduled; if you want more let me know. If there is more support needed, especially with your dyslexia, let me know. If there is anything we need to clarify please let me know, to prevent misunderstandings.*’ and “*I’m glad we’ve had this meeting to clarify things, but I had hoped to have spent time on the practical issues of Churchsuite. A Zoom meeting was arranged for 9*
15 *December pm to do this.*” In the claimant’s subsequent email to Alexis Luckoo (JB1 / 414), the claimant did not dispute those aspects of the discussion on
20 30 November 2021.

90. At that meeting on 30 November 2021, there was discussion on the use of Churchsuite. Gavin Henderson set out that he expected the claimant to use Churchsuite to a significant extent in her role as Communications Coordinator.
25 Prior to that date it was not clear to the claimant that she was expected to use Churchsuite to any significant extent in that role. At that 30 November meeting, the claimant highlighted that Gavin Henderson’s sabbatical had had an impact. The claimant recognised at that meeting that during Gavin Henderson’s sabbatical she had worked on certain projects with Barry Robinson. At this meeting, Gavin Henderson was seeking to clarify his
30 expectations in respect of the role of Communications Coordinator. The claimant perceived Gavin Hendersons actions as ‘*deconstructing’* her role as Communications Co-ordinator, and seeking to move her into an admin role,

which was not a suitable role for her because of her dyslexia. The claimant sent an email to Alexis Luckoo following her receipt of Alexi Luckoo's notes of that meeting. In that email (JB1/ 414) the claimant stated *"One thing I note that is missing from the notes is my repeated request for Gavin to stop addressing me and using my name in the manner he was using it. I asked Gavin on more than one occasion to stop addressing me like a school child and stated it was demeaning."* Barry Robinson's notes of that meeting record that Gavin Henderson said 'Rachel' on three occasions. These notes record that on the first occasion Gavin Henderson said 'Rachel' the claimant said *"Please don't treat me as a school child. Saying this just makes me feel as if I'm back at school"*. Those notes record Gavin Henderson then saying *"I didn't mean that"*. Those notes later record that Gavin Henderson said *"Rachel"* and that the claimant replied *"Please don't say that it takes me back to school."* There was no discussion at the meeting about how Gavin Henderson should address the claimant, as an alternative to using her first name.

91. On 7 December 2021 Gavin Henderson sent an email to the claimant and Barry Robinson with subject 'Word of Life' (JB1 /416 – 418). That stated *"...I feel there is a need for me to make some executive decisions as National Ministry Leader about the project."* In that email, under the heading 'Communication Co-ordinator's exit from the WoL project', Gavin Henderson stated:

"For sometime now, as discussed with you both, I have wanted Rachel to focus on other projects / areas in her role as Communication Coordinator. In our meeting last week, it is clear we are not yet at the stage where Word of Life is eyes on, hands off for Rachel, and It certainly does not seem practical for Rachel to exit the project by the end of the year."

Therefore I am moving the target date for Rachel to exit the project to the 21st of February 2022.

This will be around four months since I first requested Rachel to exit the project, and almost 12 months from when I returned from my Sabbatical and

requested that Rachel step back from the project to focus on other projects / areas. I highlight this because I feel this has been a reasonable time frame for this to be done.

5 *In our meeting last week, the question came up about whether an employed person was needed in the role. There is no budget for this on an ongoing basis at the moment, and if we were to proceed it would need to be financed from reserves. It is not feasible for either of you to take on these ongoing responsibilities in your current roles as Communication Coordinator and Regional Pastor. Some key questions in considering this, in my mind, is what*
10 *would the role specifically be and how many hours would it be.*

Employing someone for this role might make the project more feasible in the short term, but I am not sure it does in the long term, unless the role were to become self-financing (which seems unlikely at the moment). I think there needs to be a meaningful discussion on this where other options are
15 *considered.*

Therefore, I am requesting that you both present a variety of practical options about how we can proceed on this matter which include a volunteer only approach, a hybrid volunteer / employee approach and any other ideas that you want to suggest. If we aim to meet on the 13th of January for this (when
20 *we can also review the WoL podcast)."*

In that same e-mail, under the heading 'Supervision of the Communication Coordinator with respect to the WOL project', Gavin Henderson stated:-

25 *"Finally, in discussion with Rachel it is clear that there has at times been misunderstandings because of Rachel reporting to you Barry in Word of Life (e.g. with Bridlington and the podcast). This situation was a hold over from when the National Ministry Team was in effect.*

Therefore, I want it to be clear that Rachel reports to me in all areas of the Communication Coordinator work inclusive of WoL. In practical terms this means Barry that discussions on Rachel undertaking additional work, or
30 *decisions that would impact Rachel's hours or other work in the*

Communication Coordinator role need to be discussed and run by myself as Rachel's supervisor and line manager.

If you have any questions about this, or if I can provide any additional clarity, please feel free to give me a call.”

- 5 92. On 7 December 2021, Andrew Montgomery sent an email to Gavin Henderson and David Silcox (Chair of Board of Trustees). The claimant was not included in that email. That email stated:

10 *“Hi Gavin, in regards to raising of a serious complaint on 27th of last month, and that you've left unanswered. As you are the NML I find it reasonable to view that you are deliberately persisting in persecuting Rachel and I, knowing full well you have deliberately constructed to remove us from church, simply because you can. It seems you are making it very obvious no one can stop you, and there are no checks and balances.*

15 *I've copied in David Silcox as Chair of the Board because this situation, in my view is absolutely scandalous, as is the bullying and coercion we are experiencing.*

The complaint is below.”

- 20 93. Also on 7 December 2021, Ray Walker sent an email to the claimant in his capacity as chair of the Appeal Board. That email (JB1 / 421) stated *“Following your grievance heard by Gavin Henderson, the church board has set up a committee to hear your appeal.”* That email informed that the appeal hearing was to be heard by Zoom on 16 December 2021 and went on to state *“The purpose of the appeal hearing is for us to review the decision of the grievance Findings Report and to consider whether or not this should be upheld. At the meeting you will have the opportunity to go over the findings of the original hearing and explain to the committee the precise grounds for your appeal.”* The claimant replied to that email on 8 December 2021 (JB1 / 424), including stating *“...I'll hopefully be better by then as I've been unwell this week.”*

- 30 94. A number of material email communications took place on 8 December 2021:

95. On 8 December 2021 Gavin Henderson sent an email to David Silcox (JB1 / 422) asking for the respondent to give financial support for an employee “..taken on after a period of unemployment and at various points we offered assistance before she became employed..” The employee referred to was the claimant.
5
96. Also on 8 December 2021, Andrew Montgomery sent an email to Gavin Henderson (JB1 / 423). In that email, Andrew Montgomery asked Gavin Henderson “What is the process for complaints against yourself?”
97. Also on 8 December 2021, the claimant sent an email to David Silcox (JB1 / 425 – 426), whom the claimant had spoken to on 7 December 2021. In that email, the claimant raised a grievance against Gavin Henderson. The claimant’s position in that email was her role was being ‘deconstructed’ and changed to an administration role. It was further her position in that email that because of her dyslexia, she would not be good at an administration role. That email states:
10
- “Following on from our brief conversation yesterday afternoon (7/12/21) at 12:01, I understand that you are now to the side of the grievances and appeals that are currently ongoing and this is now with a committee within the board. Since yesterday's conversation with you, I have had communications from Gavin Henderson which caused me to be seriously distressed. I'm attempting to get a doctor's appointment, however they are apparently not taking any calls, never mind appointments as they are short of doctors. I do have a counselling session tomorrow which should help and I attend this weekly for the challenges I face on the work front and have done for some time now, long before I raised any grievance.
15
- Following on from our conversations on the 14th, 15th and 16th of November, I had raised my wish to proceed with whistle blowing and the desire to be given our policy on the matter. Can I please ask for this policy and for our safeguarding policy to be made available to me. Given the severity of things that have happened over the past couple of weeks, I really need to activate
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- 30

whistle blowing now and I need to understand what protections I have as an employee, is this given by the church or by the charity commission?

I am sorry to say that over and above this, I want to raise and proceed with an unlawful harassment and discrimination complaint against Gavin Henderson. My job role since raising a grievance is being deconstructed at an astonishingly quick speed and I have been subjected to meetings with no agenda regarding performance which has come as a surprise as I've never had complaints about my work before. A note taker was present for Gavin, but I hadn't been given that option or indeed notified. As yesterday had such a detrimental effect on my health I need to raise this complaint immediately bearing in mind I am being subjected to these sorts of meetings whilst an appeal is ongoing and I have further meetings with Gavin tomorrow. I am being removed from all my projects, including Word of Life, and placed into an administrative role that will be impacted by my dyslexia. Gavin is aware that I've never done an administrative role before because I'm dyslexic however he is continuing to push me down this road and deconstructing both myself and my job.

If you could please come back to me with what process it is that I need to follow that would be helpful.”

98. On 10 December, the claimant was certified as unfit for work, backdated from 7 December and until 21 December 2021, because of ‘*work related stress*’. Well-wishing emails were sent to the claimant (JB1 / 428 - 430). Gavin Henderson arranged that the claimant have use of a ‘*cash float*’ to help her manage expenses outlays and informed her of that by email (JB1 / 431). On 14 December, Board member Ray Walker sent an email to the claimant re. the arranged Zoom meeting. His position was that the hearing arranged for 16 December 2021 should proceed. He stated: “*David Silcox has passed on to us a complaint of unlawful harassment and discrimination against Gavin Henderson, which we received last Friday, we are not able to do anything on this complaint or any others until the appeal is concluded so it would be helpful all round if we can move ahead on Thursday as planned.*”

99. The Zoom meeting on 16 December was arranged as the Appeal hearing in respect of the claimant's appeal of Gavin Henderson's Findings Report. Present at that meeting were the claimant, those who had been appointed as members of the Appeal Committee (including Ray Walker as Chair of that committee) and Barry Robinson, who was present to take notes for the claimant. Barry Robinson's notes of the Zoom meeting on 16 December 2021 are at JB1 / 441 – 448. The claimant's position at that hearing was that she couldn't proceed with the appeal at that time because she hadn't seen Gavin Henderson's notes as investigating officer. The notes record (at JB1 / 447), it being said by a Board member *"If you have dyslexia am I right in thinking that you have a problem reading things, and yet you want the notes sent to you in writing?"* The claimant's response is recorded in the note as *"I only have a problem with some things"*. The further response from the Board member is recorded as *"We don't want to put you at a disadvantage by putting everything in writing."* Those notes record Ray Walker saying:

"OK, let me try to summarise:

- You haven't seen the notes, and*
- Work and church matters need to be separated."*

That the claimant replied 'yes' and Ray Walker said *"We as a committee will consider what was covered in this meeting and get back to you."*

100. On 23 December 2021, the claimant sent an email to David Silcox headed *"New complaint & Whistleblowing"*, (JB1 / 458) with an attachment headed *"Whistleblowing Complaint by Rachel Montgomery"* (JB1 / 459 – 464). In that email, the claimant refers to having been unwell. She stated *"I have not now been able to put the framework of a whistleblowing grievance down in writing. I would have preferred to try to take time to recuperate as my health is fragile at the moment however I must press ahead."* That email concludes *"I have enclosed the whistleblowing complaint for yours and the boards attention and obviously if there are any questions I'm available to answer them. I might need about a week or so to try and get some proper rest as even writing this out has had me suffering from severe chest pains and exhaustion."*

101. An email in the same terms as that sent on 23 December was sent by the claimant to David Silcox on 30 December 2021 (JB2 / 30). The position in the document headed 'Whistleblowing Complaint by Rachel Montgomery' (JB1 / 459 – 464) is that that complaint was first raised in phone calls from the claimant to David Silcox on 14 & 16 November 2021. The claimant states:

"To the best of my ability while being ill with work related stress at the time of writing this, I will give an outline below of points and when I have had the chance to recuperate more I will aim to flesh these points out more I am outlining. Issues that are systemic in nature and should be in the public interest. I understand that while I have personal grievances ongoing, for example gaslighting harassment discrimination, these are not covered by whistle blowing law unless my case. Is in the public interest and is systematic in nature."

102. In that document, the claimant highlighted that she believed her complaints 'count as whistleblowing' in relation to (JB1 / 460):

- *Someone's health and safety is in danger*
- *A miscarriage of justice*
- *The company is breaking the law, for example does not have the right insurance*
- *You believe someone is covering up wrongdoing'*

The claimant then set out her position, under the following headings:

- *Insurance concerns*
- *Poor or non-reporting of serious incidents / issues*
- *Coercive and autonomous management*
- *The Equalities Act [sic]*
- *Distinction between volunteer and employed*
- *HMRC*

- *Confidentiality issues*
- *Unhealthy autonomy with finances*
- *Unhealthy relationship between the Hendersons and the Mills*
- *Systemic lack of policies and procedures and safeguards*
- 5 • *Systemic, excessive and repeated secretiveness and blocking*
- *Systemic, excessive control and autonomy of the Hendersons*
- *The ongoing parallel directorships and interests held by James and Gavin Henderson*
- *The above basic behaviours are replicated by Peter and Jackie*
- 10 • *Gavin, the NML, has never worked anywhere else*
- *Toxic working environment and lack of safeguards for employees*
- *Our aims in the Articles of Association*
- *Pastoral systematic abuse*
- *Systemic excesses even under grievance, appeals, whistleblowing,*
- 15 *and a Protected Characteristic*
- *Other Points to be considered*
 - *Lack of governance, oversight, checks and balances from the Board*
 - *Lack of accountability and transparency from the Hendersons to the Board*
 - 20 - *Lack of clear grievance policies when complaining about senior management and the Board*
 - *A grossly toxic culture*
 - *Trustees do not understand their accountabilities.”*

103. On 24 December 2021 the claimant sent an email to Gavin Henderson asking when her wages would get paid (JB1 / 466). The claimant was distressed and looking to receive her wages as soon as possible. The claimant also contacted David Silcox in respect of this payment. Gavin Henderson replied to the claimant by email on 24 December 2021, stating:

“The salaries are set up to be paid on the 25th of the month or the nearest working day when that falls on a bank holiday (i.e. today for the December pay). I have rung the bank and they have confirmed it has been paid, but were not able to tell me when today it was paid. If there is a problem with this please contact me urgently and I will look into it further.

Also to clarify, in case there is any confusion, David Silcox is not involved in paying staff salaries. As Chair of the Board of Trustees, he serves in a governance and oversight capacity, and not a day-to-day management capacity. Sick notes should also be sent to me as your line manager as per our policy in the staff handbook.

I am sorry to hear you have a hospital appointment today - you remain in my prayers.”

104. Also on 24 December 2021 the claimant sent an email to Ray Walker and other members of the Board stating *“I think it is safe to say that this appeal is going horribly wrong...”* and again requesting Alexis Luckoo’s notes from the Zoom meeting on 9 September 2021 (JB1 / 467). On 26 December 2021, the claimant sent another email to them, beginning *“I have been looking at the overall obstruction, and prolonging of this grievance which ultimately has prejudiced this case. An employer can breach its duty of trust and confidence if it unreasonably delays the investigation (and thereby the resolution to a situation).”*

105. On 27 December 2021 the claimant sent an email to David Silcox headed ‘Wages’. In that email the claimant complained about what she saw as Gavin Henderson’s delay in dealing with her concerns re receiving her salary on 24 December (JB1 / 471 – 472), and the financial consequences to the claimant. In that email, the claimant *stated “I called you in desperation on Christmas*

5 *eve as I was in a panic with no food in the house and no petrol to get home. I am aware you do not have day to day management capacity and I copied you into my email to Gavin purely as an act of much needed governance regarding what I view as a serious matter. There appears to be a lack of governance or safeguarding for vulnerable staff, to a high degree and Gavin acts as though he is unaware that the board of trustees are accountable in law in this matter.”*

106. Also on 27 December 2021, the claimant sent an email to David Silcox headed *‘Not going to church’* (JB1 / 473 – 474). In that email, the claimant set out her version of events. That included:

- That she had raised a *‘workplace grievance’ against Pete and Jackie Mill on 9 September 2021’*.
- Gavin Henderson had told her that *‘he was going to need to tell them that I had complained’*
- 15 • The claimant’s concern at attending a house church service at the Mills house
- Gavin Henderson’s response to that concern being that the claimant should not attend church
- Thereafter, the Edinburgh congregations’ church services continuing to be arranged to take place at the Mill’s house rather than via Zoom
- 20 • Her understanding that Gavin Henderson’s position was the claimant should not attend church while the grievance was ongoing
- That her deaconess duties were *‘taken away’*, with the result that the congregation *‘witnessed me no longer sending out the Zoom links or the You Tube links’*.
- 25 • That this was *“in my mind punishment for daring to complain and is coercive behaviour in the extreme.”*

- That *“This has left a situation where the congregation have stopped contacting us... From the congregations point of view it looks as though we have been removed and with my tasks being removed it looks as though I’ve done something wrong which is more than embarrassing.”*
5
- That this *“...demonstrates how an employer can breach its duty of trust and confidence if it unreasonably delays the investigation (and therefore thereby the resolution to a situation)... meaning it becomes increasingly difficult to hear a grievance or appeal fairly.”*
- That *“..it has been a long (nearly 4 months) protracted period where we have been dismantled and not protected.”*
10

107. In his email to the claimant of 31 January 2021 (JB1 / 475 – 476) David Silcox acknowledges receipt of the email on *‘Not going to church’* and confirms receipt of *‘the Whistleblowing paper’*. He states *“This has taken a while to download as I have trouble with Hotmail and large attachments.... I have again sent it to the committee first to ensure there is no duplication in regard to matters they are looking into.”*
15

108. On 2 January 2022 the claimant set out what she stated were *‘the full details’* of her grievance against Gavin Henderson, raised with David Silcox in December 2021. In that document (JB1 / 477 – 480) the claimant’s position was *“I am being forced into new tasks that I have flagged to Gavin that my protected characteristic (dyslexia) will negatively impact”* (JB1 / 477). It was not her position that the change was being made because she is dyslexic. In that document, the claimant also stated (JB1 / 479):
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“The discrimination I am experiencing appears to be down to the fact that I am female with a protected characteristic. This means I am being pushed into an administrative role away from the projects I was working on, which my protected characteristic (dyslexia) will impact negatively. It is also now being indicated by Gavin Henderson that I should never be seen to be leading any trainings or publicly speaking, even if it is my area where I have extensive expertise and experience. This is contrary to what it states on my job
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description and contrary to what has been allowed of male colleagues, past and present, ordained or un- ordained. Females within the leadership team are not treated as equals and therefore in breach of the Equalities Act.”

109. On 6 January 2022, Ray Walker emailed the claimant, noting that the claimant
5 had been supplied with notes taken by Gavin Henderson in his investigations and asking if she wished anything else to be considered, in light of those notes (JB1 / 481). The claimant replied on that day as follows (JB1 / 482):

10 *“I am surprised by your e-mail and I can't quite fathom it considering how clear I have been in previous emails. I have not received the notes that were created, this is clear by the mentioning of Andrew's attendance when he wasn't in attendance at a workplace meeting on the 9th September, I have already sent this to you. This feels as though we are going around in circles and the committee are allowing this obstruction to take place.*

15 *As it stands with the lack of and indeed incorrect and unestablished notes, a grievance hearing has never taken place correctly never mind an appeals process.”*

110. Ray Walker's reply on 6 January (JB1 / 483) was *“You have the notes, there are no others. We wait until close of play next Wednesday in case you decide you wish to make a response.”* The claimant then replied, on the same day
20 (JB1 / 484 – 485), stating:

“Repeating that I have notes won't change the actual and real fact that I don't have them.

I have stated that I don't have the notes and I would appreciate if due diligence was carried out on this.

25 *My workplace handbook states clearly that all evidence (obviously including notes) will be provided (to name but one item).*

That already has not happened, on more than one occasion, and I should not have had to highlight this - but here I am repeating the request I should not have to make, multiple times.

I should not have to fight tooth and nail to achieve clarity, and to access notes - but here I am, having to do exactly that.

I should not have to clarify the dates and the specifics of sets of notes - but here I am, finding myself having to continuously do so.

5 *Once again I will clarify what I should not have to clarify: I have stated that Alexis has created these notes on the 9th September, this I was clear on. Has she been approached on her own and not through Gavin on this matter?*

At the moment I am off sick till the 12th - which you and the committee know - so this as far as I can see, is not being taken into consideration by the
10 *committee.*

An appeal committee is supposed to undertake its duties in a certain manner and it very much is not - see above as clear indication.

I have to say that this is very disadvantageous, repeatedly so, and is absolutely not a neutral environment.

15 *It is disheartening that I have been treated this way, and have had to engage in these communications relentlessly, while ill and particularly in view of the subject matter at the heart of the issues that the committee is supposed to be considering. I hope this gives true clarity to the position I am now finding myself in."*

20 111. Ray Walker replied to that email later that same day (JB1 / 486) stating "The notes I emailed you are the only notes, there are no others." Ray Walker emailed the claimant on 10 January 2022 re. a booking for her attendance at a Church event. That email included "Regarding the notes, you say that no notes were taken during the Zoom meeting of the 9th September by Alexis,
25 *we have checked with Alexis and she confirms that she did take notes and says they are the same as Gavin's. Id [sic] so they will add nothing further to what you already have, but she is happy to scan them and let you have them if you want them."* In the claimant's reply on the same day (JB1 / 488 – 489), she stated:

5 *"I'm not sure how else to say now for the umpteenth time, YES I want the notes! All notes should have been given to me before any conclusion of the grievance investigation. Alexis notes cannot possibly be and should in no way be the same as Gavins unless collusion has taken place, surely you do understand this?"*

10 *I am beyond exasperated and disturbed by this situation and the way it's being handled. I cannot underline enough how much this is detrimentally affecting my health as this situation is never ending and doesn't appear to have a conclusion in sight. Meanwhile Andrew and I are continuing to be victimised and the board of trustees appear to be allowing this to continue to happen."*

112. *Ray Walker's reply on that day (JB1 / 490) was "I'll ask Alexis to send you the notes. Just to set the record straight you have no rights to see the notes at all. We thought it would be a fair process if you did. That's why you have got them."*

15 The claimant then replied (JB1 / 491):

20 *"OK, please note that I have been requesting these notes now since the 16th December. I'm deeply concerned with your response, as receiving notes is something foundational within any grievance procedure being carried out correctly. The handbook also outlines this, so it is critical that I receive these notes. Therefore I do indeed have the right to see them, and is actually standard practice within any grievance procedure. When this isn't done and my right to comment on the notes before a decision is made is removed then it is deemed that a grievance hasn't been heard correctly.*

25 *I have to state that with each e-mail you send Ray, the more concerned I am becoming that the chance of this being heard fairly is becoming increasingly less of a possibility. I will ask that if you are not experienced with normal grievance procedures and common practices, (I'm aware you only just came on the board on the 2nd November and I am therefore surprised at you chairing this committee) then I would ask that you flag this with David Silcox, the Chair of the board before this case goes any further forward."*

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113. Alexis Luckoo's handwritten notes from the meeting on 9 September 2021 were emailed to the claimant by Ray Walker on 11 January 2022 (JB1 /493). Around that time, Gavin Henderson offered to the claimant that he was *"willing to authorise the Church's paying for counselling sessions, on the same basis as before."* (JB1 /494).
5
114. On 12 January 22 the claimant emailed Ray Walker confirming receipt of the notes and stating *"I now aim to put together an outline of what I'm appealing so it gives expectations and clarity to aid the investigation. I possibly won't have this done this week as my health has declined sharply this week and my doctor has advised that I get complete rest at the moment."* (JB1 / 495). The claimant was certified by her GP as unfit for work for two months from 11 January 2022 because of 'stress at work' (JB1 / 497). The claimant emailed that certification to Gavin Henderson on 12 January 22 (JB1 / 496). That email included *"I'm just processing this information myself as being off work at all causes its own stresses. It's one of the reasons I did full time hours a lot of the time instead of my part time hours as I absolutely prefer to work."* Gavin Henderson replied to the claimant (JB1 / 498). That email set out that he planned to 'check in' with her every two weeks or so. It ended *"I hope you are able to get some complete rest in these two months and that it helps with your symptoms. You remain in my thoughts and prayers. Kind regards."*
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115. On 14 January 22 Ray Walker emailed the claimant (JB1/499). He stated:
"This grievance and appeal has taken much time for all parties involved and as you have said yourself you had hoped this whole process would have been over months ago, so its time now to bring it to a close. It affects a number of other people too, so we need to bring it to an end."
25
We will agree to an extension to 5.30pm Friday 21st January 2022 for you to inform us of your reasons why you think the grievance report findings are unfair. There will be no more extensions, anything you send us after that deadline may not be considered."
- 30 116. On 19 January 2022 the claimant emailed Ray Walker with her 'appeal in full' (JB1 / 501). That email included *"I fully expect this appeal to be carried out*

fairly and with neutrality, and at any point if this can't be achieved or indeed if it has been breached then this is raised with the chair of the board immediately." The appeal grounds (JB1 / 505 – 508) include a statement (at JB1 / 506) "Within the grievance procedure I fully expected all measures to be taken to make sure fairness and neutrality was achieved. I also expected it would be carried out in a way that I wasn't discriminated against or victimised by the NML or the parties I had a grievance about, this did not happen." The grounds of appeal were in respect of the grievance procedure followed and also in respect of the grievance findings. In summary, the grounds of appeal were:

- That what had been raised in the grievance wasn't set out in the findings report and so was taken by the claimant as not having been investigated "*..to see if these amounted to such things as harassment, victimisation, offensive, intimidating, malicious or insulting behaviours/ an abuse of power through means that undermine, humiliate or denigrate.*"
- That evidence of a previous grievance against the Mills had not been considered, although relied on by the claimant in her grievance.
- That the report had dealt with issues such as the role of Deacons and Elders which was separate to the claimant's workplace grievance.
- That the claimant's workplace grievance was confidential and the findings report ought not to have been emailed to anyone other than the claimant.
- That meeting notes were not taken, or were '*incomplete and incorrect*' and "*do not record the upset that Andrew and I voiced about the investigation being carried out incorrectly meaning Gavin had to return to our home for a second meeting.*" And "*The so-called notes are just a list of bullet points, bear little representation of what was discussed, and in many instances, contain incomplete sentences. They confuse anyone who is reading them and therefore means the grievance procedure hasn't been completed in full.*"

5 • That Gavin Henderson’s visit to the Montgomery’s home on 8 October 2021 ‘...was not a grievance hearing and both Andrew and I were left distraught at not being heard.’ And that Gavin Henderson’s subsequent behaviour towards Andrew Montgomery was ‘very disturbing and controlling’.

10 • Under the heading ‘Victimisation’, that “...a neutral environment for my grievance was not provided and instead Gavin set about finding complaints against me. There were no interim measures put in place for me. Instead, I was removed from church, and still expected to work with the Mills with no guidelines or protection....”

117. Also on 19 January 2022 the claimant sent an email to the respondent’s trustees, headed ‘Private and Confidential – Failed grievance and appeal process’ (JB1 / 502 – 503). She stated:

15 “I am writing in accordance with the organisations handbook, specifically point 16.8 where it states that if I have any concerns about the fairness of the processes being followed then I need to raise it. As there is no details on where I should be raising this to then I am raising it with all who hold responsibility for governance. I do not believe the appeals process in particular is being heard by the subcommittee fairly or correctly, and therefore
20 is creating a liability for the rest of the board of trustees.

For transparency and fairness I have enclosed a document outlining the details. I’ve attempted to not get into the minutiae however as each trustee of the board is accountable in law and a possible liability is currently being created then it is only fair that I outline as much as possible. The document
25 covers a few issues, mainly:

- Non action of a whistleblowing complaint submitted 16/11/21 - substantial time out with 5 day timescales.
 - Non action of harassment and discrimination grievance against Gavin Henderson submitted 10/12/21 - substantial time out with 5 day time scales.
- 30

- *Allowing Gavin Henderson to obstruct and prejudice proceedings. One of these actions is holding a team retreat.*

The team retreat is deeply inappropriate at this time and has been arranged during grievance proceedings, which is very concerning indeed. Within the retreat exercises are done around the practice of 5 dysfunctions of a team. The team are asked about aspects of trust within the team and a safe space, the team are then expected to go into detail individually on this topic. This will entitle Gavin to directly and indirectly carry out his own questioning around the situations pertaining to the grievances. This is with a team who will no doubt be expected to be interviewed during an investigation which if the retreat goes ahead will be put in a position in a remote location to be intimidated and prejudiced.

I would ask that it is considered that neutral persons or indeed an external input is now sought to oversee all grievances and appeals fairly. I am keen for further liabilities to be prevented from happening by having the best interests of the church and the charity being the focus for all.”

118. On 30 January 2022, David Silcox emailed the claimant with an update on the progress of her appeal. He informed her *“The Committee set up by the Board has now completed its deliberations and a report for the Board is being prepared. It will then be passed to our solicitors Edward Connor for any advice and then a Board Meeting will be called. The time frame is somewhat dependant on the solicitor but will hopefully be ready in approximately a week for presentation to the Board.”* And *“The Board are considering a proposal concerning the Complaints you have lodged against Gavin Henderson and the Board Committee. The Board is seeking expertise from a HR consultant as to the best way to handle this matter, I will keep you informed.”*

119. The claimant emailed a reply to David Wilcox on the same day (JB1 / 517 – 518). That included: *“The length of time is having a hugely detrimental effect on not just my health but on Andrew’s health too as we remain dislodged and isolated. Andrew's part in this process including his own complaints have been completely ignored. I'm at a loss as to why it's being stated that the*

committee have now completed their deliberations even though I have complained and stated that the process is now broken due to their actions and they haven't even been in contact with Andrew yet considering he is mentioned throughout Gavin's findings document. I believe others have been interviewed and yet the one person that document keeps referring to and is actually discussed in the document has not! I'm afraid I'm at a loss as to the direction this is all taking."

120. On 21 February 2021, Ray Walker sent an email to David Silcox and James Lambu attaching the 'Appeal Panel's Findings Report' (JB1/ 522 – 527) ('The Appeal Report') and 'Recommendation of the Appeal Committee', being their 'proposal for dealing with the claimant's harassment complaint against Gavin Henderson raised on 2 January 2022' ('the Committee Recommendations') (JB1 / 528 – 533). The Appeal Report included (at JB1 / 525) that Gavin Henderson's Findings Report was 'distributed more widely than it needed to be'. The Appeal Report includes on this matter "We bear in mind that those involved may have had limited experience in such matters, but our view is that confidentiality should have been maintained and was not. We therefore agree with the factual basis underlying the ground of appeal, that on the balance of probabilities confidentiality was breached." The claimant's appeal was upheld to that extent. The Appeal Report goes on to consider "to what extent that failing makes the original decision unreasonable." The conclusion was "We are satisfied that it had no impact on the decision or the reasonableness of the decision. We are unable to uphold this ground of appeal." The grounds of appeal were not upheld on any 'substantive point'. Under the heading 'The Wider Context', the Appeal Report concluded:

"We also have to remember the personal situations and difficulties both couples have endured over the past couple of years which have been very, very stressful, on top of which we have had the COVID-19 pandemic which has only added to the stress. Whilst we have not upheld the appeal., we make no finding that Rachel (or anyone else) has done anything in bad faith. We are satisfied that Rachel has been under genuine stress and that her concerns have genuinely impacted her.

5 *People under stress may not always act in the ways we would normally expect. When we are under stress, we can be more prone to perceiving that someone is acting inappropriately because it does not match what we may want at the time. We need to avoid rushing to negative judgement about what may underlie another person's actions, whilst being quick to address any potential for harm."*

10 121. The Committee Recommendations includes a recognition under the heading 'Management' that *"The management structure under which Rachel Montgomery worked, has been 'loose' and unclear at times, with her 'reporting' to three different managers. On paper, the NML has been her line manager, but the way she sees it is that Barry Robinson has really been her manager, the amount of time working with Barry on the WOL project supports this view. Peter Mill is also cited in at least two documents as her manager and she has worked with him on certain projects also. The management styles of the 'three managers' is quite different..."* and *"... it is imperative the line manager remains involved with frequent contact, monitoring, support and appraisal and does not by default allow management to slip to others (or give the impression others are allowed to assume that function) whose projects are being worked on. This has been corrected as she now reports to the NML."*

20 122. The Committee Recommendations include recommendations in relation to Jackie Mill and Andrew Montgomery. Under the heading 'Rachel Montgomery' is stated:

25 *"It is clear Rachel has been through a very stressful time and while this does not excuse the behaviours observed, it has been a factor and continues to be, as the sick notes for 'workplace stress' demonstrate.*

30 *In the interests of Rachel's health we recommend she be relieved from all work duties including WOL. The pressures of work have evidently been too much so it is best she be released from work completely. We recommend this be done right away with no delay, and that she remain on full pay until her fixed term contract and employment ends on 25th April 2022.*

Separately, Rachel Montgomery seems to have a disproportionate fixation with 'procedure and policy' and to quote her she sees 'her role in life as being to help organisations get their policies and procedures right'. It is through her subjective view of what is right, struggling to be objective or see things from the perspective of others, as we have seen during our investigation. [sic]"

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123. The Committee Recommendations, under the heading 'Role of the NML in Complaints', includes: "Ideally, he should never be directly involved in appeals under any circumstances, but, a small organisation like this, there may be very rare occasions when he has to step in because there is literally no one else. However this should be strictly a last resort." The section under the heading 'Church Appeal Process' includes: "As there has been a high volume of complaints from the same person over a short period of time, and complaints from others who were external to this grievance, this has inevitably slowed the system down because the normal process are not structured to accommodate numerous appeals and complaints. Nevertheless, the appeals committee of the Board of Trustees has reviewed the original grievance and reached its conclusions."

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This recent experience has demonstrated to us that we need to revisit this process, ensuring it is clear, particularly for all church employees."

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124. In the section under the heading 'Safeguarding and Bullying' it is noted: "The Charities Commission have recently produced updated guidance on safeguarding, which also covers bullying. We suggest this is reviewed by the NML and perhaps annually by the Board thereafter."

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125. The section under the heading 'Proposal for Dealing with Harassment and Discrimination complaint against the NML' is partly redacted (JB1/532 – 533). That section notes that a complaint of harassment and discrimination was raised by the claimant against Gavin Henderson on 2 January 2022 and states:

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"Some of the material we have seen before, in e-mails she has written complaining about job de-construction, which were sent during our work on

the gaslighting grievance appeal, and some of it with additional material is now being reframed in a new complaint of harassment and discrimination.

This is beyond the remit of the appeal committee and not something we wish to be involved in, nor can we be involved in due to our work on the gaslighting grievance appeal. The nature of the complaint means it needs an HR specialist familiar with complaints of this type who can deal with it quickly and competently.”

The Board is asked to consider funding an external ‘HR specialist’ for that purpose. The proposal goes on to state:

“There is also a complaint or intention to make a whistle blowing complaint dated December 8th 2021, in which Rachel Montgomery requests the safeguarding policy of the church and we believe it is safeguarding policy or safeguarding failure that she intends to complain about. She has previously mentioned her dissatisfaction with the church’s safeguarding policy despite never having seen it, as in the same e-mail she requests a copy of the policy which she was subsequently sent. As yet no such complaint has been forthcoming, so we cannot advise on how to progress this.” A section following that wording is redacted. The document then concludes:

“We have brought this proposal to the Board for discussion to decide if the proposal outlined here is a good option, or if there may be others that should be considered. If the Board decides this proposal is a good option and the costs involved are reasonable for the work required, and have to be incurred, we suggest that the proposal is given the go ahead straight away, and a suitable person found and commissioned to undertake the work.”

126. The Appeal Report and Committee Recommendations were discussed at the respondent’s Board Meeting on 27 February 2022. The partly redacted Minutes of those meetings are at JB1 / 534 – 537. It was agreed at that meeting to action the Committee recommendation *“to release Mrs R Montgomery from work completely without delay on health grounds and that she be paid for the time remaining on her fixed term contract.”* (JB1 / 535). In respect of the claimant’s harassment and discrimination complaint against

Gavin Henderson (the NML), it was agreed “to proceed to appoint a HR specialist familiar with these type of complaints to deal with the matter.” (JB1/ 536). The redacted version of those minutes record:

5 “The Board discussed the Appeal Committee’s recommendation to release Mrs R Montgomery from work completely without delay on health grounds and that she should be paid for the time remaining on her fixed term contract.

The National Ministry Leader informed the Board
.....

.....Church’s

10 Solicitors.....
.....”

127. On 4 March 2022, Gavin Henderson sent the Appeal Report to the claimant (JB1 / 540 – 541). His email begins “The Appeal committee has come back to me as your line manager regarding the outcome of your Appeal in relation to your grievance complaint against Pete and Jackie Mill.” In the attachments
15 to that email, the claimant was told that the original decision stands and there is no further right of appeal.

128. On 7 March 2022, Ray Walker emailed Ian Woodley with his responses to concerns raised by Ian Woodley in respect of Gavin Henderson’s dealings
20 with the claimant (JB1 / 542 – 544).

129. At 9.11am on 10 March 2022, the claimant sent an email to the members of the Board of Trustees, stating:

25 “After taking advice, I would like to make everyone on the board aware of an e-mail I received from Gavin Henderson on the 4th of March, which I have enclosed below. This e-mail has been received while Gavin has an unlawful harassment grievance against him and within the bounds of reasonableness should not be contacting me during this time until the matter is resolved. It might be good to note that this matter has been ignored for three months since I reported it, and I have already highlighted it to the board that it has been

5 ignored with no action taking place. This e-mail received on the 4th of March has taken place whilst everyone is aware that Gavin Henderson's actions of harassment have brought about my health issues that included a breakdown on the 7th of December, which directly related to a communication received from him. The Board of Trustees to this date have not put in any protective or safeguarding procedures for me, which they are legally required to do so, and this is a bare minimum of actions and notwithstanding that we are a church and have a Christian duty. Within the e-mail I received it states that the committee of the board have directly asked Gavin to send me the outcome of the appeal. The committee have asked the very person they were supposed to be investigating to communicate the outcome to me. This action demonstrates discrimination and indeed favouritism. The question is why have the Board of Trustees allowed this appeal to go ahead without an independent investigation and for me to be victimised throughout the process.

10
15 I am completely shocked at receiving this communication not only because the committee have requested that Gavin communicates it directly to me but I have not had an appeal hearing or being interviewed. The company handbook states clearly that an appeal hearing is part of the process and that I the employee have the right to be heard. I have been left sitting and waiting for months for the appeal hearing to take place. I believe others have been interviewed but I as the complainer have not had a chance to speak with the committee! How can this appeal have concluded without my input?

20
25 The committee have also not followed the equalities act [sic] which they are legally obliged to do so. I have nowhere to go to ask as an employee for an explanation of the document as I don't understand the document in its current form. On seeking external advice it throws up more questions as it's not signed officially, it's not clear and transparent and eludes to things I apparently mentioned, this is without a hearing.

30 I also note that while I'm being ignored and deliberately not heard, I am being constructively removed by all. Belonging is being displaced within full knowledge of all board members and even with emails having been sent about why both Andrew and I have been removed from church have been

5 *ignored. It is a serious matter for any minister including board members who are ministers to purposefully remove me from church without actually giving me any reasons as to why you have all done this, while I'm an employee of GCI. Whilst trying to take care of my health which no one else appears to be interested in, I want to know immediately who I am to raise a complaint with regarding that handling of this appeal and not being heard?" [sic]*

10 130. That Appeal Report was the outcome of the claimant's appeal of Gavin Henderson's Findings Report. It was not a report on the claimant's grievance raised about Gavin Henderson on 2 January 2022. The decision that Gavin Henderson should inform the claimant of the outcome of the claimant's appeal of Gavin Henderson's Findings Report (including his findings on her grievance on 'the Edinburgh situation'), despite at that time the claimant progressing a grievance about Gavin Henderson, coloured the claimant's perception of the respondent's dealings with her grievances and appeals.

15 131. Also on 10 March 2022, a letter was sent to the claimant from David Silcox informing her that her employment contract was being terminated (JB1 / 546). This stated:

20 *"Your contract is due to end on 25 April 2022 when the current six month extension ends. The trustees are conscious that your health has not been good and there are concerns that it is being impacted by work, with your recent fit note referring to stress. We don't know whether you will be able to return to work when your current fit note expires, or for how long you will be able to return, if work is a factor in making you unwell. We need to consider your welfare.*

25 *Our decision is that, rather than unnecessarily protract a situation that may be harming your health, we should end your employment. This letter is therefore notice of that decision.*

30 *You are entitled to one month notice, which would normally expire on 10 April 2022. You are not required to work that notice but will instead be paid in lieu of what you would have received over that period. We are willing to do this on the basis of full pay, regardless of whether or not you would have been fit to*

work. Your employment therefore ends today. You will also be paid for any accrued untaken holiday for the current holiday year. Those payments should be in the next payroll.

Please be assured that this decision does not impact any investigation into concerns you have raised. That will continue.

Thank you for your service over the last 16 months. We wish you a speedy recovery.”

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10 132. Also on 10 March 2022, a letter was sent to Andrew Montgomery from ‘Peter and Jackie Mill’ informing Andrew Montgomery of his ‘*disfellowship*’ from the respondent’s church (JB1 / 545).

133. Both letters of 10 March 2022 were hand delivered to the Montgomery’s home. Prior to the termination of the claimant’s employment, no steps were taken by the respondent to obtain a medical report on the claimant’s health, ability to work, or ability to participate in any grievance or appeal procedure.

15 134. On 13 March 2023, David Silcox replied to the claimant’s email of 10 March. (JB1 / 548 – 549). In that email, it was stated “*The document you received has relevance to your Appeal concerning the issues you raised about the Edinburgh situation*”. David Silcox’s position was that the claimant had been interviewed in respect of that appeal on 16 December 2021. In that email he
20 stated: “*After completing their report the Chairman sought advice from our lawyer in drafting the document which was presented to the Board on the 27th February. After due consideration the Board asked Gavin Henderson to convey the decision to you. This was done as Gavin Henderson was the one who referred your appeal to the Board. I do appreciate the time lag here but*
25 *if such an appeal is to be thorough and fair then every document etc. has to be considered and this was done.*”

135. In that e-mail, David Wilcox went on to inform the claimant that an HR consultant would be appointed by the Board to investigate the complaint made by the claimant against Gavin Henderson on 2 January 2022. He stated “*She is very experienced and has in fact completed work for other Churches. She*
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will interview and submit her findings to the Board. She has advised me that this should be a fairly speedy process but will depend on the nature of the complaints.” David Silcox concluded “Once again I appreciate there has been a delay but again it has been in the context of seeking thoroughness in making
5 sure every aspect will be addressed. This has taken time but will be completed as quickly as possible. I hope this gives you a perspective as to what has happened with these matters.”

136. Also on 13 March 2022, the claimant replied to David Silcox, copying her reply to Barry Robinson (JB1 / 550 – 551). She stated:

10 “My reason for copying in Barry is because you state the document I received was relevant to my appeal about the Edinburgh situation. Barry will confirm as my designated note taker, my appeal was not to do with the Edinburgh situation it was my workplace grievance, and the two should not be commingled! You also state that I was interviewed on the 16th of December.
15 An appeal hearing couldn't take place on the 16th of December as no interviewing on my appeal happened. I questioned the committee on the 16th as to why I was being called for an appeal hearing when I hadn't actually submitted an appeal in full at that point, only an intent to appeal. I was asked why I hadn't submitted the appeal and I stated that in submitting my intent I
20 had asked for the process as it wasn't in the company handbook. I also clarified that I hadn't received or signed any notes that had been taken within the grievance process and that I needed to be in possession of them before outlining my appeal in full. The committee stated that they were in full receipt of notes and as I highlighted that I was not, it meant that I was disadvantaged,
25 this had the committee agreeing that notes would be sent to me before we could reconvene. We never reconvened after that.

The meeting on the 16th of December was short as it only outlined that I hadn't appealed in full and I wasn't in receipt of full notes. It was agreed that an appeal hearing couldn't go ahead that day and that the committee had to go
30 and get those for me so I could submit my appeal in full to enable a hearing to go ahead. A hearing never went ahead and I have never been interviewed on matters pertaining to my grievance or reasons for appeal. The appeal has

therefore concluded without my input, me the actual complainer. My right to be heard has been denied! This needs to be resolved immediately and the conduct of the chair of the committee to be raised immediately with the rest of the Board of trustees, and I do mean immediately!"

5 137. The claimant's email to David Silcox of 13 March 2022 (JB1 550 – 551) shows that there was no clear distinction between the respondent's dealings with the claimant's workplace grievance against Gavin Henderson, as set out in writing on 2 January 2022, and her 'workplace grievance' raised on 7 September 2021. The respondent dealt with the claimant's 'workplace grievance' of 10 September 2021 on the basis that it was about '*the Edinburgh situation*'. That grievance included workplace issues which were wider than the '*the Edinburgh situation*'. Gavin Henderson's Findings Report on the claimant's grievance concentrated on '*the Edinburgh situation*' i.e., essentially, the situation between the Mills and the Montgomeries. The claimant's position in 15 that email of 13 March is that her interview on 16 December 2021 could not have been in respect of her appeal of Gavin Henderson's Findings Report because at that time she had not submitted her written appeal, only her intent to appeal, and '*...it was agreed that an appeal hearing could not go ahead that day.*' The claimant stated in that email '*My right to be heard has been 20 denied!*' The claimant made no reference to her dyslexia in that email.

138. The claimant's position in that email of 13 March 2022 is not entirely consistent with the position in Barry Robinson's version of the notes of the meeting on 16 December 2021 (JB1 / 441 – 448). Neither those notes, nor any written communication before the Tribunal thereafter sets out that it was 25 agreed that the appeal hearing could not go ahead on that day, or that there is to be a further appeal hearing. The meeting on 16 December was taken by the Appeal Committee to be the appeal hearing. The Appeal Findings indicate that in considering the claimant's appeal, account was taken of the position set out by the claimant in her email of 13 March 2022.

30 139. Later on 13 March 2022 the claimant again emailed David Silcox (without copying Barry Robison) (JB1 / 552). The claimant clarified her position, as follows:

5 *"I highlighted that the appeal was regarding my workplace grievance and not the Edinburgh situation. The appeal should have been in line with what I submitted, this was Gavin's conduct through the grievance. I submitted my appeal to yourself and to the committee NOT to Gavin. I did this for my protection as Gavin shouldn't have seen what I'd written. With the committee now sending it to him instead of directly to me has opened the door to making Gavin continue his harassment of me and Andrew to devastating effects this weekend.*

10 *I therefore haven't mixed up my separate grievance against Gavin on the 2nd of January as the appeal was also looking into Gavin's conduct."*

140. On 17 March 2022 the HR Consultant appointed by the Board to 'carry out an investigation into the allegation of unlawful harassment & discrimination against Gavin Henderson' emailed the claimant (JB1/ 553).

15 141. On 24 March 2022 the claimant sent an email to David Silcox headed *"Termination Paperwork Including Professional Fees"*. That email referred to a phone call the claimant had had with Barry Robinson the previous day and stated *"... it was good just to be able to speak with someone as I always find being given the ability to discuss things reduces conflict. I have had many months of not being able to speak with anyone and decisions continually being made about my future without my input. After that call I'm happy for you to go ahead and draw up the relevant paperwork."* The claimant went on in that email to seek expenses incurred re her use of GiANT for the respondent. She stated *"As you know I was involved in the coaching programme and the developing leaders groups along with coaching <A> in 5 Voices and leadership. You are not permitted to use the tools such as 5 Voices without paying GiANT as this is their IP. I used GiANTS tools during my 16 months of employment with the church exclusively and didn't have any other clients at that time. The cost to me was \$145 per month which was around £110. Gavin is completely aware of this and I've never been reimbursed."* The first
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30 time the claimant requested payment from the respondent in respect of costs associated with GiANT tools for training was in that email to David Silcox of 24 March 2024 (JB1 /555). The claimant did not seek these expenses during

the course of her employment with the respondent or using the respondent's normal procedures for claiming expenses. During the course of the claimant's employment with the respondent she had not sought to agree that the respondent be responsible for any expenses incurred by the claimant in respect of use of GiANT materials. The basis on which the claimant should use the GiANT materials was not discussed or agreed. The claimant contacted GiANT HQ about their position on accredited use of the material and further emailed Barry Robinson on that issue on 30 March 2022 (JB1 / 556).

10 142. On 31 March 2022 the claimant sent an email to David Silcox (JB1 / 558 – 560) in respect of a number of matters, including her contact with the police, concerns about continued alleged harassment by Gavin Henderson, Andrew Montgomery's appeal against his disfellowship, the claimant's appeal against the grievance findings, the claimant's meeting with the HR consultant (arranged for 6 April 2022), and the 'Chairmans Role'. Under that last heading, included *"..I am looking at my position and how things keep escalating with apparently no end and no protecting. Since the first formal grievance I made of gaslighting and harassment away back in September the harassment has only ever increased and become more and more obvious in nature, yet there have been no interim measures put in place by you to protect me which is the duty of you and the board of trustees."*

143. In her email to David Wilcox (copied to Barry Robison and Greg Williams) of 31 March 2022 (JB1 /558 – 560), the claimant stated *"David, your NML is currently out of control, he holds many leadership positions and is insistent that all matters go through him and him alone making for a dangerous situation for many."* In that email the claimant went on to set out her position in relation to a number of matters, under different subheadings.

144. The claimant's meeting with the appointed HR consultant took place via Zoom on 6 April 2022. The document at JB1/ 561 – 568 was agreed to be the HR Consultant's notes from that meeting. The document at JB1 569 – 574 was Barry Robinson's notes from that meeting. Barry Robinson had attended that meeting as the claimant's note taker and colleague. The claimant was

concerned about the speed of questioning by the HR Consultant at that meeting. The claimant felt that she was not given the appropriate time to process the questions and provide her answer. This concern is recorded in Barry Robinson's version of the notes of the meeting by the claimant saying
5 (at JB1 / 572) *"I need to slow down because I can't process this with people speaking over me."* Requiring greater time for processing is an effect of the claimant's Dyslexia. The notes do not record the HR Consultant addressing the claimant's comment about requiring to slow down.

145. The HR consultant's notes from that meeting are at JB1 / 561 – 568. These
10 notes begin by recording the HR consultant's position to the claimant as:

"There are some areas that I would like clarification on. I want to focus on your grievance against GH, not the grievance submitted on 9th September which GH investigated. I realise that one impacts the other and it is difficult to deal with in isolation."

15 Those notes record the claimant's reply as *"would like to review both grievances together as they both demonstrate the behaviour in question."*

The notes then record the HR consultant saying: *"You state that since you submitted a workplace grievance on 9th September 2021, GH's behaviour has been intimidating, hostile, degrading and an offensive environment. Can
20 you outline the events which caused you to lodge this complaint?"*

Both sets of notes record there being discussion on alleged sex discrimination in respect of females not being treated equally (at JB1 / 562 and at JB1 / 570). Both notes record it being put to the claimant that Gavin Henderson had asked her *'when he returned from his sabbatical'* that her involvement in Word of
25 Life should be reduced (JB1 / 563 & JB1/571). Barry Robinson's notes of that meeting (JB1 / 569 – 574) record the claimant being asked if any *'interventions'* were put in place following her mention of *'disabilities'* when she was interviewed for her employment with the respondent. Those notes record the claimant's answer as *"They were not needed because the role was
30 not to do with admin. It only became a problem when G tried to change my job description"* then said to be from October 2021. Those notes record the

claimant's position as *"G is not great at explaining what he wants. Basically it was to get someone to manage the database, and to send out birthday and Christmas cards. I raised my hand to say that it would be a risk for me to do this because of my dyslexia, especially as the database would need to be cleansed first. I was treated in a demeaning way."*

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146. On 8 April 2022, the claimant emailed David Silcox (copied to Barry Robinson) with her *'serious concerns'* about the meeting with that HR Consultant (JB1/576 – 577). In general, the claimant set out her concerns about the way in which the investigator had handled her interview. It was the claimant's position that the HR Consultant had not listened to her and that she had a preconceived position. That email ended *"In accordance with the handbook I have raised this concern directly with you, and I don't expect this to conclude without my concerns being addressed."*

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147. The Board Appeal Panel's summary decision of the appeal against the outcome of the investigation of grievances raised by the claimant against Gavin Henderson is dated 12 June 2022 (JB1 625 – 628). In her witness statement at para 45, the claimant relies on the position set out in that decision (at JB1/627) that *"In the Appeal Panel's view, the evidence presented does not amount to a pattern of direct, deliberate discrimination or harassment by Gavin Henderson over a sustained period of time."*

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148. Following her interview of the claimant, the HR Consultant asked some further questions of Gavin Henderson, who responded to these. (JB1 / 578 – 579). On 12/4/22 the claimant sent some further documentation to the HR Consultant. The HR Consultant's response was that she would not be reading that additional documentation and would be concluding her investigation that week (JB1 / 580). The claimant set out in her email response (JB1 / 581) that she was shocked at this and that she had understood that she was to provide more information to the HR Consultant. The claimant sent an email to the respondent's Board of Trustees (JB1 / 582). She stated:

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"I have just received a very disturbing e-mail from the external HR person who is investigating my grievance of unlawful harassment and discrimination

5 *against Gavin Henderson. I have had concerns around grievances and appeals not being completed correctly and seriously disadvantaging me already, specifically regarding my appeal being concluded without me even being interviewed. This investigation appears to be going the same way as the external HR woman stated in a meeting on the 6th April at 2:00 PM, that was witnessed by Barry Robinson, that she was going to interview others and she was looking for more evidence to the questions she asked from myself. None of this has been done so far and she stated she was on holiday this week for Holy Week.*

10 *All of a sudden I have received an e-mail this afternoon stating she is concluding in a couple of days' time and interviewing others and getting evidence from myself is now out with her remit! How on earth is this possible and it begs the question, who has stated it is out of her remit and putting pressure on her to conclude before doing a full investigation. and while she is supposedly on holiday. Please investigate as to who says it is out of her remit immediately.*

The basics of a grievance should be, and what I have experienced:

- *A prompt, thorough and impartial response. - It has been four months since I submitted my complaint, with many chaser emails asking what was happening, with my first interview only taking place on the 6th April, a month after my contract was suddenly and shockingly terminated with no warning.*
- *Taking evidence from witnesses. - This is being denied.*
- *Listening to both the alleged harasser and the complainant's version of events. - My evidence in full not submitted or being accepted.*
- *A timescale for resolving the problem. - Not given.*

25 *I need an urgent answer to this immediately as it is now putting the charity into serious peril and becoming a situation of public interest."*

149. Later on 12 April 2022, the HR consultant emailed the claimant agreeing to look at any further documentation which could be emailed to her by the claimant by midday on 13 April 2022 (JB1 / 583 – 584). The claimant responded by email on 12/4/22 (JB1 / 585). That response included:

5 *“I also note that you have just sent your notes tonight and being dyslexic coupled with being extremely ill, (which not once have you taken into consideration) then the timeline of 12 tomorrow is unrealistic and prejudicial. Therefore it is my belief that this cannot conclude and I am now pulling out of the process with you. I am disappointed that an HR representative does not*
10 *consider the equalities act [sic] within their proceedings.*

I will feed this back to the board of trustees and hopefully they will come back to you.”

150. On 19 April 22, the claimant sent an email to the respondent’s Board of Trustees. That email (JB1 / 588 – 589) included under a heading including
15 *‘Urgent’: “Meanwhile I wish to raise an urgent safeguarding issue regarding <A> who is a vulnerable adult with life limiting condition.”* That email set out the claimant’s concerns about Peter and Jackie Mills actions in speaking to that individual and his family members about the situation between the Mills and the Montgomeries.

20 151. On 20 April 2022, the claimant sent an email to *‘All Trustees of the Board’* stating *“As promised please find the document with all my outstanding matters that are of concern with questions. The level of urgency and a return communication on timelines is required immediately.”* (JB2 / 25 – 26). That
25 *‘Timeline for Grievance, Appeals and Termination’* did not include mention of any *‘whistleblowing complaint’* raised on 30 December 2021 (JB2 / 30). That *‘timeline’* had the following headings:

- 3rd March 2022 – Conclusion of appeal against Gavin Henderson’s handling of a grievance against the Mills
- 10th March 2022 – Termination of contract with no notice

- 13th March 2022 – Grievance against Gavin Hendeson with External HR Consultant
- 6th April 2022 – (section redacted)
- Full DSARS request submitted

5 152. Also on 20 April 2022, the claimant sent an email to David Silcox seeking to appeal the decision to dismiss her (JB1 /695 – 696). In that email, the claimant stated *“My hope is that resolution and reconciliation is sought instead of continuing to be avoided by the action of ignoring me. I have copied in the rest of the board of trustees to safeguard yourself and the church Dvid, due to the fact you have outlined many times that you can’t be directly involved or indeed answer any questions I have.”*

10 153. On 22 April 2022, the HR Consultant emailed Gavin Henderson with some more questions in respect of the claimant’s grievance (JB1 / 590). In summary, Gavin Henderson’s response at JB1 / 591 – 592 sets out his position on the misunderstandings which arose following his emergency sabbatical.

15 154. The HR Consultant’s Investigation report on the claimant’s grievance against Gavin Henderson was issued on 2 May 2022 (JB1 / 593 – 600). In that report is it noted as a ‘factor impacting the investigation’ that *“Throughout this investigation, I have been asked by Rachel (and her husband) to work beyond the scope of my remit and to include the wider issues with the church, revisiting the previous grievance, she continues to send material, I have agreed that I will review it all before completing this report. She seems unable to separate the grievance with her church leaders from her work situation. During our video meeting, she seemed muddled and evasive. A week later she contacted me wishing to change her responses and questioned the integrity of my notes, even though my notes were taken by a professional PA. She also stated that she hadn’t had time to put her material together. She refused the first date I offered, and then had a weeks’ notice of the new date, being ample time, especially as she wasn’t working at that time.”*

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155. In the 'Recommendations' section it stated (JB1 / 599):

5 *"The grievance is not well founded and it is not upheld. A number of the complaints are misconceived and there is some reason to conclude of some of them that they have not been raised in good faith. There is no sound basis to conclude that Gavin Henderson subjected Rachel to discrimination or harassment. Whilst there were matters raised that were factually correct, such as an e-mail not being responded to, this fell short of a breach of contract or other duty. There is no sound evidence of hostility on the part of Gavin towards Rachel."*

10 156. In the 'Informal action' section it stated (JB1 / 600):-

"Gavin Henderson should be alert that in meetings that are lengthy or potentially tense, it may be appropriate to regularly check the welfare of other attendees, allowing matters (such as unwelcome over-use of a person's name) to be picked up early.

15 *Job descriptions should be fuller and checked for ambiguities. I understand that the one used in this employment was taken from the US. I would advise that job descriptions are written for the specific role.*

20 *A clear policy for staff appraisals should be implemented and training provided for managers so they appreciate the importance of them and how to conduct them well."*

25 157. The claimant appealed the decision set out in that HR Consultant's report. On 13 May 2022 (JB1 / 601), David Silcox sent an email to the claimant arranging the Appeal to be conducted by the Board of Trustees by Zoom on 18 May 2022. As an 'Addendum' to that email, David Wilcox set out what were said to be 'relevant comments from a recent meeting of the Board of Trustees concerning some motions that were passed'. This addendum was in the following terms:

"At a Board meeting on the 8th May 2022, the Board unanimously agreed to accept the substance and findings of the draft investigation report.

The Board also made a request that the editorial errors in the report be corrected. The Board also accepted Mr B Robinson's comments relating to the compulsory anti-bullying and effective communication training as being incorrect. Mr G Henderson corroborated that this was the case. The Board acknowledged Mr B Robinson's other two comments on the report.

Mr Gavin Henderson stressed to the board that at no point during the interview with the HR expert had any of his comments meant to be a criticism of B Robinson and that he was confident that Mr Robinson would have taken his duties as Mrs Montgomery's line manager (during Mr G Henderson's sabbatical) seriously and responsibly.

The Board considered how to handle an appeal by Mrs Montgomery of the independent HR expert's investigation into her grievances against Mr G Henderson. A subsequent motion was unanimously agreed that any appeal would be heard by the Board.

The chairman informed the Board that he would recuse himself from the actual appeal itself."

158. Following emails between the claimant and David Silcox, on 25 May 2022 David Silcox informed the claimant (JB1 / 605) that the remit to the HR Consultant was to investigate the grievance brought by the claimant on 2 January 2022 against Gavin Henderson, said to be set out in the report as: "The grievance was that RM was subjected to unlawful harassment and discrimination on the part of GH. The specific incidents said to comprise harassment and discrimination were set out in RM's email of 2nd January 2022. These specific incidents are addressed in turn below...". David Silcox stated in his email to the claimant of 25 May 2022: "That is the brief agreed and there was no further instructions given."

159. A meeting in respect of that appeal took place on 25 May 2022. A meeting between Barry Robinson and the respondent's Board was arranged to be heard on 7 June 2022. Prior to the meeting with Barry Robinson, the Board made the decision to turn down the claimant's appeal. On 31 May 2022, a Board member sent an email to the Board Chairman (JB1 / 606). That email

included: *“..I think the reason that the board felt it should interview Barry is the need to ‘dot our i’s and cross our t’s’. When Rachel finds her appeal turned down, she will probably take it further and the board needs to be seen to have done everything it could to establish a right conclusion that will stand up to any scrutiny.”*

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160. In the notes of the Zoom meeting on 7 June 2022 between Barry Robinson and the respondent’s Board (JB1 / 607 – 613), the purpose of that meeting is stated to be *“... to discuss Rachel Montgomery’s appeal against an HR consultant’s report on RM’s claim of discrimination and harassment by Gavin Henderson. The meeting followed an appeal hearing with RM on the same subject on 25th May.”* The notes at (JB1 / 607 – 613) accurately summarise Barry Robinson’s position in respect of the matters raised by the claimant in her grievance of 2 January 2022. On a number of these matters, Barry Robinson was supportive of the claimant’s position.

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15 161. The claimant was informed of the Board’s decision on her appeal by email from the Chair of the Board Appel Panel of 14 June 2022 (JB1 / 624). Attached with that email was a document set out to be a summary of the Board Appeal Panel’s decision and dated 12 June 2022 (JB1 / 625 – 628). In summary, the decision was not to uphold the claimant’s appeal.

20 162. On 24 June 2022 an announcement was issued by Greg Williams (CGI President), David Silcox (UK Board Chair) and James Lambu (UK Board Vice-Chair). That was issued by email (JB1 / 637 – 639) and included:

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“Over the past several months, quite a number of accusatory and inflammatory emails as well as social media posts have been circulated through our church family.

Such emails have contained allegations of gaslighting, deceit and discrimination on the part of church employees, and they have contributed to a climate of suspicion and unrest. We think that now is the time to respond to this situation. In order to allay any fears and concerns.

Some of these allegations have come before the UK's Board of Trustees and its management. We don't typically make public announcements about these matters, but in this instance, however, due to the seriousness and spread of some of the allegations, the UK Board looked into the situation and has the following comments to make.

Allegations were received against Pete and Jackie Mill, and some of these allegations have been circulated widely amongst the membership without the approval or support of either the Church Board or its National Ministry Leader, Gavin Henderson. The National Ministry Leader led an internal investigation into these allegations and found the allegations to be false. Subsequently, a Board Committee confirmed the NML's findings. This is a quote from the committee's report "there is no sound basis to conclude that there has been malice or manipulative behaviours shown by Peter and Jackie Mill towards the appellant, whether intentional or unintentional." Please note that CGI's President and the UK Church Board value highly the ministry of Pete and Jackie Mill and commend them to you.

A grievance was also received by the Board against Gavin Henderson on the grounds of discrimination and harassment. Based on legal advice the Chair of the Board referred the matter to a reputable outside consultant to process it independently. The consultant's findings were subsequently reviewed and upheld by a panel of the Board following an appeal. This is a quotation from the consultant's report. "The grievance is not well founded and is not upheld. A number of the complaints are misconceived and there is some reason to conclude of some of them that they have not been raised in good faith." There was no evidence of harassment or discrimination found on the part of Gavin Henderson. Please note that GCI's President and the UK Board support and value Gavin Henderson's ministry in his challenging job and commend him and his wife <S> to you."

163. The claimant was distressed by the content of that letter and it being read out by the most senior person in the respondent's international church. That was to a 'full conference' with the respondent's ministers and leaders in the UK. That letter was again read out by Scottish Pastors to the local congregation.

That action caused the claimant to feel unable to continue or revive her voluntary role within the church or to attend any of the respondent's church services. It affected the claimant's social life, as most of her friends were associated with the respondent's church. The impact on the claimant's social connections was deeply distressing to her.

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164. The medical report by Dr Susanna Houston (JB1/706 – 709) reports on the significant level of anxiety suffered by the claimant as at the date of that report (28 June 2023). That report states *“This is regarding incidents of discrimination in terms of her dyslexia diagnosis that she felt she was experiencing at work around 16 months ago. This has been causing her a huge deal of anxiety and she tells me that the usual coping mechanisms she utilises for day to day life are crumbling as a result.”* The primary purpose of that report was to assess the claimant for ADHD. The report includes a report on the claimant's thoughts of harm related to this court case (at JB1 / 709).
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165. When working for the respondent, the claimant's net monthly pay was £1393.98, gross £1598.05.
- 15
166. The claimant contacted ACAS. The ACAS Early Conciliation Certificate ('ECC') was issued on 16 June and states the date of ACAS' notification as 6 May 2022 (JB1 / 1). The ET1 was submitted by the claimant on 11 July 2022 (JB1 / 2).
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Relevant Law

Protected Disclosure

167. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he has made a protected disclosure (ERA section 47B).
- 25
168. An employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure (ERA section 103A).

169. In order for a disclosure to be a protected disclosure, it must satisfy the provisions of Part IVA of the ERA. The meaning of 'protected disclosure' is with reference to the definition of 'qualifying disclosure' in section 43A and subsequent sections in that Part IVA. The claimant relies upon section 43B(1)(d), which provides that any disclosure which in the reasonable belief of the worker is made in the public interest and tends to show that the health and safety of any individual has been, is being or is likely to be endangered, is a qualifying disclosure. The disclosure must be made in accordance with one of six specified methods of disclosure set out in sections 43C to 43G.

10 **Time Bar**

EqA section 123

"(1) *Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*

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

(b) *such other period as the employment tribunal thinks just and equitable.....*

(2) *...*

(3) *For the purposes of this section—*

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

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

(4) *In the absence of evidence to the 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.”*

Equality Act 2010

5 170. Sex (gender) and disability are ‘protected characteristics’ under section 4 EqA.

171. Section 13 EqA sets out the provisions in respect of unlawful direct discrimination:

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

172. Section 15 EqA sets out the provisions in respect of unlawful discrimination arising from disability:

“(1) *A person (A) discriminates against a disabled person (B) if—*

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

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

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

173. Section 26 EqA sets out the provisions in respect of unlawful harassment:

“(1) *a person (A) harasses another (B) if -*

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

25 (b) *the conduct has the purpose or effect of –*
(i) *violating A's dignity, or*

(ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.....*

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

5 (a) *the perception of B;*

(b) *the other circumstances of the case;*

(c) *whether it is reasonable for the conduct to have that effect.*

174. Section 27 EqA sets out the provisions in respect of unlawful victimisation:

10 “(1) *A person (A) victimises another person (B) if A subjects B to a detriment because -*

i. A does a protected act, or

A believes that A has done or may do a protected act.

...

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

175. The principle of significant influence applies to these claims. This principle was indicated by Lord Nicholls in *Nagarajan -v- London Regional Transport* 1999 ICR 877, HL, and applied by the EAT in *Villalba -v- Merrill Lynch & Co. Inc. and ors* 2007 ICR 469, EAT and in *Garrett -v- Lidl Ltd* EAT 0541/08.

20 176. In *International Petroleum Ltd v Osipov* UKEAT/0058/17, (paragraphs 82-84) LJ Simler expressly equated the words “*on the ground that*” with the phrase “*by reason that*” in *Nagarajan v. London Regional Transport* 1999 ICR 877 and concluded: “*Under s.48(2) ERA 1996 where a claim under s.47B is made, “it is for the employer to show the ground on which the act or deliberate failure*

25 *to act was done. In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy Kuzel v. Roche Products Ltd*

[2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure.”

177. As set out in *Harrow LBC v Knight* [2003] IRLR 140 at para 16, a claim under s.47B has:

5 “...[to] show that the fact that the protected disclosure had been made, caused or influenced the employer to act (or not act) in the way complained of: merely to show that ‘but for’ the disclosure the act or omission would not have occurred is not enough..... [to] answer the question whether [the protected disclosure] formed part of the motivation (conscious or unconscious)” of the
10 *alleged statutory tortfeasor.”*

178. In determining the claims under the Equality Act 2010, we had regard to the guidance in the Equality and Human Rights Commissions Statutory Code of Practice on Employment (‘the EHRC’) (2011).

Equal Treatment Bench Book

15 179. We took into account the relevant guidance in the Equal Treatment Benchbook (‘ETBB’) (updated February 2021), in particular:

- Chapter 1 – Litigants in Person and Lay Representatives
- Chapter 4 – Mental Disability
- Appendix B – Disability Glossary – Dyslexia

20 **Submissions**

180. Directions on submissions were set out in the Note of Proceedings dated 22 November 2023. Both parties were then given extended periods to lodge their submissions. It was agreed that the claimant’s submissions, if she wished to make them, would be by way of her comment on the respondent’s
25 representative’s submissions. Those submissions were sent to the claimant and she provided her comments on them. The claimant was given the opportunity to give oral submissions. Both sets of submissions were extensive and, in some parts, emotive. The entire content of both sets of

submissions has been carefully considered and taken into account in making the decisions in this Judgment. Failure to mention any part of these submissions in this Judgment does not reflect their lack of consideration by this Tribunal. Some of what was contained in the submissions is not relevant to the issues for our determination. Of the relevant matters, some of what is contained in the submissions is not material to the issues for our determination. We appreciated that the claimant is not legally qualified and was overwhelmed at the submissions stage. Our focus was on the issues which were for our determination, applying the relevant law to our findings in fact. As explained at the Final Hearing, our decisions were not taken in respect of the morality of or general fairness of the respondent's actions. At all times we sought to further the overriding objective set out in Rule 2 of the Tribunal Rules. Only evidence before the Tribunal at the Final Hearing was taken into consideration. That included documents referred in the witness statements.

181. The submissions are addressed in the decision section below. The respondent relied on the following authorities:

- *Robinson v Royal Surrey County Hospital NHS Foundation Trust* UKEAT/0311/14 (30 July 2015, unreported);
- *South Western Ambulance Service NHS Foundation Trust v King* [2020] IRLR 168, EAT;
- *Caterham School Ltd v Rose* UKEAT/0149/19;
- *Amies v Inner London Education Authority* [1977] 2 ALL ER 100;
- *Amies & Parr v MSR Partners LLP* [2022] EWCA Civ 24;
- *Thompson v Ark Schools* [2019] ICR 292;
- *Robertson v Bexley Community Centre* [2003] EWCA Civ 576;
- *Wells Cathedral School Ltd v Souter* UKEAT/0836/20;
- *Rodgers v Bodfari (Transport) Ltd* 1973 325 NIRC;

- *Palmer and another v Southend-on-Sea Borough Council* [1984] ICR 372;
- *Bodha v Hampshire Area Health Authority* [1982] ICR 200 the EAT;
- *Porter v Bandridge Ltd* [1978] ICR 943;
- 5 • *Cygnnet Behavioural Health Ltd v Britton* [2022] EAT 108;
- *Cullinane v Balfour Beatty Engineering Services Ltd* [2011] UKEAT/0537/10;
- *Tiplady v City of Bradford Metropolitan District Council (Case no 1800213/2017)*
- 10 • *Williams v. Michelle Brown* UKEAT/0044/19;
- *Cavendish Munro Professional Risks Management v Geduld* [2010] IRLR 38;
- *Kilraine v London Borough of Wandsworth* [2018] IRLR 846;
- *Simpson v. Cantor Fitzgerald Europe* [2002] EWCA Civ 1601, [2021] IRLR 238;
- 15 • *Chesterton Global Ltd v Numohamed* [2017] EWCA Civ 979;
- *Dobbie v Paula Felton t/a Feltons Solicitors* [2021] IRLR 679;
- *Parkins v Sodexho* [2002] IRLR 109;
- *Babula v Waltham Forest College* [2007] IRLR 346;
- 20 • *Panayiotou v Kernaghan* [2014] IRLR 500;
- *Barton v Royal Borough of Greenwich* UKEAT/0041/14;
- *Fincham v HM Prison Service* [2002] UKEAT 0925/01;
- *Chief Constable of Police v Khan* [2001] UKHL 48;
- *Blackbay Ventures Ltd t/a Chemistree v Gahir* UKEAT/0449/12/JOJ

- *De Souza v Automobile Association* [1986] ICR 514, 522;
- *Ministry of Defence v Jeremiah* [1980] QB 87, 104B;
- *Smith v London Metropolitan University* [2001] IRLR 884;
- *Cavendish Munro Professional Risks Management v Geduld*
- 5 • *Kuzel v Roche Products Ltd* [2007] IRLR 309 EAT;
- *Kuzel v Roche Products Ltd* [2008] IRLR 530 CA;
- *Warby v Wanda Group* UKEAT 0434/11;
- *Grant v HM Land Registry* [2011] EWCA Civ 769;
- *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336;
- 10 • *Betsi Cadwaladr University Board v Hughes & Ors*,
UKEAT/0179/13/JOJ;
- *Ministry of Defence v Cannock* [1994] IRLR 509, [1994] ICR 918, EAT;
- *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ
1871
- 15 • *Vento v Chief Constable of West Yorkshire Police (No.2)* 2003 ICR
318, CA
- *Chapman v Simon* [1994] IRLR 24;
- *Ministry of Defence v Cannock* [1994] IRLR 509 at 524;
- *Thaine v LSE* [2010] ICR 1422;
- 20 • *BAE Systems (Operations) Ltd v Konczak* [2017] EWCA Civ 1188;
- *Al Jumard v Clwyd Leisure Ltd* [2008] IRLR 345;
- *D Watt (Shetland (Ltd)) v Reid* [2001] All ER (D) 94.

182. At the conclusion of the FH, parties' attention was drawn to the guidance from the EAT in *Habib v Dave Whelan Sports Ltd* [2023] EAT 113. The respondent's representative addressed that authority in his submissions. In her comments on the respondent's submissions, the claimant relied upon

5 *Majrowski v Guy's and St Thomas's NHS Trust* [2006] IRLR 695, HL.

Redactions

183. Some of the documents in the Joint Bundle have redacted sections. A Case Management Order ('CMO') was made by EJ Robison on 13 November 2023 in respect of a matter of legal privilege. At the respondent's insistence, we did

10 not have sight of the scope or terms of EJ Robison's decision on the matter of legal privilege. In this Tribunal's CMO of 13 November 2023, we ordered the respondent to produce a fully unredacted version of the page of the respondent's Board Meeting Minutes ('JB1 / 535'). The reasons for that were set out with that CMO. In terms of that CMO, that fully unredacted document

15 was provided to EJ Robison. As at the conclusion of the evidence being heard in this FH, no decision had been issued by EJ Robison re the extent of the unredacted documents which should be produced to this Tribunal, following the CMO of 13 November 2023. At that time, parties were advised that if, as a result of EJ Robison's decision, these documents were produced to this

20 Tribunal further unredacted, then that would be taken into account with regard to the evidence heard. EJ Robison's decision was that the document should remain redacted. This Tribunal has not had sight of the unredacted version of that document. The redacted document in question was the respondent's Board Meeting Minutes produced for this FH at (JB1/ 535), redacted at

25 paragraph 1679, as set out in the Findings in Fact above, with "..." reflecting the extent of the redaction.

184. Separately, it was agreed that some of the redactions in documents in the Joint Bundles are not in relation to the CMO issued by EJ Robison, but are appropriate redactions because they relate to individuals periphery to the

30 issues for our determination. It was agreed that although those sections were not covered by EJ Robison's Order, they would remain redacted. There are

other redactions in the documents before us, including to the claimant's ET1 paper apart, where the reason(s) for the redaction was not discussed.

Burden of Proof

185. As noted by Lord Hoffman in *Re B (Children)* [2008] UKHL 35 “*The fact either*
5 *happened or it did not. If the tribunal is left in doubt, the doubt is resolved by*
a rule that one party or the other carries the burden of proof.”
186. Section 136 EqA sets out the provisions in respect of the application of the burden of proof in determining claims under the EqA.
187. There is no reverse burden of proof in whistleblowing detriment cases (*Chief*
10 *Constable of Greater Manchester Police V Aston & Others*
UKEAT/0304/19/RN at [54]). However, if an employer fails to show an innocent ground or reason the tribunal may, and no doubt frequently will draw an adverse inference, but is not bound to do so (e.g. *London Borough of Harrow v Knight* [2003] IRLR140 at para 20 and *Kuzel v Roche Products*
15 *Limited* [2008] IRLR 530 para 40).
188. In *International Petroleum Ltd v Osipov* UKEAT/0058/17 at para 115 Simler P (as she then was) summarised the law as follows:
- “(a) *the burden of proof lies on a claimant to show that a ground or reason*
(that is more than trivial) for detrimental treatment to which he or she
20 *is subjected is a protected disclosure he or she made.*
- (b) *By virtue of s.48(2) ERA 1996, the employer (or other respondent)*
must be prepared to show why the detrimental treatment was done. If
they do not do so inferences may be drawn against them: see London
Borough of Harrow v Knight at paragraph 20.
- 25 (c) *However, as with inferences drawn in any discrimination case,*
inferences drawn by tribunals in protected disclosure cases must be
justified by the facts as found.”

Comments on Evidence

189. Much of the content of both submissions related to the credibility and / or reliability of witnesses' evidence. We have set out our reasoning in respect of matters of credibility and reliability only where they relate to an important factual issue of dispute, in the sense that it is one that resolves the dispute and was material to our process of reasoning. In the context of this decision, 'credibility' means that the person was speaking the truth, as they believe it to be. In this case, in our assessment, all of those who gave evidence spoke the truth as they believed it to be. In some instances, their versions of events varied. We required to make findings in fact in respect of those matters which were material to the issues we required to determine. In doing so, we considered the evidence objectively. We assessed the evidence, in order to come to our conclusion on what had occurred (i.e. to make our finding in fact). In the context of this decision, 'reliability' of a person's evidence means the objective accuracy of their evidence.

190. Generally, there are a number of factors taken into account when making findings in fact. These factors include:

- internal consistency (i.e. that the individual's version of events does not change throughout their evidence);
- consistency of oral evidence with contemporaneous documentary evidence;
- consistency of oral evidence with written case;
- consistency with evidence from other witnesses;
- openness in answering questions;
- any evasion or avoidance in answering questions;
- willingness to make appropriate concessions; and
- demeanour and character (both to be approached with caution).

191. Consistency is an important aspect in the assessment of evidence. In making our findings, we took into account the guidance in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 2560 (Comm). There, following comments that:

5 “.. *The effect of this [litigation] process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.*”

10 And that:

“*..such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.*”

It was concluded that:

15 “*In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its*

20 *length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that,*

25 *because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*”

192. It is well established that ‘contemporary documents are always of the utmost importance’ (*Onassis and Calogeropoulos v Vergottis* [1968] 2 Lloyd’s Rep 403, at para 431). Applying the above guidance, greater significance was

placed on the position in relevant contemporaneous documents, rather than versions of events presented from memory.

193. Throughout, we were mindful of the claimant's dyslexia. As recognised by the respondent in their submissions, in assessing witness credibility and reliability we had regard to the Equal Treatment Bench Book ('ETBB'), Presidential Guidance on vulnerable witnesses and the decision of the EAT in *Habib v Whellan Sports*. In the claimant's submissions she did not comment on the respondent's position that, unlike in *Habib*, this Tribunal '*maintained a diligent, proactive approach in making a series of adjustments throughout proceedings to ensure [the claimant] could engage with proceedings and achieve her best evidence.*' The claimant also made no comment on the respondent's representative's position that '*at the conclusion of proceedings, the claimant helpfully confirmed to the Tribunal that she had felt she had able to give her evidence.*' We took from this that the claimant agreed with the respondent's representative's submissions in that aspect. We had no indication to the contrary. The respondent stressed in their submissions on credibility that they did not advance any criticism of the claimant's evidence based upon her dyslexia.

194. The claimant's demeanour was not a significant factor in assessing her credibility or reliability. A number of adjustments were put in place to enable the claimant to give her best evidence. Where the claimant indicated that she was confused, care was taken to take appropriate steps, e.g. to rephrase questions and / or to take a break.

195. As set out in the Note Following Proceedings at what became a Case Management Preliminary Hearing ('CMPH') on 28 August 2023, it was discussed then that the claimant should provide any medical evidence she intended to rely on. The claimant was asked in her evidence what the effects of her dyslexia are her evidence was noted. We also took into account the claimant's disability impact statement (JB1 / 68 – 70), extracts from her medical records and supplementary notes (JB1 / 71 – 77) and medical reports at JB704 – 709.

196. There was miscommunication between the claimant and Gavin Henderson throughout the claimant's employment. That miscommunication was from the outset of the employment relationship. The miscommunication and lack of clarity extended to the misunderstanding on the number of hours the claimant was employed to work. The claimant's position in her evidence was that she believed that she was employed to work 15 hours a week. Gavin Henderson's position in his evidence was that he believed that the claimant was employed to work 30 hours a week. That is a fundamental misunderstanding on the basis of the employment relationship. That had an impact, as the amount of work that the claimant was expected to do within her employed role became an issue. As set out in the findings in fact, in her emails to Gavin Henderson she did mention her hours being part time. Gavin Henderson ought to have been aware of the extent of the claimant's working hours. The claimant's belief was based on the job description at JB1 / 181, which describes the role as being "P/T (minimum 15 hours per week), 1 year fixed term contract". The claimant's evidence was that although the role was for 15 hours a week, she worked much more than that. We noted that the Statement of Employment Particulars (@JB1 / 182) states the normal working hours are 100 per month, with an hourly rate of £15.50 per hour. The claimant's position in her ET1 claim form was that her gross monthly wage was £1550. That figure is consistent with the Statement of Employment Particulars (£15.50 x 100 hours). Monthly hours of 100 equates to 23 hours a week. In her ET1 the claimant's position is that she worked 21 hours a week, which would equate to a monthly gross wage of £1410.50. The gross monthly wage figure in the claimant's Schedule of Loss (JB1 / 688) is £1598.05. The fact that the claimant worked from home contributed to the lack of understanding about how many hours the claimant was expected to work, and did work.

197. There was a conflict in evidence over the length of time spent by the claimant in 'on boarding'. Gavin Henderson's evidence was that the claimant had spent 3 days at the Market Harborough headquarters. The claimant's evidence was that she had spent 'less than 24 hours', with an overnight stay. The claimant's evidence was that she had spent around two hours with Gavin Henderson as part of this on boarding. The claimant was able to give some

5 detail on what she did in that time. No detail was provided by the respondent
in respect of any timetable, programme or agenda for a 3 day on-boarding
session. Alexis Luckhoo's evidence was that the claimant spent '*maybe 2*
days' at this. Gavin Henderson did make some concessions under cross
examination by the claimant that his door had been closed for part of the time
and that much of the time had been spent in dealing with the emergency
situation which had arisen in respect of the Day to Day project. For these
reasons, we accepted the claimant's evidence in respect of the length and
content of the on boarding session. We accepted that there had been no
10 detailed discussion at that session as to what the claimant was required to do
in respect of developing the respondent's use of Churchsuite.

15 198. We considered that Gavin Henderson's lack of experience in management
was a factor in the lack of clarity on what he required from the role of
Communications Co-ordinator, and in the way in which he dealt with the
claimant's grievance and with the claimant thereafter. When asked by the
Tribunal, his evidence was that he had some experience outwith the
Respondent's organisation, when he worked as a supervisor in a shop, but
had no experience of dealing with grievances. He had had no training from
the respondent on management or dealing with internal issues such as
20 grievances.

25 199. Much of the issues in this case arose from assumptions and lack of
communication or miscommunication. There was an assumption from Gavin
Henderson that the claimant knew what was required from the role of
Communications Co-ordinator. There was an assumption from the claimant
that in the role of Communications Co-ordinator, she would be expected to
use the skills that she had used in her own business, and that she had been
employed for that purpose. There was an assumption that Barry Robinson
was aware of what was required in the role of Communications Co-ordinator,
while Gavin Henderson was on leave, despite there having been no proper
30 handover.

200. We carefully considered whether the miscommunications between the
claimant and Gavin Henderson were an effect of the claimant's dyslexia, or

were because of her dyslexia. The miscommunications arose from a lack of clarity on what the claimant was expected to do in the role as Communications Co-ordinator, and not for any unlawful reason. There were several factors which contributed to the lack of clarity in respect of what the claimant was required to do in her employed role. In particular:

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- The job description for the Communications Co-ordinator role (JB1 / 181) did not accurately reflect what Gavin Henderson required from that role.

- Gavin Henderson's lack of management expertise.

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- Gavin Henderson required to take an emergency sabbatical shortly after the claimant's employment began;

- There was no proper handover in respect of the duties the claimant should undertake while Gavin Henderson was on sabbatical;

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- On the start of the claimant's employment with the respondent, an emergency situation arose, which meant that the claimant was required to do a considerable amount of work in respect of the Day to Day project, which then became Word of Life, and which was not originally part of her job role.

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- The claimant believed that she had been employed in the role of Communications Co-ordinator because of her skills and experience in learning and development.

- There was no clear instructions to the claimant on what she was required to do in her role as Communications Co-ordinator.

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- There was no clear instructions to the claimant on what she was required to do in respect of the respondent's use of Churchsuite.

- Due to lack of handover, Barry Robinson did not have a clear understanding of what was required from the role of Communications Co-ordinator.

- More work was required on the Word of Life project, because of the emergency situation which had arisen at the start of the claimant's employment.
- Barry Robinson was happy with the work the claimant doing supporting him in the Word of Life project.

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201. The claimant was reluctant to make any concessions in her evidence before us. We considered whether this was related to her dyslexia. This was not an effect relied upon by the claimant as being a feature of her dyslexia. It is not listed in the ETBB 'Glossary of Impairments' as a possible effect of dyslexia. We were conscious that overload may cause inconsistencies and inaccuracies in evidence. There was no evidence before us that reluctance to make concessions could be or was linked to the claimant's dyslexia. An example of this reluctance to make concessions was in relation to the claimant's complaint that the respondent's decision to award a contract to another independent contractor was an incident of sex discrimination. That complaint was made even though that contract had been awarded to (another) female. On the face of it, a decision to award a contract to another female could not have been sex discrimination against the claimant. The claimant did not concede that until the stage of submissions.

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202. Similarly, the claimant made no concessions in respect of that contract having been awarded by the respondent 6 months before the claimant's employment with them began. The claimant's evidence was *"I wasn't allowed to tender for it"*. The claimant's evidence was that she had 'given the idea' to Peter Mill, and that he had *'pitched it to the NMT'*. She was upset that there had then been *'no advertising of the contract'*. The claimant's position was that *'only friends or friends or friends were put forward'*. When it was put to the claimant under cross examination that the female who had been awarded the contract had relevant experience, the claimant replied with information on her own experience. When asked if she accepted that the female who had been awarded the contract had 'more experience' the claimant's reply was *"if it's a matter of years, yes, if that's what you base it on."* She was reluctant to make the concession.

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203. Another example of the claimant's reluctance to make any concessions was when it was put to the claimant in cross examination that it was true that she had been employed under a fixed term contract. After a line of questioning in that regard, the claimant's response was *"That's what I ended up agreeing to"*. The claimant did not concede the fact that she had been employed under a fixed term contract.
204. Another example of the claimant's reluctance to concede was in respect of Gavin Henderson's email to her of 8 November 2021 (JB1 / 324-325) and the claimant's position that Gavin Henderson had refused to give her an appraisal. When it was put in cross examination that Gavin Henderson had not *'refused to give'* her an appraisal, the claimant's response was *'He just didn't action it, even though it was clear it was needed.'* When then asked *'Did Gavin Henderson ever refuse to give you an appraisal?'* her response was *'He didn't put that in writing. He just didn't do it.'* The claimant was then taken to the notes of the meeting on 6 April 2021, at JB1 / 566. The claimant's evidence was *'That statement is black and white and I wouldn't be that specific.'* When then asked to confirm if it was her position that Gavin Henderson had refused to give her an appraisal, the claimant's response was *'That's my assessment of the situation.'* There was no evidence to support the claimant's position that Gavin Henderson had refused to give her an appraisal.
205. The claimant's position that Gavin Henderson had refused to give her an appraisal was somewhat inconsistent with a later part of the claimant's evidence under cross examination: when taken to the email from Gavin Henderson to the claimant of 17 November 2021 (JB1 / 336) and the meeting between the claimant and Gavin Henderson on 18 November 2021, the claimant's evidence was that this *'felt like a performance review'*. When it was put to the claimant that this was not an appraisal, her response was *'It came from an email requesting an appraisal. It wasn't an invitation to an appraisal but I thought that was what we were going to discuss. We were going through my performance.'* When this disparity in her evidence was put to the claimant in cross examination, her response was *'I think that Gavin Henderson is now*

saying that this wasn't an appraisal. I went into that meeting thinking I was going into an appraisal because I'd asked for one. It turned out to be a performance review.' There was no agenda for the meeting on 18 November 2021. The claimant's evidence was that it was her 'assumption' that this meeting was an appraisal. Much of the miscommunication between the claimant and Gavin Henderson was because of assumptions made by both individuals. This is in line with the statement in Alexis Luckhoo's notes of the meeting on 18 November that '*Both agreed that there had been misunderstandings along the way.*' (JB1 / 354).

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10 206. Separately from the reluctance to make concessions, there were some inconsistencies in the claimant's case and we carefully considered whether these were linked to her dyslexia. We took into account the claimant's position that she was '*always better orally*' than in writing. There was a considerable amount of contemporaneous correspondence from the claimant to individuals within the respondent. We considered the position in the contemporaneous documentary evidence in respect of its consistency with the claimant's position at the FH. There were some significant inconsistencies between the position presented by the claimant in her emails at the time of the alleged discrimination, and her position in oral evidence. In particular, the claimant's email correspondence to Gavin Henderson often had a conciliatory and deferential tone. The claimant accepted that. The claimant's explanation was that the hierarchical culture within the respondent's organisation encouraged deference to those '*above*' in the church structure. Barry Robinson supported that position. The claimant did not rely on her dyslexia as being a reason for that deference or conciliatory tone. Her evidence was that '*you're deferential until you're not.*' She referred to there being '*several examples of that*' within the documentary evidence relied upon. We accepted that explanation to some extent, but also accepted Gavin Henderson's evidence that he had to take the emails '*at face value*'. On the face of the email communications, the first indication of an issue is Andrew Montgomery's email to Gavin Henderson
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30 of 19 November 2021 (JB1 / 367- 368), where Andrew Montgomery copies in the claimant and comments on the grievance not being '*limited to gaslighting*'. This was in response to receipt of Gavin Henderson's Findings Report on 19

November 2021. The claimant was distressed at the position in that report, as shown in her email to Gavin Henderson @ JB1/373. The email of 21 November 2021 raising complaint of Gavin Henderson's alleged vexatious behaviour is from Andrew Montgomery (JB1 / 376 – 377). Until then, the contemporaneous documentary evidence shows no indication of hostility or tension in the working relationship between the claimant and Gavin Henderson. The email communications between them after the meeting in July 2021, showed that at that time the claimant was able to ask Gavin Henderson for clarity where she was unsure. The claimant's position in her evidence was that after that July meeting she unable to approach Gavin Henderson to seek any clarity. That position is not supported by the claimant's email communications with Gavin Henderson, as set out in the Findings in Fact.

207. We considered the meeting in July 2021 between the claimant and Gavin Henderson to be significant. That meeting was significant because that was the first time that Gavin Henderson sought to discuss with the claimant her performance in the role of Communications co-ordinator, against the job role requirements. The photographs of the flip charts from that meeting were significant in respect of that finding. What the claimant had been doing in her role as Communications Co-ordinator had transpired into something Gavin Henderson had not intended it to be, because the factors identified above in respect of the lack of clarity on what the claimant was required to do in her employed role. We accepted that at that July 2021 meeting, Gavin Henderson's intention was to clarify to the claimant what he expected from the role of Communications Co-ordinator. We accepted that, despite his intentions, Gavin Henderson did not clearly explain to the claimant what the extent of the role of Communications Co-ordinator was. We considered that to be as a result of his lack of management expertise. That meeting in July 2021 was effectively a reset. It was the first time that Gavin Henderson had communicated in any detail to the claimant what it was he required from the role of Communications Co-ordinator. The claimant's position in her evidence was that she believed that from July 21 Gavin Henderson was seeking to 'deconstruct' her role. In July 2021, Gavin Henderson was seeking to focus

the duties of the role back to what had been originally intended. We accepted the claimant's evidence that what was being set out to her in the July meeting in respect of the scope of the Communications Co-Ordinator role was not what she had understood the scope of the role to be. Even on the claimant's own
5 evidence, it was clear to the claimant from July 2021 that Gavin Henderson required a different focus from the claimant in her role of Communications Co-ordinator. That is significant because it shows that as at July 2021 (before any grievance was raised) Gavin Henderson was taking steps to focus the claimant to certain duties, and that the claimant was aware of that. That
10 position is supported by the photographs of the flip charts used at the meeting.

208. The claimant's evidence under cross examination was that at the July meeting with Gavin Henderson, the writing on the flip charts in respect of *'Future'* *'didn't make sense to me at the time.'* Her evidence was *'There were no direct instructions within the meeting. I would just sit and listen. He doesn't like questions being asked. It was all buzz phrases.'* The claimant's explanation for not having queried this was *"I'm supposed to sit and listen – that's the inference I get when I try to engage. It was him talking at me...very little two way. That was the style of the meeting.' That position was somewhat supported by Shirley McLean's evidence that Gavin Henderson 'didn't like to be challenged."* When it was put to Gavin Henderson that he was regarded by others as not liking to be challenged, and so was not challenged, his response was *'not that I'm aware'*. We found him to be credible in that response, and noted that that was not inconsistent with the evidence that he did not like to be challenged, and so was not challenged. However, the email
15 correspondence between the claimant and Gavin Henderson after that July 21 meeting was significant. Those emails are not consistent with the claimant's position in her evidence that she found that July meeting to be hostile and intimidating. We attached significant weight to the terms of that
20 email correspondence.

209. Under cross examination, it was put to the claimant that an important part of the role of Communications Co-ordinator was to develop the respondent's use of Churchsuite and to encourage use of that system. We accepted the
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claimant's evidence that she understood Churchsuite to be "a CRM tool – customer relations" and "just a database – an interactive database". We accepted Gavin Henderson's evidence that Churchsuite had additional capabilities. Aside from Gavin Henderson's evidence, there was no evidence to support the respondent's position that it had been explained to the claimant that Churchsuite was more than a database and that the claimant had been given clear instructions to develop the respondent's use of Churchsuite. There was no contemporaneous documentary evidence to support that position. The contemporaneous email correspondence, including between the claimant and Alexis Luckhoo, supported the claimant's position that she had not understood that she was required to attend Churchsuite training, or that she was required to develop the respondent's use of what that system could offer. The claimant's evidence was that she "didn't have time to (to attend Churchsuite training) with all the other things I had to do." The claimant did concede that she did use Churchsuite to some extent in that she required to log in and access data using that application. The claimant's evidence under cross examination was that in July 2021 the discussion about Churchsuite had been around Gavin Henderson's "idea of sending out birthday cards." We accepted the claimant's evidence that she believed that there was discussion in that July 21 meeting about Churchsuite because she had raised that a Pastor had come to her with a 'data issue' re "connect cards" (i.e. a query re holding congregation members' addresses). Her evidence was "I was aware of the conversation [about Churchsuite] in July but I don't think that was about training. October was the first time training was mentioned." We accepted the claimant's evidence that she believed that had been 'abandoned' after she asked about expenses involved in attending the training. The flip charts from the July 21 meeting (JB1 667 – 672) are not consistent with Gavin Henderson's evidence that it was made clear to the claimant at that July meeting that she required to develop the church's use of Churchsuite. The flip charts from the meeting and the emails referring to that meeting do not support there having been that discussion. There was no follow up email communication to the claimant after the July meeting stating the importance of the use of Churchsuite or setting out any requirement for her to use that

database. Gavin Henderson's response to being asked why he did not follow up the meeting in writing was to say "*I wish I had*".

210. We accepted the claimant's evidence under cross examination that her meeting with Gavin Henderson on 19 July 2021 was the first time that she had been told that her role was to help others to build a sustaining community. The claimant's evidence was that that was "*...the first I heard of it.*" Although we accepted Gavin Henderson's position that at the July meeting he was seeking to '*refocus*' the Communications Co-ordinator role back to what had been originally envisaged, what was required from the role remained unclear after that meeting. The fact that at that meeting Gavin Henderson asked the claimant to conduct a '*5 Voices*' assessment with a new Pastor, added to the confusion and supported the claimant's position that in that July meeting she was not given clear instructions as to the parameters of the Communication Co-ordinator role. Although an outline had been given by Gavin Henderson, after that July meeting there continued to be a lack of clarity about the extent of the claimant's duties as Communications Coordinator. The position in Gavin Henderson's witness statement (para 47) that his "*aim for the Communications Co-ordinator role was that they would be a catalyst for change in the projects they were involved in*" is not consistent with the role being purely administrative.

211. The claimant did not make any concession with regard to her not having followed up the July meeting to seek any clarity on the approach required from Gavin Henderson. The claimant's response to being asked why she did not follow up the July meeting with any queries in writing was "*I'm dyslexic. I'm always better orally.*" And that it was "*a struggle to put in writing*". That position is inconsistent with the emails written by the claimant to Gavin Henderson in July and August 2021. We accepted Gavin Henderson's evidence that he took the meaning of the claimant's written communications to him on the face of what was stated. We accepted that on the face of what was written by the claimant in her emails of July and August 2021 emails it was reasonable for Gavin Henderson to have taken the claimant to be agreeing with the approach he had outlined in the July meeting. It was significant that although in July

2021 Gavin Henderson was taking steps which the claimant later interpreted as *'deconstructing'* her role, that perception is not consistent with the position in the claimant's emails to Gavin Henderson at that time. We did not accept that the content of the claimant's emails to Gavin Henderson at that time can be entirely explained by the claimant adopting a deferential attitude.

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212. We had to determine whether the claimant had made it clear in her meetings with Gavin Henderson that she did not understand instructions or required some adjustments because of her dyslexia. We did not find that she did so. It was significant that on a number of occasions, as set out in the findings in fact, Gavin Henderson asked the claimant to let him know if she needed any support. The contemporaneous email correspondence show that the claimant expressed thanks to Gavin Henderson on a number of occasions. We accepted that on the face of the contemporaneous documentary evidence Gavin Henderson did not understand the claimant to be seeking any adjustments because of her dyslexia at or after the July 2021 meeting.

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213. There were some internal inconsistencies in the claimant's position in the documentary evidence. The position set out by the claimant under the heading *'interview process'* in her grounds of appeal of January 2022 (at JB1/507) is not consistent with the email correspondence from the claimant and from Andrew Montgomery around the time of Gavin Henderson's visit to their home on 8 October 2021. The claimant's position at JB/ 507 is that after that meeting *'both Andrew and I were left distraught at not being heard'*. That is not consistent with the correspondence sent to Gavin Henderson after that meeting, in particular the claimant's text message to Gavin Henderson of 9 October 22 (JB1 / 310) and Andrew Montgomery's email to Gavin Henderson of 15 October 21 (JB1 / 318 – 319). On the face of what was written in those communications, we did not accept that the inconsistency was because the claimant and Andrew Montgomery were being deferential.

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214. It was very significant that the email correspondence between the claimant and Gavin Henderson until 19 November 2021 showed no animosity or indication of a strained relationship. On the face of those emails, there was a good relationship between the claimant and Gavin Henderson until November

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2021. That position is supported by Gavin Henderson's actions in arranging for the claimant funding of counselling, a loan and use of a cash float. The face to face contact was limited because of the COVID lockdown measures, because the claimant worked from home and because of Gavin Henderson being busy on other matters for the respondent. The email correspondence evidences Gavin Henderson offering support to the claimant and giving feedback to her on her work. The correspondence also shows that the claimant was able to seek clarity from Gavin Henderson and expressed her gratitude to him on a number of occasions. The claimant's evidence was that after November 2021 she was no longer deferential in her written communications with Gavin Henderson. That evidence was consistent with Gavin Henderson's evidence that there was a change in the claimant's tone towards him at that time. The claimant accepted that she sometime has a very assertive tone. Her evidence was *"I probably over-assert myself. In situations where I feel threatened and no-one is listening. That brings a certain fear and anxiety."* Her evidence under cross was that the respondent had *"a culture of fear and in that background I can over assert myself. I find it very difficult when putting things down in writing."* There was no evidence of her having informed the respondent during her employment with them that she had a difficulty with tone or otherwise when putting things down in writing. On the face of it, the claimant set out her issues to them in writing on a number of occasions.

215. The claimant's position in her evidence was that on 25 October 2021, Gavin Henderson told the claimant that her contract would be extended for 6 months and that he told her she had *"done a fantastic job"* and he had *"no complaints"*. The claimant's evidence was that she understood from that that her contract would be further extended. That position is not consistent with the claimant's email to Gavin Henderson of 5 November (JB1 / 323) where she states *"...it is deeply worrying that since I have done that...(raise her grievance in September 2023) my contract has only been renewed for 6 months alongside a proposal to remove me from a project that is working."* We concluded from that email and from Gavin Henderson's reply to the claimant' of JB1 / 324 –

325, that on 25 October 2021 Gavin Henderson communicated to the claimant that her contract would only be extended for 6 months.

216. We considered the email from Gavin Henderson to the claimant sent on 8 November 2021 to be significant (JB1 / 324 -325). The tone of this is conciliatory. Significantly, Gavin Henderson sets out his position in respect of the re-focus of the role. That position is in line with his position on what was intended to be the scope of the Communications Co-ordinator role. The email from Gavin Henderson to the claimant on 8 November 2021 (JB1 / 324-325) was also significant because it supported the respondent's position that there was a change in the respondent's income levels, as a result of liturgical changes, which was a significant factor in the claimant's fixed term contract not being renewed or further extended. That email is also significant because it confirms that the claimant had been told by that time that her contract would be extended for 6 months and was not intended to be permanent. With regard to the grievance issues, in that email Gavin Henderson asks the claimant to contact him if there is any change to her earlier position that there was no issue with team meetings. It was the evidence of the claimant that she had only been content with the position on team meetings as an *"interim measure"*. The claimant's evidence was that there was *"a very specific reason why team meetings weren't an issue.... team meetings weren't a problem as the Mills were on an extended holiday."* That position in her evidence is consistent with the claimant's response to Gavin Henderson on 9 November 2021. That email (JB1 / 326 – 328) is assertive in tone. It does not however indicate difficulties in the working relationship between the claimant and Gavin Henderson. She begins that she is *"...more than happy to chat and talk through things..."*. In that email, the claimant clearly sets out that she is not happy that her contract is only being renewed for 6 months. The tone of that email does not indicate deference. Her position in respect of that email was *"It may be clumsily written – I am dyslexic – putting things in writing is difficult and how it can come across can clearly be an issue. I was looking for a verbal conversation after that."*

217. It was the claimant's evidence that 18 November 2021 was the first time she was notified that there were any issues with her performance. We did not accept that position. There was discussion in respect of her performance with regard to the job role requirements in July 2021. In her evidence the claimant did not accept that she was told on 18 November that her contract would not be renewed. That position is not consistent with the contemporaneous documentary evidence, which shows that by 5 November (JB1 / 323) the claimant was aware that her contract was only going to be extended for 6 months. The claimant's evidence was that at that meeting on 18 November 2021 there was a "*clear focus on my performance*". The claimant's position was that she ought to have been advised of a right to be accompanied at that meeting because "*I would expect if my performance was going to be discussed in such a way, with the intention to tell me that after just starting a 6 months extension that I would be terminated after 6 months*". The contemporaneous documentary evidence shows that the claimant was informed that her contract would only be extended by 6 months prior to that 18 November 2021 meeting. We accepted the respondent's position that the claimant was not asserting a statutory right to be accompanied at the meeting on 18 November 2021. The claimant did not prove that she had done so. The claimant's evidence on this under cross was "*I don't know about statutory rights, I just know about best practice*" and "*he knows I'm dyslexic.*"

218. On the evidence, the change in the relationship between the claimant and Gavin Henderson came on receipt of Gavin Henderson's Findings Report. That was sent to the claimant and Andrew Montgomery on 19 November 2021. The contemporaneous documentary evidence did not support the claimant's evidence on her having a difficult relationship with Gavin Henderson from the time of her on boarding and on his return from sabbatical.

219. The notes of the meeting on 30 November 2021 were significant. Both sets of notes (JB1 / 392 – 997 and JB1 / 400 – 411) record discussions consistent with the claimant having been told that her employment would likely be terminated after the 6 month extension. Both record Gavin Henderson's expectations on what should be done in that 6 month period. Both record

Gavin Henderson offering support / adjustments in respect of the claimant's dyslexia. It was significant that the claimant had followed that meeting up with an email to Alexis Luckoo (JB1 / 414) noting the parts she considered had been missed in her notes. The claimant in that email does not raise any issue with the part of Alexis Luckoo's notes recording the claimant's understanding that her contract with the respondent would end after the six month extension (unless another role was found).

220. Alexis Luckoo's evidence was that that meeting was tense. She confirmed that Gavin Henderson had called the claimant by her first name and that the claimant found that to be inappropriate. There was no evidence that the reason for him doing so was because the claimant is dyslexic.

221. It was clear that the claimant has been deeply affected by her experience with the respondent. It was however considered to be significant that the claimant did not make any concession that some of that distress had been caused by matters outwith the employment relationship. Despite a medical report indicating otherwise, the claimant maintained under cross examination that all of her distress was caused by the respondent's actions towards her during the course of her employment. That position was not supported by the evidence, even in the claimant's witness statement. It was clear that a great deal of the claimant's distress was in respect of other matters, including the respondent's actions in disfellowshipping Andrew Montgomery.

222. Under cross examination, it was put to the claimant that there were '*relationship issues*' between the claimant and her husband ('the Montgomeries') and Peter and Jackie Mill ('the Mills'). Although as part of the investigation, it was considered by the respondent to be significant that the congregation members didn't want to go '*on record*', it was not disputed that concerns about the Mills had been raised to the Montgomeries by members of the Edinburgh congregation during the COVID lockdowns. Aside from challenging the claimant under cross examination, there was no evidence presented by the respondent to rebut the claimant's evidence that it was the fact that she and Andrew Montgomery had raised these concerns with the Mills that "*brought up severe issues*". We did not hear evidence from Peter

Mill or from Jackie Mill. It was suggested to the claimant under cross examination that the issues had been ongoing since an incident at the respondent's youth camp in 2019. There was some evidence of this, but the evidence of Shirley McLean, Ian Woodley, Barry Robinson and Gavin Henderson was that they were not aware of there being any issue between the Montgomeries and the Mills until around January 2021. For those reasons, we accepted the claimant's evidence that "*there had been a couple of issues, yes, but we had moved on and it didn't impact the relationship.*" That position was consistent with the tone of the email communications between the claimant and Peter Mill, until September 2021, and with the position of James Henderson in his email.

223. It was clear that the claimant and Andrew Montgomery perceived that Peter Mill and Jackie Mill were being viewed upon by the respondent more favourably than they were. Part of the claimant's perception that the Mills were viewed more favourably than her and her husband was because she believed that the culture of the respondent remained very hierarchical in nature, and because of Peter Mill's position within the organisation. Another part in the claimant's perception of this was because in February 2021 (JB2 / 15-16) following Ian Woodly having approached Barry Robinson, James Henderson had contacted Peter and Jackie Mill by email, and had not personally contacted either the claimant or Andrew Montgomery. This was very significant and was the root of much of the claimant's concerns. The claimant knew of this contact from 9 February 2021, (JB2 / 15). No explanation was offered to the claimant from the respondent as to why it was considered to be appropriate for James Henderson to then contact Peter and Jackie Mill by email, and to not personally contact either the claimant or Andrew Montgomery. The claimant sought to rely on this as sex discrimination. The claimant also sought to rely on sex discrimination in respect of Gavin Henderson's Findings Report having been sent to Andrew Montgomerie as well as herself, although the grievance had included work issues between her and Peter Mills.

224. We did not hear evidence from James Henderson. Aside from what is set out in James Henderson's email of 8 February 2021, there was no evidence as to why James Henderson did not consider Barry Robinson to be the appropriate facilitator, given his then role as Ombudsman. There was no evidence to explain why the position of Ombudsman was removed from the respondent's structure in 2021. The decision to not have Barry Robinson as facilitator in seeking to resolve issues between the Mills and the Montgomeries was significant to the claimant, particularly when the role of Ombudsman was then removed from the organisation structure. The claimant found this to be suspicious. Shirley McLean's evidence supported the claimant's view. We saw some strength in Shirley McLean's position in her evidence that *"precisely when we needed an Ombudsman, that role was taken away"*.

225. It was the respondent's representative's position that on a number of occasions during the claimant's cross examination she had given evidence which was not in her witness statement. We took into account that the claimant is unrepresented and has no experience of preparing witness statements. The respondent's witness statements were prepared with the assistance of the respondent's skilled legal representatives. Under cross examination Gavin Henderson raised a number of matters which were not included in his witness statement. There were also some inconsistencies in Gavin Henderson's evidence, as set out below.

226. In his evidence Gavin Henderson relied on some '5 Voices' material relating to types of organisations. His evidence was that the respondent was now a *'high challenge / high support'* organisation. He accepted that in the past the respondent had been *'more in the bottom left corner'* i.e. a 'low challenge / low support' organisation. His evidence on the respondent's past culture was consistent with the evidence of Shirley McLean and Barry Robinson, both of whom we found to be credible witnesses. We accepted Shirley McLean's evidence that Gavin Henderson had done much to change the culture of the respondent, but that there remained issues in respect of hierarchical deference. The respondent's dealings with the claimant did not support Gavin

Henderson's position that there is now a 'high challenge / high support' culture within the organisation. Gavin Henderson accepted that there were no steps put in place to support the claimant after she had raised challenges in her grievance.

5 227. We accepted the claimant's evidence that she *'expected to be allowed to create (the SEP / youth strategy) in a manner fitting to the organisation.'* There was no evidence of clear instructions from the outset on what the claimant was required to do or produce in respect of the SEP youth camp. The claimant built a community of practice with identified young people and
10 worked with them initially using '5 Voices' material. That material (said to be similar to a 'Myers Briggs' personality type assessment') is used by the respondent. The claimant was asked to do this assessment on a new Pastor. The claimant used 5 Voices material with the youth community of practice so as to identify which individual would be most suited to which task in respect
15 of developing the youth strategy. She believed that it was important that the young people had *'input and ownership'* and that she was *'facilitating and drawing ideas to create strategy'*. The claimant believed that it was appropriate to use 5 Voices because that was the *'direction of travel from the head down, in the US.'* When put to the claimant under cross examination
20 that that was *'far removed'* from what she was expected to do, the claimant's evidence was that she didn't believe so, and that she would *'expect to have got feedback from Barry Robinson'* if she was *'going wrong'*. We accepted that, although that had to be in the context of there being no clear handover from Gavin Henderson to Barry Robinson in respect of the claimant's duties
25 and what she was required to do. That was because of the unplanned nature of Gavin Henderson's sabbatical. The claimant's position in her evidence was also consistent with Gavin Henderson's response to the claimant's email following the meeting in February 2021 (JB1 / 233-234) and the claimant's email to Gavin Henderson on 6 July 2021 in respect of a 5 Voices assessment
30 for the new Pastor (JB1 / 266). That email is significant with regard to the claimant's claim for expenses for GIANT. Again there was a lack of clear communication between Gavin Henderson and the claimant. The claimant had proceeded on the basis that to use the Giant / 5 Voices tools with the new

Pastor, she would require to use her own access rights to the GIANT platform. Gavin Henderson's position in his evidence was that the claimant ought to have used the material which had been purchased by the respondent. Other than Gavin Henderson's oral evidence, there was no other evidence to support his position. There was no evidence of any instruction to the claimant that she should use what had been purchased by the respondent. The claimant assumed that she should use her own access rights, and was not told otherwise. It was on that basis that the claimant thought it appropriate that the respondent meet the cost of her GIANT access. The position put to the claimant in cross examination that Gavin Henderson was an Accredited Instructor with GIANT was not consistent with Gavin Henderson's own evidence. We accepted the claimant's evidence that she *'didn't know he was accredited'*, which was in line with Gavin Henderson's own evidence. The reason the claim for the GIANT expenses was not successful was because the claimant did not make a claim through the respondent's Expenses Policy for these expenses, although they are part of the claim before us.

228. Under cross examination, the respondent sought to challenge the claimant's HR experience and knowledge of employment law, with reference to the claimant's CV. Given the claimant's role in her own business, we did not accept the claimant's evidence that she had *'no legal knowledge'*. That position was another example of the claimant's unwillingness to make concessions and was inconsistent with the position in the claimant's email to Gavin Henderson on 9 November 2021 (JB1 / 327 -328) , where she stated *'Given my extensive experience in drawing up contracts I find the reason to be questionable.'* and *'Dignity at work is a law that came in in 2001 and I know I had to implement it when I employed people'*. The claimant's evidence when that was put to her under cross examination was *"I didn't know about Dignity at Work, but Andrew (Montgomery) did. I had implemented it without knowing. Because I'm dyslexic, I think things come naturally to me in respect of how to treat staff. Andrew has pointed out to me. That this is dignity at work"* and *"Dignity at work is something Andrew let me know about."* When the claimant was pressed under cross examination to concede that she knew about 'Dignity at Work' at the time of writing the email on 9 November 2021, her

response was *"I asked my husband. Did I have knowledge to the law back then – no. I was asking my husband to advise me on how I was being treated at work."* When further pressed, the claimant's evidence was *"On writing the email I knew Dignity at Work was a particular law"*, then *"I didn't view myself as having knowledge. It was an extremely long time ago. It's a weighty subject.... I'll have picked up some aspects."* And *"I wasn't qualified."* We accepted that the claimant did not have specialist knowledge of employment law. We accepted the claimant's evidence that in a former role in banking, the claimant had had to leave the role because her short term working memory made it difficult for her to remember credit card details to input digitally without writing them down, and that the claimant had not requested any reasonable adjustments be put in place in respect of that role. We accepted Gavin Henderson's position that the claimant did not raise with him her dyslexia as being an issue until November 2021. It was significant that there was no documentary evidence from the claimant prior to then asking for support in respect of her dyslexia, and that in his emails to the claimant Gavin Henderson had asked her to let him know if she needed any support.

229. Under cross examination, the respondent's representative sought to challenge the claimant's experience and ability to process data, with regard to her CV. We did not consider that to be significant, given our conclusions on the lack of clarity about the duties of the job role as Communications Co-ordinator and the miscommunications between Gavin Henderson and the claimant in respect of what was required from that role.

230. The claimant's evidence in respect of seeking adjustments at meetings with Gavin Henderson was *"I said I'm dyslexic and asked him to repeat things."* And *"I asked for different explanations or asked him to look over or feedback"*. The claimant's position was that as she had told him that she is dyslexic, Gavin Henderson ought to have had a conversation with her asking what she required because of her dyslexia. The claimant was clear in her evidence that there had been such a conversation with Barry Robinson and that she was not asserting that there had been any failure to make reasonable adjustments in the period when Gavin Henderson was on sabbatical. Her evidence was *"I*

5 *didn't need help as he (Barry Robinson) was implementing everything I needed. While Gavin Henderson was off there was no failure to make adjustments. I described where the issues were. I checked instructions verbally, he would proof read, he was always on the end of the phone so I could check things. I verified with him what aspects of dyslexia I suffered from. He continually asked where I needed help or support."* The claimant then confirmed her position that there were *"no unlawful actions in that period"*. Separately, the claimant's evidence was *"I don't believe we discussed that term (reasonable adjustments) but he (Barry Robinson) did point out why he was doing things with me."* Given the terms of the contemporaneous email correspondence between the claimant and Gavin Henderson from February to November 2021, as set out in the findings in fact, we found that there was communication between the claimant and Gavin Henderson in respect of her dyslexia at that time. As set out in the findings in fact, Gavin Henderson offered the claimant additional support in respect of her dyslexia. On the evidence, the claimant's dyslexia was not causing her significant issues at work for the respondent. The claimant did not suffer direct discrimination on the grounds of her dyslexia. We had regard to what was relied upon by the claimant as this discrimination, as set out at Table D in Appendix A. The claimant did not prove primary facts in respect of what is set out there.

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231. Barry Robinson's evidence on what he understood the claimant's duties as Communications Co-ordinator to be was not consistent with Gavin Henderson's evidence on that role's requirements. The lack of handover of duties to Barry Robinson, due to the emergency nature of Gavin Henderson's sabbatical, impacted on Barry Robinson's understanding of what was expected by the claimant in the role of Communications Co-ordinator and was very significant. During the time when Gavin Henderson was on sabbatical the claimant proceeded as she thought was best for the respondent. That approach was supported by Barry Robinson in that period. Barry Robinson was unaware of Gavin Henderson's wishes in respect of what was required in the Communications Co-ordinator role. That misunderstanding of what was expected from the role was very significant.

232. We carefully considered the evidence to make our findings on the reason for the claimant's dismissal. The timings were very significant. The contemporaneous documentary evidence of discussions at the meeting with the claimant on both 18 and 30 November 2021 are consistent with the decision that the claimant's contract would be ended after 6 months was, by that time, already made. Although not explicitly stated in the contemporaneous documentary evidence, on balance, we found that implicit to the decision that the claimant's contract would be extended for 6 months was the decision that the claimant's employment with the respondent would end on the expiration of that 6 month extension. Barry Robinson's evidence on the discussions at the meeting between him and Gavin Henderson on 14 September 2021 was significant to that finding. Having made our findings in fact and our decisions on qualifying disclosures (as set out in the 'Decision' section below), it was very significant that we found that the decision to end the claimant's employment was made before she did a protected act (the first being on 8 December 2021) or made a protected disclosure (the first qualifying disclosure being on 23 December 2021). As we found that the decision to dismiss the claimant had been made prior to the claimant doing a protected act or making a protected disclosure, the reason for that decision could then not have been because she had done those things. The grievance raised by the claimant in September 2021 was not a protected act in terms of the Equality Act 2010 and was not relied on by the claimant as being so. The grievance raised by the claimant in September 2021 was not a qualifying disclosure under the Employment Rights Act and was not relied upon as being so.

233. The email from the solicitor to Gavin Henderson of 12 November 2021 (at JB1 /329 – 330) (which the respondent had waived confidentiality on) was significant in relation to when the decision to dismiss the claimant had been taken. We agreed with the claimant's position that that email showed that the decision not to renew the claimant's contract had already been made at that time. The respondent relied on that email making no mention of any other reason but the completion of the job, and the focus being on ensuring that the work was completed under the contract. We did not accept that email as

identifying the reason(s) for the claimant's dismissal. It was significant in indicating that as at that time, the decision to dismiss the claim had been made. That email also made mention of a wish not to employ the claimant beyond 2 years (although not stated there, we note that that is significant because that is the stage for qualifying service for a claim of unfair dismissal). We did not however accept the claimant's position in her evidence that the intent at this time was *"to deconstruct my job"*. The claimant's evidence was that in November 2021 Gavin Henderson was *"looking for advice to end my fixed term contract during a grievance."* and that *"he was taking advice on what kind of project to move me onto. One that has a beginning a middle and an end."* We accepted the respondent's reliance on the claimant not having raised her grievance against Gavin Henderson as at the date of that email.

234. On the evidence before us, we found that the reason for the claimant's dismissal was because her fixed term contract came to an end and there was no other role available. The evidence showed that from 14 September 2021 it had been decided that the claimant's contract would only be renewed for 6 months. There was no evidence of any other role becoming available which the claimant could have moved to continue her employment after that 6 month period. We accepted the claimant's position that some projects were still ongoing but there was no evidence of these being done by anyone replacing the claimant in an employed role. The claimant did not dispute the respondent's position in respect of their finances affecting the role.

235. The claimant's extended fixed term contract was due to end on 25 April 2022. The claimant's employment was not however terminated on 25 April 2022. Her employment with the respondent was terminated, with immediate effect, on 10 March 2022, with payment of one month's pay in lieu of notice, until 11 April 2022. There was no explanation provided for that.

236. In line with the overriding objective in Rule 2 of the Tribunal Rules and the guidance on lay representatives in the Equal Treatment Bench Book, steps were taken to seek to ensure that parties were on an equal footing. As the claimant was unrepresented, and the respondent's representative is a skilled Barrister with experience in Employment Law, some questions were asked of

the respondent's witnesses. Gavin Henderson was asked why the claimant was dismissed. The evidence from Gavin Henderson was significant in respect of the reason for the claimant's dismissal. The respondent offered no other witness to speak to that reason. Gavin Henderson's initial evidence on being asked "*What was the decision making process*" was "*By the time it got to February she was on sick leave for an extended period. The issue kept cropping up. It was difficult to find a way forward: a workable solution. Every option we took she viewed as harassment e.g. the Christmas party. However the strategy meeting was very important. If I'd cancelled it, it would have had a negative effect on the church. She didn't need to attend it. She viewed that as discriminatory. She was then off sick at the time of the team retreat. She sent several emails and she emailed Roy Walker saying it couldn't go ahead if she didn't attend. She viewed it as discriminatory and victimisation. Cancelling the event was not in the best interests of the church. If you exclude me and the Mills, that would affect the best interests of the church. Her role was easier to exclude without impact and that was viewed negatively by her. She made it clear work was causing her stress.....The kindest thing to do was to end to her employment and recognise the stress she was suffering.*"

237. Gavin Henderson's evidence was that mediation was not considered at that time because it was a small department and the claimant needed to work with the management team but had issues with a number of them. After lunch, Gavin Henderson was asked if there was any other reason for the claimant's dismissal and additionally gave financial reasons. The respondent's position was that the reason for the claimant's dismissal was her incapacity (ill health). We did not accept that. It was significant that there was no evidence before us of any steps being taken to obtain a medical report, either from the claimant's GP or from an Occupational Health advisor, and there was no explanation for that failure. We considered the evidence in the round. The Board Minutes Board Minutes were redacted so cannot be taken as a full picture. On the findings in fact, and taking into account when the decision to dismiss the claimant was taken, the reason for the claimant's employment being terminated was because of the expiry of her (extended) fixed term contract.

238. We considered the following to be significant to the reason for the claimant's employment being terminated on 10 March 2022, before the expiry of her fixed term contract on 24 April 2022:

- The Appeal Committee recommendations (JB1 / 528 – 533)
- 5 • The Minutes of the Board meeting on 27 February 2022 (JB1 / 534 – 537)
- Gavin Henderson's evidence on the reasons for the claimant's dismissal
- Barry Robinson's position to the Board on 7 June, as recorded at JB1
10 / 613 that *"...our history as a church is that whenever anyone challenges the authority of the church, they are marginalised or disfellowshipped and walk away. RM isn't prepared to do that because she won't let things drop..."*.

239. On that evidence, we found that the reason for the claimant's employment
15 being terminated on 10 March 2022, before the expiry of her fixed term contract on 24 April 2022, and being paid until 10 April 2022, rather than to 25 April 2022, was taken because the claimant had raised the grievances against Gavin Henderson alleging his discriminatory behaviour i.e. because she had done the protected acts. That was victimisation under section 27 of
20 the Equality Act 2010. Although the recommendation of the Board was that the claimant be paid *"for the time remaining on her fixed term contract"* (JB1 / 535), David Silcox's letter to the claimant of 10 March 2022 (JB1 / 546) informed the claimant of the termination of her contract on 1 months' notice, and with payment in lieu of that notice.. For those reasons, the claimant's loss
25 from the decision to terminate the claimant's contract early could only reflect loss from 11 April to the end of the extended contract, on 25 April 2023.

240. The claimant did not prove that she had suffered any detriment or was dismissed because of raising a protected disclosure. There was a lack of evidence on any disclosure by the claimant prior to the document sent to
30 David Wilcox on 24 December and also on 27 December 2021. We accepted

that in that document the claimant made a protected disclosure in terms of the ERA. Although that document is mentioned in the Appeal Committee's Recommendations (at JB1 / 533), no procedure appears to have been followed by the respondent expressly in respect of a whistleblowing complaint having been made. That complaint appears to have been 'lost' in the volume of issues which the claimant had raised. That position is supported by Ray Walker's position in his subsequent email to the claimant re seeking to avoid 'duplication' and that the whistleblowing complaint is not mentioned in the HR Consultant's report (JB1 / 593 – 600). At that time the claimant was unwell and was absent from work. There were a number of email communications from her to David Silcox around that time. We did not hear evidence from David Silcox or any member of the Board who dealt with the appeal of the 9 September grievance and decided to pass the grievance about Gavin Henderson on to the external HR Consultant. According to the HR Consultant's report, the respondent dealt with:

- the grievance raised on 9 September;
- the appeal of that grievance – which included issues with Gavin Henderson's handling of the grievance of 9 September; and
- the complaint about Gavin Henderson, set out on 2 January 2022.

241. We did not hear evidence from that HR Consultant or from Ray Walker. On the face of the documentary evidence before us, the claimant's grievance about Gavin Henderson, as set out by her on 2 January 2022, appears to have been taken by the respondent as duplicating and superseding the whistleblowing complaint of 24 and 27 December 2021. In any event, the claimant did not prove that she has suffered any detriment or was dismissed because of raising that whistleblowing complaint. The contemporaneous documentary evidence did not support that position. When Gavin Henderson was asked if the matters in that document had any impact on the decision to dismiss, his evidence was *"I had no awareness of these matters and it had no impact on the decision and I was very involved in the decision."* We accepted that evidence. The respondent can be criticised for appearing to not have

dealt with the claimant having raised Whistleblowing concerns, but the claimant has not proved that she was treated unlawfully because of having raised those concerns.

5 242. The claimant's email to David Silcox of 8 April 2022 (JB1/ 576-577) was significant because it contemporaneously raised concerns about the external HR consultant's handing of the meeting on 6 April. The claimant's position in that email, including that the HR Consultant had "*...talked over my answers..*" was consistent with the claimant's position in evidence that she was given '*no time to process*' the questions put to her at the meeting. The claimant's 10 evidence on that meeting was consistent with Barry Robison's evidence on his perception of the meeting. For those reasons, we accepted the claimant's version of events at that meeting.

15 243. We found Barry Robinson to be a credible and reliable witness. Despite having a continuing employment relationship with the respondent, he answered questions openly. He made concessions. He was balanced and did not apportion blame.

20 244. The respondent's position was that in the matters relied upon by the claimant as 'whistleblowing' the claimant had not sincerely believed that what the respondent was doing was unlawful. The respondent sought to rely in their submission on Simon Williams's account of his discussion with the claimant, as set out in his email of 19 September 2022, at JB1 / 649. Simon Williams was not called to give evidence before us. The claimant was unclear in her evidence in relation to what was discussed with Simon Williams. We 25 attached little weight to that email because it was written in response to a document prepared by the claimant in her claim (the FBPs), we did not hear evidence from that individual himself, and it was not contemporaneous to the conversation with the claimant, which was on 14 November 2021 (some 10 months previously). That email did support the claimant's position that in that 30 phone call the claimant had said that she wished to raise a "*whistleblowing complaint*". The claimant did not prove that she had raised such a complaint at that time.

245. Andrew Montgomery was not part of the decision to dismiss and was not present for most of the events which related to the claimant's employment with the respondent. Given the volume of contemporaneous documentary evidence, Andrew Montgomery's evidence was not significant to our decisions.

Decision

246. In making our Findings in Fact, we had regard to the guidance of Baroness Hale at paragraph 31 of the House of Lords' decision in *B (Children) [2008] UKHL 35*.

247. On application of Rule 62(5) of the Procedure Rules, we applied our factual findings to the relevant law and made our decisions on the issues we required to determine, for the following reasons.

Time bar – Equality Act claims

248. The claimant's position in her submission is that the issues of time bar were determined at a Preliminary Hearing. That is not correct. The Note from the PH on 21 March 2023, before EJ Robison, refers to matters of time bar being one of the factors to be taken into consideration when considering whether an amendment should be allowed. In allowing the amendment in terms of the FBPs, EJ Robison reserved the decision on time bar for the Final Hearing (JB1 / 152 – 168 @ paragraphs 24 and 49). The claim for direct disability discrimination under section 13 EqA was limited to events between March and November 2021 (JB1 / 152 – 168 @ paragraphs 55 – 56). The issues of time bar in respect of the claims under the Equality Act 2010 are to be determined at this Final Hearing.

249. The claimant relied on the period taken for the respondent to investigate her grievance (4 months). The claimant relied upon *Ikejiaku v British Institute of Technology* (“...absence of knowledge rendering it not reasonably practicable...”). The respondent's position was that due to the generalised nature of the allegations, it was difficult to discern which of the complaints can specifically be identified as related conduct extending over a period of time.

In summary, it was their submission that all claims relying on alleged events prior to 5 February 2022 were out of time. The respondent's representative accepted that it may be possible, in principle, for the claimant to run together acts constituting different types of discrimination in order to establish conduct extending over a period, provided that as a matter of fact, there is a nexus between them (*Robinson v Royal Surrey County Hospital NHS Foundation Trust* UKEAT/0311/14 (30 July 2015, unreported) at (obiter)), however, a claimant may not run together discriminatory acts with others which are not discriminatory (*South Western Ambulance Service NHS Foundation Trust v King*) [2020] IRLR 168, EAT. We accepted the respondent's representative's submission that the correct approach in dealing with the question as to whether there has been a series of acts extending over a period is for the Tribunal to make its findings in fact based on the evidence heard. (*Caterham School Ltd v Rose* UKEAT/0149/19). We accepted that it is the act, not its consequences, that must be continuing (*Amies v Inner London Education Authority* [1977] 2 ALL ER 100). For that reason, we required to make detailed findings in facts, in order to then analyse whether, on those facts, there was a continuing course of alleged discriminatory conduct.

250. In *Z v Y* [2024] EAT 63, LJ Eady gave a useful summary of the legal position, at para 51, as follows:-

"In determining whether the acts complained of in any particular case amount to conduct extending over a period for the purposes of section 123 EqA, or whether they are properly to be understood as isolated and separate acts, each giving rise to its own time limit, it can be relevant to ask whether there is a common thread that links the matters relied on – for example, a common personality - such as might demonstrate a discriminatory campaign or regime; see Southern Cross Healthcare v Owolabi UKEAT/0056/11 and Veolia Environmental Services UK v Gumbs UKEAT/0487/12. Alternatively, it might be necessary to consider whether the initial act or decision was such as to initiate a process of further acts, which cannot then be seen (per Hendricks) as "a succession of unconnected or isolated specific acts"; see Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT/342/16."

251. We considered the acts relied upon by the claimant as direct sex discrimination (s 13 EqA). These were said to have been set out at Table C in the List of Issues (Appendix A). Table C was prepared by the respondent's representatives. On our consideration, it did not entirely accurately reflect what the claimant relied upon. We noted Mr Jones' position on the complexities in this case, both on the factual matrix on which the claims are based and the relevant law, and that given the claimant's Dyslexia he had tried his best to set out in the Tables the concise position on what he considered was the most difficult case he has dealt with. We took into account the claimant's Dyslexia.
252. In considering whether what was relied on by the claimant as sex discrimination under s13 EqA was a continuing course of conduct, we considered the position set out by the claimant in her FBPs and her witness statement, as well as what was set out in Table C of the List of Issues. We also took into account the position set out in the Note of the PH on the amendment application (JB1 / 152 – 168), which considered the content of the FBPs in detail. The matter noted as 'AA' in Table C is not noted in the claimant's FBPs. That relates to a coaching contract not being awarded to the claimant in 2019. That act was not part of a continuing course of conduct. It occurred prior to the claimant's employment with the respondent.
253. Without determination of either whether what is alleged by the claimant did occur, or whether it was unlawful discrimination, what is relied upon by the claimant as direct sex discrimination, as set out in her FBPs @ JB1 / 132 – 136, under numbering 3(ii) from (1) to (7) is, on the particular circumstances of this case, part of an alleged continuing course of conduct. That alleged conduct is alleged sex discrimination by Gavin Henderson, and (at (7)), alleged sex discrimination in the external investigator's handling of the investigation into that behaviour, as raised by the claimant in her grievance on 2 January 2022. That was the claimant's grievance against Gavin Henderson raised on 2 January 2022 (JB 477 – 480), which included allegations of his sex discrimination towards the claimant (as well as alleged disability discrimination). That included (at JB1/ 479):

5 *“The discrimination I am experiencing appears to be down to the fact that I am female with a protected characteristic. This means I am being pushed into an administrative role away from the projects I was working on, which my protected characteristic (dyslexia) will impact negatively. It is also now being indicated by Gavin Henderson that I should never be seen to be leading any trainings or publicly speaking, even if it is my area where I have extensive expertise and experience. This is contrary to what it states on my job description and contrary to what has been allowed of male colleagues, past and present, ordained or un- ordained. Females within the leadership team are not treated as equals and therefore in breach of the Equalities Act.”*

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It is clear from the investigator’s notes of her meeting with the claimant on 6 April 2022 (JB1 / 561 – 568) that part of what was being investigated was the claimant’s allegation that females were not being treated equally within the respondent’s organisation. The investigators notes, JB1 / 562, state:

15 *“You comment that females within the leadership are not treated equally. Can you give me any examples? Is it a headship thing?”*

RM – On the website the female pastor is not included in the leadership team listing. [A woman has to be introduced by her husband.]

20 *RM led an event in Bridlington which involved leading trainers. GH not happy that she had let it and told not to do it again. However, he had said nothing before she went.”*

25 254. In her evidence, the claimant relied upon a continuing course of conduct by Gavin Henderson, the respondent’s investigation of that and the Board’s decision. Within the grievance appeal there were accusations of sex discrimination in respect of the approach of the investigator and of the Board, as well continuing allegations of alleged discrimination by Gavin Henderson. From what is set out in the FBPs at 3(i)(7), the claimant relies upon sex discrimination in the Board’s hearing of her appeal on 21 March 2021. We did not accept Mr Jones’ submission that the grievance and appeal stages were only dealing with the consequences of the alleged discriminatory acts. There is a common thread (in terms of LJ Eady’s guidance *Z v Y* [2024] EAT 63). As

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the sex discrimination claim also relies on alleged discrimination in the handling of the appeal, the last act in the continuing course of alleged discrimination was the claimant's receipt of the decision from her appeal. The Board's decision was made on 12 June 2022. It was communicated to the claimant by email on 14 June 2022 (JB 624). In the particular facts and circumstances of this case, there is a continuing course of conduct in terms of s.123(a) EqA 2010b, until 14 June 2022.

255. The claimant's employment was terminated on 10 March 2022. Her grievance was dealt with post-employment. Given that the continuing course of conduct extended beyond the date of termination of employment, although the ET1 was submitted less than 3 months after the last act in a continuing course of conduct, we considered the application of s.123(1)(b) EqA. It was not argued by the respondent that the last act of discrimination required to take place while the claimant was employed by the respondent. The claimant relied upon having awaited the outcome of the internal grievance and her health. The evidence did not show the claimant's health as having prevented her from submitting her claim before she did. We accepted the respondent's submission that the burden of persuading the Tribunal to exercise its discretion under s 123 is on the claimant (*Robertson v Bexley Community Centre* [2003] EWCA Civ 576). We took into account that a desire to pursue an internal appeal before instigating legal proceedings is not in itself a good reason to extend time: though it can be a factor in the decision, it must be looked at in its overall context (*Wells Cathedral School Ltd v Souter* UKEAT/0836/20). The appeal related to a grievance. It was not an appeal of the decision to dismiss. The claimant relied upon the context of this claim being a claim against a church, whose beliefs included that disputes should be concluded internally, without recourse to courts. We considered that to be significant. That belief was emphasised to us by the respondent a number of times during these proceedings. In these particular circumstances we therefore accepted the claimant's reliance on having awaited the outcome of the grievance appeal before bringing her claim to the Employment Tribunal. The claimant was notified of the outcome of her grievance appeal on 14 June 22. Her ET1 was submitted on 11 July 2022. Taking into account that her

employment ended on 10 March 2022, we considered that further period to be just and equitable under section 123(1) (b). On application of section 123(1)(b) the complaints of sex discrimination under the EqA are not time barred.

- 5 256. For the reasons set out below, we did not require to consider the time bar issue with regard to the complaint under s13 based on the protected characteristic of disability.

Protected Disclosures

- 10 257. The respondent expressly conceded that the claim of automatic unfair dismissal (based on protected disclosure) was not time barred. The claimant relied upon having suffered detriments and being dismissed as a result of having made protected disclosures.

- 15 258. At the stage of submissions, the respondent's position was that the claimant's complaints of having suffered detriments on the grounds of protected disclosures were not presented within the statutory period identified in section 48(3)(a)-(b) of the ERA, and that it was reasonably practicable for the claimant to have done so. It was Mr Jones' position that the Tribunal then does not have jurisdiction to hear the claimant's detriment claims (D1-D6) located in Table B of the Tribunal's List of Issues based on their alleged occurrence (numbered with reference to paragraphs 8,13, 25, 28, 33 and 40 in the claimant's witness statement). The claimant expressed her concern at this matter being raised at this late stage. We accepted that time limits for presenting claims are a jurisdictional issue (*Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC*) and if a claim is out of time, the Tribunal must not hear it.
- 20 We accepted that it is incumbent upon the Tribunal to consider jurisdictional matters when they occur. We accepted the respondent's reliance on *Palmer and another v Southend-on-Sea Borough Council [1984] ICR 372*, where the Court of Appeal concluded that 'reasonably practicable' does not mean 'reasonable' or 'physically possible', but rather 'reasonably feasible'. We
- 25 We accepted that in consideration of the reasonably practicable test, the fact that
- 30 an internal appeal process was ongoing did not in itself mean that it was not

reasonably practicable to present a claim on time (*Bodha v Hampshire Area Health Authority [1982] ICR 200* and subsequently approved by the Court of Appeal in *Palmer*). We accepted that the question of whether it was reasonably practicable to bring a claim in time is a question of fact for the Tribunal. We accepted that the onus of establishing that it was not reasonably practicable to present a claim on time lies with the claimant, who must show why she did not present her claim within time (*Porter v Bandridge Ltd [1978] ICR 943*). We accepted that in a recent review of the authorities, the EAT confirmed that the reasonably practicable test is a strict one and there is no basis for it to be interpreted liberally in favour of the Claimant (*Cygnets Behavioural Health Ltd v Britton [2022] EAT 108*) per Cavanagh J at para.27. It was Mr Jones' position that we had to consider:-

- *Were the claimant's claims for detriments on the grounds of protected disclosures (section 47B Employment Rights Act 1996) presented within the period identified in section 48(3)(a)-(b) of the Employment Rights Act 1996 below?*
- *If not, was it reasonably practicable for the complaint to have been presented within three months?*

259. To identify the applicable normal 3 month period for the protected disclosure claim under section 47B Employment Rights Act 1996, in this case, we had to first establish what was being relied upon by the claimant as a protected disclosure, and the date(s) when that occurred. We could then determine whether that complaint was brought within the period identified in section 48(3)(a) ERA. In that approach, we took into account the guidance from the EAT in *Blackbay Ventures v Gahir [2014] ICR 747*, at para 98.

260. We proceeded on the basis that there are five s.43B(1) questions for a Tribunal to consider, as set out by His Honour Judge Auberbach in *Williams v. Michelle Brown* UKEAT/0044/19:

- (i) there must be a disclosure of information;

- (ii) the worker must believe that the disclosure is made in the public interest;
- (iii) if the worker holds such a belief, it must be reasonably held
- (iv) the worker must believe that the disclosure tends to show one or more of the matters listed in sub para a) to (f) of s.43B ERA 1996; and
- (v) if the worker holds the belief, it must be reasonably held.

261. We accepted Mr Jones' submission that information in this context means a disclosure of facts and that merely voicing a concern, expressing an opinion or making allegations is not enough. There must be a sufficient factual content and specificity that it is capable of tending to show one of the relevant types of wrongdoing (*Cavendish Munro Professional Risks Management v Geduld* [2010] IRLR 38 & *Kilraine v London Borough of Wandsworth* [2018] IRLR 846 & *Simpson v. Cantor Fitzgerald Europe* [2002] EWCA Civ 1601, [2021] IRLR 238). We accepted that a disclosure must identify the breach of legal obligation (*Fincham v HM Prison Service* (paragraph 33) [2002] UKEAT 0925/01). We took into account that it cannot be a purely personal matter - *Chesterton Global Ltd v Numohamed* [2017] EWCA Civ 979. We noted that it is possible in principle that a disclosure may be made in the public interest despite its private purpose (*Dobbie v Paula Felton t/a Feltons Solicitors* [2021] IRLR 679). We accepted that the respondent's failures to comply with legal obligations under the claimant's own contract of employment will not amount to qualifying disclosures unless they satisfy the requirement that the claimant had a reasonable belief that the disclosure is being made in the 'public interest' (*Parkins v Sodexo* [2002] IRLR 109). We noted that the burden of proof is on the claimant to establish the requisite reasonable belief. (*Babula v Waltham Forest College*). We took into consideration that following – *Panayiotou v Kernaghan* – [2014] IRLR 500] we should distinguish between the fact of a protected disclosure and matters related or connected to the disclosure when considering whether a claimant can succeed on a protected disclosure claim. We took into account that C's belief must be reasonable

(*Barton v Royal Borough of Greenwich* UKEAT/0041/14 (paragraphs 33 & 91).

262. Some of what the claimant relied upon in her submissions were additional matters which we did not hear evidence on and which could not be taken into account in our decision.

263. We had regard to Table A in Appendix A, the claimant's witness statement and the FBPs at JB1/ 144 – 145 at 9 (1) – (6) (although 9(5) is wholly redacted and is taken as not being relied upon). With regard to the numbering in Table A and step (1) in *Blackbay Ventures v Gahir* para 98:

- 10 • What is relied upon by the claimant in PD1 is alleged disclosure in a conversation with James Henderson on 19 April 2021. The claimant refers to this at paragraph 4 of her witness statement. There was not sufficient evidence before us to prove that the claimant made a qualifying disclosure in that conversation. There was no evidence before us to attribute the claimant's eventual dismissal to that conversation.
- 15 • What is relied upon by the claimant in PD2 is disclosure in a conversation with Simon Williams on 15 November 2021 in relation to concerns about use of fixed term contracts in respect of another individual. There was some evidence before us on a conversation taking place on that date but there was not sufficient evidence before us to conclude that the claimant had disclosed information to Simon Williams then on the respondent's alleged failure to comply with a legal obligation, or on a matter giving rise to the health and safety of an individual having been or likely to be endangered.
- 20 • What is relied upon by the claimant in PD3 is disclosure in a conversation with David Silcox on 16 November 2021 in relation to concerns about use alleged health and safety issues and breach of legal obligations. On the evidence before us, and taking into account the claimant's own position that she did not give details at that time, there was not sufficient evidence before us to conclude that the
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claimant had disclosed information to David Wilcox then on the respondent's alleged failure to comply with a legal obligation, or on a matter giving rise to the health and safety of an individual having been or likely to be endangered.

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- What is relied upon by the claimant in PD4 is disclosure in an email to David Silcox in December 2021. That email was sent on both 24 and 30 December 2021, with attachment headed 'whistleblowing Complaint by Rachel Montgomery (JB1 / 459 – 464) On the face of it, that attachment sets out alleged breaches of legal obligations and matters giving rise to the health and safety of an individual having been or likely to be endangered. We found that by sending that attachment document the claimant made a qualifying disclosure.
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- What is relied upon by the claimant in PD6 is an email to the Board of Trustees of 19 April 2022 headed 'Immediate safeguarding action to be taken'. In Mr Jones' submissions it was accepted by the respondent that PD6 amounts to a protected disclosure.
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264. With regard to PD2, we accepted the claimant's position that her discussion on fixed term contracts with Simon Williams was about another individual, rather than her own circumstances. The claimant relied upon there being no witness evidence from Simon Williams and on his email to Gavin Henderson (JB1 / 49) being dated 19 September 22, 10 months after her call and not being contemporaneous. We accepted that the claimant was concerned about the impact of the decision on the other individual. There was however insufficient evidence before us for the claimant to prove that she had disclosed any information to Simon Williams at that time. Similarly, with regard to PD3, there was insufficient evidence before us for the claimant to prove that she had disclosed information to David Silcox verbally. We accepted he respondent's reliance on the position in the claimant's witness statement. We accepted the respondent's position that what is relied upon by the claimant in PD 2 and PD 3 do not amount to a qualifying disclosure on the basis that lacks sufficient factual content and specificity capable of tending to show one of the

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relevant types of wrongdoing (*Cavendish Munro Professional Risks Management v Geduld*)

265. We determined that PD4 was a qualifying disclosure. This was the attachment to the email sent to David Silcox on 23 December 2021, headed “*New complaint & Whistleblowing*”, (JB1 / 458) with an attachment headed ‘Whistleblowing Complaint by Rachel Montgomery’ (JB1 / 459 – 464), which the claimant also sent to David Silcox on 30 December 2021 (JB2 / 30). In determining that that was a qualifying disclosure, we did not accept the analysis in Mr Jones’ submissions on what was disclosed there. We did not accept Mr Jones’ submission that the concerns in that document are vague and generalised which do not disclose information in the meaning of *Cavendish Munro*.

266. Taking into account the length of this Judgment, and our findings in fact, we have not set out in detail our reasons for concluding that the claimant made a qualifying disclosure by emailing the document headed “*Whistleblowing Complaint by Rachel Montgomery*” (JB1 / 459 – 464) to David Silcox. This is because on our findings in fact and for the reasons set out in the Comments on Evidence section above, we did not find that the claimant suffered any detriment or was dismissed as a result of making that disclosure. Having made that finding in fact, we did not require to consider the issue of time bar in respect of the protected disclosure detriment claim. We had regard to what is set out in Table B in Appendix A as being the detriments alleged as being a result of the claimant having made a protected disclosure. As the only matter which we found was a qualifying protected disclosure occurred at the earliest on 23 December 2021 (JB1 / 458 – 464), anything which occurred before that date could not be considered as being a detriment arising from having made a protected disclosure. For those reasons what is set out as a detriment D1 – D5 in Table B could not have been as a result of the claimant having made a protected disclosure.

267. We considered whether, on our findings in fact, the claimant making the protected disclosure on 23 December 2021 was the reason for the respondent acting as set out at D6 – D11 in Table B (what is relied on as the detriments

as a result of making the protected disclosure(s)), in terms of being a significant influence i.e. a more than minor or trivial factor. For the reasons set out in the Comments on Evidence section above, we found that they were not.

5 268. We noted that the matter of Andrew Montgomery's disassociation from the respondent's Church was not in the field of employment for the purposes of s.47B ERA 1996.

269. As we found on the facts that the claimant having made the protected disclosure on 23 December 2021 was not the reason or a significant influence
10 to the reason for the claimant's dismissal, or for the alleged detriments. We therefore we did not require to consider the questions on time bar in relation to those claims, and did not do so.

Unfair Dismissal (automatic) (s.103A ERA 1996) – Reason for Dismissal

270. We accepted Mr Jones' submission that when determining the reason for the
15 dismissal, we should consider the conscious or unconscious reason for the dismissal act, which is not a causative or 'but for' test – *Chief Constable of Police v Khan* [2001] UKHL 48. We accepted that the burden of proof is upon the claimant to demonstrate the reason for the dismissal. We noted the guidance of the Court of Appeal in *Kuzel v Roche Products Ltd* [2008] IRLR
20 530 and the relevant principles set out there. The reason for the claimant's dismissal was that her extended fixed term contract was coming to an end and there was no other suitable role for her. On the facts found, we did not accept the respondent's reliance on the claimant's incapacity. With regard to the principles in *Kuzel*, the claimant did not produce evidence supporting the
25 positive case. We took into account that *Kuzel* is not authority for the burden of proof being on the claimant to prove that the protected disclosure was the reason for dismissal. Having made a finding on the reason for the claimant's dismissal, we considered whether the claimant's protected disclosure had a
30 significant influence on the decision to dismiss. On the face of the primary findings in fact, we found that it did not. For these reasons, the claimant's

claim of automatic unfair dismissal under section 103A ERA 1996 is not well founded and is dismissed.

Direct sex discrimination (s.13 EqA 2010)

5 271. We did not accept that the first question for us was in considering this claim was as set out at Appendix A at (3).

272. We first considered whether the claimant has proved facts from which, if unexplained, the Tribunal could conclude that her treatment by the respondent was because of her sex (gender), as alleged by the claimant. Following *Madrassy–v- Nomura International* [2007] IRLR 246, there requires
10 to be evidence from which the Tribunal could draw an inference that the protected characteristic relied upon was the reason for the (difference in) treatment. If on the face of the primary facts the claimant showed sex discrimination, we could then consider those primary facts and whether any secondary facts (inferences) should properly be drawn from the primary facts.

15 273. Table C in Appendix A was produced by the respondent's representatives as reflecting what the claimant relied upon as being direct sex discrimination. We considered the evidence on the matters listed in that Table C, with reference to the position in the FBPs under numbering 3(i)(1) – (7) (JB1 / 132 – 136) and in the claimant's witness statement. We considered whether, on
20 the face of it, the claimant showed that she was treated less favourably on the grounds of her sex (gender) in respect of the matters relied upon. With regard to the numbering in the FBPs under numbering 3(i) (JB1 / 132 – 136) and in Table C, our findings were:

25 (1) The contemporaneous documentary evidence does not support the claimant's position that she was ignored by Gavin Henderson at a meeting on 5 August 2021.

(2) The contemporaneous documentary evidence does not support the claimant's position that Gavin Henderson spoke negatively to the claimant on the grounds of her sex. On the claimant's own

evidence, his criticism was in in respect of the content of the tools in the book.

- 5 (3) The contemporaneous documentary evidence does not support the claimant's position that Gavin Henderson refused to give her an appraisal.
- (4) The contemporaneous documentary evidence does not support the claimant's position that she was called to the meeting on 18 November because of her gender, or that she was treated detrimentally at that meeting (at all) or because of her gender.
- 10 (5) The principal reason why the Findings Report was sent to the claimant and Andrew Montgomery was because they had agreed to matters being dealt with wholistically. That included matters relating to each of them and to the church as well as matters relating to the claimant's employment. We considered whether the
- 15 claimant's gender was a significant influence in that Findings Report having been sent to both the claimant and Andrew Montgomery. In the particular circumstances, we considered that it was not.
- (6) We did not accept the claimant's position that the Findings Report
- 20 found 'in favour of the male pastor'. The claimant did not prove that the outcome of the Findings Report was because of her gender. The report concerned two females (the claimant and Jackie Mill) and two males (Andrew Montgomery and Peter Mill). In our determination, the position of Peter Mill within the respondent's
- 25 organisation was a factor in the outcome in the Findings Report. The claimant did not prove that her gender was a factor in the outcome in the Findings Report.
- (7) The claimant did not prove that the way in which her grievance was dealt with by the respondent was detrimentally affected because of
- 30 her gender.

274. We found that the claimant did not prove primary facts to make out a case of direct sex discrimination (a 'prima facie' case). The claimant has not proved that she was treated less favourably on the grounds of her sex (gender) in respect of the matters relied upon. The burden of proof therefore does not shift under section 136 EqA. We cannot move to draw inference from secondary facts. If the claimant had proved that she had been treated less favourably on the grounds of her sex (gender) in respect of the matters relied upon, we could have then looked at secondary facts such as the content of certain documents within the Bundle produced by the respondent which were not specifically related to the claimant. As the claimant did not prove a prima facie case of sex discrimination, section 136 EqA did not engage and we could not go on to draw any inference of sex discrimination from such other evidence.

Direct Disability Discrimination (s.13 EqA 2010)

275. Similarly, in respect of the complaint under s12 EqA relying on the protected characteristic of disability, we considered the primary facts and whether any secondary facts (inferences) should properly be drawn from these primary facts.

276. We considered what the claimant relies on as direct disability discrimination (section 13 EqA) set out in the FBPs JB1 / 136 – 137, under numbering 3(iii) (1) – (3) and Table D of the List of Issues Appendix A), and the claimant's witness statement. The respondent's representative's position was that what is set out at Table D were 'one off acts, albeit with continuing effects', relying on *Amies & Parr v MSR Partners LLP [2022] EWCA Civ 24*.

277. The evidence showed that on a number of occasions the claimant had brought up with the respondent that she is dyslexic (e.g. JB1 / 136 – 137; JB1 / 426; JB1 / 438 – 440 ; JB1 / 441 -448; JB1 / 447; JB1 / 477; JB1 / 479; JB1 / 520 – 521; JB1 / 550; JB1 / 601; JB1 / 607; JB1 / 625. The evidence showed that during the claimant's employment with the respondent her position had been that because she is dyslexic, she would not be good at the administrative role the claimant believed she was being moved into. It was not the claimant's

position during her employment that it was because she is dyslexic that her role was being changed. We set out in the Comments on Evidence section above what we found to be the reasons why the claimant believed that her role was being deconstructed. Essentially, this was because of miscommunication. There was not a continuing course of conduct of alleged behaviour which was discriminatory on the grounds of the claimant's disability.

278. With regard to the numbering 1 – 3 in Table D, and on the findings in fact set out above:

(1) The claimant did not prove that there was an issue with communications / instructions on projects because of her dyslexia.

(2) The claimant did not prove that she was moved to an administrative role because of her dyslexia (and that was not her position in her evidence)

(3) The claimant did not prove that she asked for an oral hearing and so did not prove that she was denied an oral hearing.

(4) The claimant did not prove that Gavin Henderson authored the conclusions and outcomes, as alleged.

279. We considered whether the claimant has proved facts from which, if unexplained, the Tribunal could conclude that her treatment by the respondent was because of her disability, as alleged by the claimant. We found that the claimant did not prove such primary facts. The claimant has not made out a prima facie case. The claimant has not proved that she was treated less favourably on the grounds of her disability in respect of the matters relied upon, as set out in Table D in Appendix A. The burden of proof therefore does not shift under section 136 EqA.

280. We noted the position in the PH Note from the hearing on 23 March 2022 in respect of allegation (1) being pleaded as ending in November 2021 and this claim therefore being out of time. In the circumstances of this case, it was in accordance with the overriding objective in Rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to consider

the claimant's evidence on these matters. The content of the email communications between the claimant and Gavin Henderson were significant. Having found in fact that the claimant did not prove that there was an issue with communications / instructions on projects because of her dyslexia, we did not require to determine the time bar issue. We did not accept Mr Jones' submission that even on the claimant's evidence, the change of job role was a one off event on 18 November 2021. Our findings in fact did not support that position. However, on our findings in fact the claimant was not moved to an admin role because of her dyslexia.

10 *Discrimination arising from disability (dyslexia) (s.15 EqA 2010)*

281. What the claimant relies on as discrimination arising from her disability (section 15 EqA) is set out in the FBPs JB1 / 136 – 137, under numbering 4 (1) – (2) and at section 6 of the respondent's List of Issues. In her submissions, the claimant relies on her performance as the 'thing' arising from her disability. There was no evidence to suggest any issue with the claimant's performance linked to her dyslexia. The 're-focus' was to the duties of the role as had been originally intended by Gavin Henderson. The issues were because of miscommunications, as set out in the Comments on Evidence section above. These did not arise from the claimant's disability.

20 282. With regard to that numbering 1 – 2, and on the findings in fact set out above:

(1) The claimant did not prove that she was moved to an administrative role because of something arising from her dyslexia (and that was not her position in her evidence)

(2) The claimant did not prove that she coaching plan was not sent out because of something arising from her disability.

283. Having found in fact that issues with miscommunication between the claimant and Gavin Henderson were not because of something arising from the claimant's dyslexia, we did not require to determine the time bar issue. We considered whether the claimant has proved facts from which, if unexplained, the Tribunal could conclude that her treatment by the respondent was

because of her disability, as alleged by the claimant. We found that the claimant did not prove such primary facts. The claimant has not made out a prima facie case. For the reasons, the claimant's claim under section 15 is not well founded and is dismissed.

5 *Disability - Reasonable Adjustments (s.20/21 EqA 2010)*

284. The PCP relied upon by the claimant (as referred to in Appendix A at (5) and in the FBPs at JB1 / 138) was that from 19 July 2021, the respondent was no longer providing support to the claimant as had been provided by Barry Robinson, in respect of no longer regularly providing feedback, proofreading,
10 one to ones and an opportunity to verbally check instructions on projects and ask questions to gain clarity if she wasn't sure.

285. As a matter of fact, the same level of support was not provided to the claimant as had been by Barry Robinson. The submissions did not address whether that was a PCP. We had regard to paragraph 6.10 of the EHRC, that the
15 phrase 'provision, criterion or practice' should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions. On that basis, we considered that what the claimant was relying on was a PCP.

286. On the basis that what is relied on by the claimant in her FBPs at JB1 / 138 –
20 139, under (5) was a PCP which was applied to the claimant, we considered whether the application of that PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability? The respondent's position was that what the claimant relied on as substantial disadvantage was distress, a negative performance review on 18 November
25 2021 and the decision to terminate her fixed term contract.

287. In determining a reasonable adjustments claim, we require to consider the nature and extent of the substantial disadvantage relied on by the employee, make positive findings as to the state of the employer's knowledge of the nature and extent of that disadvantage, and assess the reasonableness of the
30 adjustment (i.e. 'step') that it is asserted could and should have been taken in that context. An employer cannot make an objective assessment of the

reasonableness of proposed adjustments/steps unless it appreciates the nature and extent of the substantial disadvantage imposed on the employee by the PCP, and an adjustment to a work practice can only be categorised as reasonable or unreasonable in the light of a clear understanding as to the nature and extent of the disadvantage.

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288. For the reasons set out in the Comments on Evidence section above, we did not find that the miscommunications and lack of clarity between the claimant and Gavin Henderson were related to the claimant's dyslexia. On the facts found, the claimant did not prove that she had set out to the respondent the nature and extent of the disadvantage suffered because of her dyslexia. We had regard to the principles set out in *Pnaiser v NHS England and Coventry City Council* [2016] IRLR 170. The claimant's position was that the disadvantage she suffered was distress and dismissal. Distress itself is not a substantial disadvantage in terms of the EqA 2010 section 20(3). For the reasons set out in the Comments on Evidence section above, we did not find that that the claimant's dyslexia was a factor in the decision to dismiss. Because of inconsistencies in the claimant's position in her evidence, it was difficult to assess the extent of any disadvantage arising from her dyslexia. The claimant's position in her initial interview was that she did not need adjustments for her dyslexia. We took into account that in taking the steps to 'refocus' the claimant's role, Gavin Henderson was attempting to focus the claimant on what he believed the job was meant to deliver from the outset, although, for the reasons set out in the Comments on Evidence section above, that had not been made clear to the claimant. Although in her email to David Silcox of 8 December 2021 (JB1 / 426) the claimant's position is that she would not be good at an admin role because of her dyslexia, it was not the claimant's position in her evidence that she was dismissed because of her dyslexia. There was no evidence to support findings in fact that the claimant's dyslexia had detrimentally impacted on her role with the respondent. The claimant's claim under section 20 / 21 EqA re failure to make reasonable adjustment has not been proved. It is therefore held to be not well founded and is dismissed.

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Disability related harassment (s.26 EqA 2010)

289. We accepted Mr Jones' position that we required to address the following:

5 *“On the findings in fact, and with regard to the allegations in Table E, did the respondent harass the claimant by engaging in unwanted conduct that was related to the claimant’s disability with the purpose or effect of violating the claimant’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, all contrary to s.26 of the EqA?”*

290. That Table E is set out in Appendix A. We also had regard to what is set out in the FBPs JB1 / 141 – 188, under numbering 7 (1) – (8).

10 291. In respect of (1), there was no evidence before us to make a finding in fact that Gavin Henderson had chosen not to issue the leaflet created by the claimant for any reason related to the claimant’s disability. The contemporaneous documentary evidence does not indicate that that was for a reason related to the claimant’s disability. As set out in the Comments on
15 Evidence section above, the misunderstandings on the scope of the role were not related to the claimant’s dyslexia. In that work the claimant was seeking to progress in a way which was in line with her previous experience and which she believed was in furtherance of the reasons she had been employed by the respondent, and in the interests of the respondent. On the facts, Gavin
20 Henderson did reply to the claimant’s email. Gavin Henderson’s decision not to issue the leaflet was a managerial decision. It was not related to the claimant’s disability. It related to the miscommunication on what the claimant was required to do in her role. For these reasons the claim in respect of the matter in the FBPs under numbering 7 (1), and at (1) in Table E is not well
25 founded and is dismissed.

292. Similarly, in respect of (2) and (3), there was no evidence before us to make a finding in fact that Gavin Henderson actions or inactions on the claimant’s coaching plan were for any reason related to the claimant’s disability. The contemporaneous documentary evidence does not indicate that they were for
30 a reason related to the claimant’s disability. It related to the miscommunication on what the claimant was required to do in her role. It was

not related to the claimant's disability. For these reasons the claim in respect of the matter in the FBPs under numbering 7 (2) and (3) and at (2) and (3) in Table E is not well founded and is dismissed.

5 293. In respect of (4), we did make a finding that in that meeting Gavin Henderson referred to the claimant by her first name ('Rachel') and that the claimant objected to that, saying it made her feel like she was 'back at school'. We did not accept that in doing so Gavin Henderson "*spoke to the claimant as if she was a child*". We noted from the medical reports provided by the claimant that her dyslexia was diagnosed when she was at school and that school was not
10 a positive experience for the claimant. There was no evidence to support a finding that Gavin Henderson referred to the claimant by her first name for a reason related to her disability. For these reasons the claim in respect of the matter in the FBPs under numbering 7 (4), and at (4) in Table E is not well founded and is dismissed.

15 294. In respect of (5), we took into account the contemporaneous documentary evidence on the meeting on 30 November 2021. That evidence did not support a finding that that meeting was '*badgering*'. The notes of the meeting record that it started at 12.20 and finished at 3pm. The content of the notes suggest that the claimant's dyslexia was taken into account. It was not the
20 claimant's position at that meeting that by that stage her dyslexia had already had an impact on her ability to carry out her role. Her position (as recorded at @JB1 / 394) was "*Rachel flagged again that the work expected of her regarding office communication was out of her area of expertise and that her dyslexia may have an impact.*" Gavin Henderson's response is recorded there as including "*...if accommodation was needed for her dyslexia the Church would try to accommodate it.*" The claimant's concerns about the need for 'data cleansing' are then recorded. Those notes record that Gavin Henderson was willing to take steps to support the claimant, e.g. 'Gavin agreed to more written communications of his expectations' (JB1 / 396) and
25 "*Gavin offered more meetings with Rachel to consider reasonable accommodations for her dyslexia...*" (JB1/ 397). The other contemporaneous documents do not contradict that position. It was significant that in the
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subsequent contemporaneous emails it was not the claimant's position that that meeting had been '*badgering*' or overlong and she did not raise concern about Gavin Henderson having had a separate meeting with Barry Robinson. On the evidence heard, there was no basis for a finding that the meeting had been '*badgering*'. On the evidence heard, there was no basis for a finding that the length of the meeting was related to the claimant's disability. For these reasons the claim in respect of the matter in the FBPs under numbering 7 (5), and at (5) in Table E is not well founded and is dismissed.

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295. In respect of (6), we took into account the contemporaneous documentary evidence on the meeting on 16 December 2021. That evidence did show that in that meeting the claimant had been asked the questions relied on her. The question "*Why would you want a copy of the notes if you are dyslexic*" has to be taken in context. According to the contemporaneous note, that was followed up by the statement "*We don't want to put you at a disadvantage by putting everything in writing.*" The question was related to the claimant's disability but in the context of the supplementary position, as recorded in the note of that meeting (JB1 / 447), that was not with the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, contrary to s.26 of the EqA. We did not accept that in that context it was reasonable for the claimant to have taken that comment as having that effect. That question was asked to seek to ensure that the claimant was not disadvantaged by having everything in writing.

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296. Barry Robinson's notes of that meeting do not record the claimant being asked "*have you ever worked before*". At JB1 / 446 it is recorded that the claimant was asked "*Have you ever worked for any other organisation*". The evidence did not support a finding that that question was related to the claimant's disability.

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297. For these reasons the claim in respect of the matter in the FBPs under numbering 7 (6), and at (6) in Table E is not well founded and is dismissed.

298. In respect of (7), there was no evidence before us that these actions were in any way related to the claimant's disability. What is relied on at 7(b) is an internal document, not intended to be disclosed to the claimant. The claim in respect of the matters in the FBPs under numbering 7 (7), and at (7) in Table E is not well founded and is dismissed.
299. In respect of (8)(a), we took into account the contemporaneous documentary evidence on the meeting on 6 April 2022. That evidence did show that in that meeting the claimant had expressed her concern about the speed of questions being put to her. That is recorded in both the notes at JB1 / 561 and at JB1 / 572, where it is recorded that the claimant said "*I need to slow down as I can't process this with people speaking over me*". The contemporaneous records do not show the HR Consultant as then addressing this '*slow down*' point. Both the contemporaneous documentary evidence and Barry Robinson's evidence (para 46 of his witness statement) supported the claimant's position on this.
300. On the findings in fact, in respect of this matter, by failing to take account of the claimant's dyslexia at the meeting on 6 April 2022, and in particular failing to respond to the claimant's indications that she needed to '*slow down*', the HR Consultant did harass the claimant by engaging in unwanted conduct that was related to the claimant's disability with the effect of creating an intimidating, hostile, degrading and humiliating environment for the claimant, contrary to s.26 of the EqA. No argument was made by the respondent that they are not liable for the HR Consultant's actions in this regard. In conducting that meeting, the HR Consultant was acting on behalf of the respondent. In doing so they were an agent for the respondent in terms of s 110 EqA and the respondent is liable for their unlawful actions at that meeting.
301. We considered the claimant's position in the FBPs under numbering (8), (JB1/144) in respect of the appeal concluding under protest. The contemporaneous emails show that the claimant raised issues with the appeal process. In terms of the harassment claim, we had to consider whether the actions in proceeding with the appeal, despite the claimant's objections, were related to the claimant's disability. The primary facts did not show this.

302. The claim in respect of the matter in the FBPs under numbering (8) which is at (8)(a) in Table E is successful and the claimant is entitled to remedy in respect of an injury to feelings award in respect of that limited matter. There was no financial loss to the claimant which arose from that matter.

5 *Victimisation (s.27 EqA 2010)*

303. The respondent accepted that the claimant did protected acts within the meaning of s.27 EqA 2010 (submissions para 211) by:

i. On 9 December 2021 making a verbal grievance regarding alleged discrimination

10 ii. On 2 January 2021 submitting this grievance in writing

304. In doing so, they make reference to the claimant's position in FBPs at JB1/140 and in para 33 of her witness statement. In her FBPs at JB1 / 140, under numbering (6) the claimant relies on having raised a verbal grievance on 9 December 2021 and a written grievance on 2 January. In her witness statement at para 33, the claimant relied on her email to David Silcox at JB1 / 425 – 426, stating *"I emailed David to outline my distress and confirmed that I had stated on the 7th Dec that I raised a grievance against Gavin."* That is not an accurate reflection of the terms of the email at JB1 / 425 – 426. The terms of that email are set out in full in the Findings in Fact section above. On the basis of the terms of that email, we have proceeded on the basis that the claimant did a protected act on 8 December by emailing David Silcox (JB1 / 425 – 426) stating that she wanted to *"raise and proceed with an unlawful harassment and discrimination complaint against Gavin Henderson"*. That is a protected act in terms of the EqA section 27(2)(c) and (d). There is no contemporaneous documentary evidence to support a protected act having been done by the claimant on 9 December 2021.

305. The content of the claimant's email to David Silcox of 8 December 2021 supported her evidence that she had spoken to David Silcox on 7 December, but did not support a grievance having been raised verbally on 7 December 2021. It was significant that in her email of 8 December (JB1 / 425 – 426),

the claimant states: *“Since yesterday's conversation with you, I have had communications from Gavin Henderson which caused me to be seriously distressed.”* The documentary evidence supports the grievance having been raised in the email of 8 December to David Wilcox. That was the first protected act.

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306. The further protected act, on 2 January 2022, is at JB1 / 477 – 480. There the claimant set out to the respondent the details of her allegations of harassment and discrimination by Gavin Henderson. That is a protected act in terms of the EqA section 27(2)(c) and (d).

10 307. The identification of the dates was important because on application of section 27 EqA (1) we had to determine whether the claimant was subjected to a detriment because she did (one or both) of those protected acts.

15 308. We took into account the position in the PH Note from 29 August 2023 that the claims are as set out in the FBPs. That included a claim for victimisation under s27 EqA. We considered whether, on the evidence before us, the claimant was subjected to a detriment because of doing one or both of the protected acts. We took into account the position in para 212 of Mr Jones' submissions, which stated: *“Before addressing each of the detriments in turn, R draws the Tribunal's attention to the fact that in her updated 'Evidence Relyed [sic] Upon' document which forms part of her composite W/S, C appears to make a number of vague and unparticularised allegations which vary considerably from the detriments that were pleaded and which are particularised in the List of Issues. R denies any allegations of unlawful victimisation but will restrict the focus of its submissions to those matters within the Tribunal's List of Issues.”*

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309. We also take into account the position of the EAT (LJ Eady) in *Z v Y* [2024] EAT 63, where, in summary, it was held that “The ET had erred in failing to determine the claim of discriminatory constructive dismissal, which was part of the pleaded case before it; the list of issues had not replaced the pleaded claim and the ET had been wrong to slavishly stick to that list (*Parekh v Brent London Borough Council* [2012] EWCA Civ 1630 applied).”

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310. We took into account that we required to consider on the evidence before us whether the claimant had suffered a detriment by doing the protected act(s) and that the cause of action (victimisation) was set out.

311. Section 212(1) EqA expressly states that detriment does not include conduct that amounts to harassment. The EHRC summarises treatment that may amount to a 'detriment' (at paras 9.8 and 9.9) as:

“Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards... A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.”

312. With regard to that guidance, and the claimant's position in her FBPs as to what she relies on as detriment in the victimisation claim (JB1 / 140), the statement in an internal board document that the claimant *“didn't appear or was not obviously impacted by her dyslexia”* is not of itself a detriment arising from the claimant having done a protected act. The issue of *“permitting rapid fire questioning of the claimant within an investigation meeting that prevented her comprehending the questions”* has been dealt with under the harassment claim (section 26 EqA) above. At JB1 / 140 the claimant relies on the content of the HR Consultant's report being *“..derogatory, and judgmental and were indeed all related to my dyslexia, which also impacted due to ill health. Due to this, my grievance regarding discrimination was not upheld.”* We did not take the content of that report of itself to be a detriment. The fact that the claimant was emailed by David Silcox on 13 May 2022 in terms of what is at JB1/ 601 is not of itself a detriment under section 27 EqA. The outcome of the appeal is not a detriment of itself.

313. We considered whether the claimant was subjected to a detriment in terms of section 27 EqA in respect of whether the fact that she had raised her grievance alleging unlawful discrimination by Gavin Henderson (the protected acts) caused or materially contributed to her dismissal. On the findings in fact, the decision not to renew the claimant's contract could not have been because the claimant did the protected act(s) because that decision was taken before the first protected act. We considered the evidence on the decision to dismiss the claimant on 10 March, prior to the end date of her (extended) fixed term contract, which was due to end on 24 April 2024. We have set out in the Comments on Evidence section above why we concluded that that decision was because the claimant had done the protected acts. In doing so, we concluded that the claimant having done the protected acts was a significant influence (i.e. more than a minor or trivial factor) to the decision to terminate the claimant's employment on 10 March 2022 (and not 24 April 2022) and paying her in lieu until 11 April 2022 (and not until 24 April 2022). The claimant suffered a financial loss in respect of payment for the period from 12 until 24 April 2022. That was a detriment.
314. On the evidence, we also found that by issuing and reading aloud at church the 'Announcement to the Ministry – 24th June 2022' letter from Greg Williams (JB1 / 637 – 639) the respondent subjected the claimant to a detriment in terms of section 27 EqA. In the FBPs it is the claimant's position that by the issue of that letter she had suffered a detriment as a result of making a protected disclosure. The content of that letter is set out in the Findings in Fact section. On the face of the terms of that letter, that letter was issued because the claimant had raised her grievance against Gavin Henderson. On the face of it, the fact that the claimant did the protected act(s) was the reason, or at least a significant influence to the decision to issue that announcement. The announcement is a comment on the grievance raised by the claimant. It is noted that the *"quote from the Committee's report"* in that letter does not fully reflect the content of that report (JB1 / 522 – 527), as set out in the Findings in Fact. The claimant was significantly upset by the terms of that letter and the way in which it was communicated. We accepted the claimant's evidence that among the respondent's UK Church congregation she (and

Andrew Montgomery) could be identified from the content of that letter. We accepted the claimant's evidence that she had been discredited as a result of the respondent's actions, which had caused relations she had had with some in the church to be severed. We accepted her evidence that because of the content of that letter the claimant felt that she could no longer attend the respondent's church, and that was deeply upsetting for her. On the evidence, there was detriment to the claimant as a result of her having done a protected act. This finding is based on primary facts, particularly the terms of the letter, without any inference requiring to be drawn from secondary facts.

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10 315. We considered what the claimant had set out in her FBPs at JB1 / 140. We considered the position in the claimant's witness statement, at paragraphs 38 (headed "*Victimisation within a grievance process based on the ground of disability*"). What is relied on in that paragraph 38 (letter from Greg Williams JB1 / 637 – 639) is also relied upon at para 52 of the claimant's witness statement. We noted that that letter was not explicitly referred to in the FBPs at JB1 / 140. At JB1 / 140 the claimant relies on the content of the HR Consultant's report being "*..derogatory, and judgmental and were indeed all related to my dyslexia, which also impacted due to ill health. Due to this, my grievance regarding discrimination was not upheld. I appealed this.*"

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20 *Before the appeal was heard on the 13.05.22 with all members of the board apart from David Silcox and Ray Walker, this was intimidatory [sic]. The chairman emailed me before the hearing stating that the Board unanimously agreed to accept the substance and findings of the draft investigation report. This meant the appeal was prejudiced and I didn't get a fair hearing. The decision had already been made.*

25 *I reasonably believe this to be victimisation where my character has been maligned and my credibility damaged which was a further act to remove me from my job and damage my reputation within the church community."*

30 316. In the claimant's FBPs at JB1/150, at (11) under the heading '10. *What detriments do you allege the respondent subjected you to on the grounds you made a protected disclosure*' there is further reference to alleged

victimisation, in regard to the letter from Greg Williams and others of 18 June 2022 (JB1 / 637 – 638), the claimant states her position as ‘*The act victimised both myself and my husband.*’ In her submissions, the claimant relies on Greg Williams reading out that letter as harassment and victimisation. We took into account that reliance on that letter is not listed by the claimant under her victimisation claim. We considered our findings in fact and whether, on those facts, the claimant had suffered a detriment because she had done a protected act. Where the claimant is unrepresented, and where we heard evidence on that letter, it was in accordance with the overriding objective in Rule 2 to consider whether, on the findings in fact, the actions in respect of that letter were victimisation in terms of s27 EqA. The respondent’s position in respect of those actions is set out in Mr Jones’ submissions as:-

“It is submitted that in regard to D11, the Ministry Announcement of Dr Greg Williams and James Lambu dated 24 June 2022 was an internal communication to the ‘church family’ to address and rumours and concerns within the church that had resulted in ‘a climate of suspicion and unrest’. [637-638]. The Tribunal are invited to note that, the announcement does not mention C or her employment. Moreover, it was made over three months after the termination of C’s employment and for the principal reason of internal church governance – not any alleged qualifying disclosures.”

317. On the face of the terms of that letter, the fact that the claimant did the protected acts was a significant influence to that letter being written and issued.

318. Although the list of issues (Appendix A) does not set out that the claimant relies on being removed from her job and / or acts which damaged her reputation within the church community as being detriments arising from her doing the protected acts, that was clearly the claimant’s position in her evidence and that is foreshadowed in the FBPs, which was accepted as an amendment to the position set out in the ET1. Unlike in *Z v Y*, by considering whether the claimant suffered a detriment in that regard, we have not considered a head of claim which is not set out in the list of issues. The claim of victimisation is included in the list of issues.

319. For these reasons, we found that the claimant was subjected to a detriment in terms of section 27 EqA in respect of:

- 5 • Her financial loss from 12 until 24 April 2022, arising from the decision to terminate the claimant's employment on 10 March 2022 (and not 24 April 2022) and paying her in lieu until 11 April 2022 (and not until 24 April 2022).
- 10 • The claimant being discredited by the issue of the announcement / letter at JB1 / 637 – 639, causing relations she had had with some in the church to be severed and causing her to feel that she could no longer attend the respondent's church.

320. The claimant's claim of victimisation under section 27 EqA is successful to that extent.

Re-imbusement of Expenses

15 321. The claimant did not agree or seek these expenses from the respondent during the course of her employment with the respondent. The claimant's claim for payment in respect of GiANT expenses is not well founded and is dismissed.

Remedy

20 322. We considered the remedy the claimant is entitled to in respect of limited extents of the successful claims under section 26 EqA (harassment) and section 27 (victimisation).

25 323. Because of our findings on the reason for the claimant's dismissal, the financial loss which the claimant suffered as a result of the matters in which her claims were successful is limited to the period from 12 April 2022 until 24 April 2022. On the basis of the claimant's net monthly income from the respondent being £1393.98 (JB1 / 690), the financial loss in the period from 11 until 24 April 2022 is ((£1393.98 x 12 / 52) £321.69 x 2 weeks) £643.38.

324. The claimant is entitled to an award in respect of injury to feelings ('solatium'). We took into account the evidence that the claimant had been receiving

counselling from before doing the protected acts and that there were issues which impacted on the claimant and caused her distress other than those in respect of which her claims are successful. On application of *Chapman v Simon*, we awarded compensation only in respect of the extent of the successful complaints. We were careful to seek to compensate only for the harm caused by the unlawful discrimination. We took into account the limitation of the extent of the successful claim under section 26 (harassment), and the evidence on the effect on the claimant of those actions. We took into account the evidence from the claimant on the effect of the issue of the announcement. We did not accept that the claimant was unable to work, and so had suffered financial loss as a result of the successful aspects of her complaints. We took into account the general principles that underlie awards for injury to feelings, set out in *Prison Service and ors v Johnson 1997 ICR 275, EAT*. We took into account Lord Justice Mummery's guidance in *Vento (No. 2)* that some of the elements that injury to feelings encompasses are 'subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on'. We took into account the EAT's guidance in *Komeng v Creative Support Ltd EAT 0275/18* that, when considering awards for injury to feelings, a tribunal's focus most be on the effect of the unlawful discriminatory treatment on the claimant, not on the gravity of the discriminatory acts of the respondent. We had to have regard only to the effect of the successful elements of the complaints, on the application of the relevant law to the material facts. We had to be satisfied on the basis of the evidence and our findings of fact that the harm or injury suffered by the claimant was caused by the acts of unlawful discrimination (*Essa v Laing Ltd 2004 ICR 746, CA*). We took into account the findings in fact on the claimant's evidence in her document headed 'Injury to Feelings' (JB1 / 692) and the extent of the medical evidence before us. Although the claimant was obvious distressed before us, there was no medical evidence of any medical condition caused by the unlawful acts.

325. We noted that in inquiring into the extent of injury to feelings, account can be taken of matters arising out of and consequential upon the act of discrimination (*British Telecommunications plc v Reid 2004 IRLR 327, CA*).

In particular, the Court of Appeal there noted (paragraphs 33 and 34) that if a grievance procedure about a discrimination complaint is completed quickly by an employer, this may help to limit the extent of the injury to the complainant's feelings. Conversely, if it takes a considerable time, the injury to feelings may well be greater because the injury is prolonged. That is the position so long as the grievance is a natural consequence of the unlawful incident. Delay in dealing with a grievance is not a detriment of itself, as suggested by the claimant, but may then be taken into account in the level of an award of injury to feelings, dependant on the circumstances. In this case, we considered that the injury to feelings award should to some extent reflect the upset caused to the claimant by the way in which her grievance was dealt with after the meeting with the HR Consultant on 6 April 2022. In the circumstances, we considered those dealings to be a consequential effect of the unlawful act. We accepted the claimant's position that the outcome of her grievance against Gavin Henderson raised on 2 January 2022 was affected by the HR Consultant's unlawful acts in failing to take account of the claimant's disability (evidenced by her failure to take into account the claimant's position that she needed to slow down). We could not accurately predict what the outcome of that grievance would have been, had the HR Consultant not acted unlawfully. By that time, the claimant had been dismissed.

326. We accepted Mr Jones' submissions on the relevant bands of the Vento scale at the material time (Lower band £990 - £9,900; Middle band £9,900 - £29,600; Upper band £29,600 - £49,300). The claimant sought an award in the middle band (on the basis of all of her claims being successful and to reflect injury to feelings in respect of the effect of unlawful discriminatory action in respect of the full extent of her complaints). In all the circumstances, an award for injury to feelings is made of £9,900, which at the top of the relevant lower band (and at the start of the middle band) of *Vento*.

327. Interest is awarded, on application of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803, Reg 3(1), at the applicable rate of 8%.

328. On the financial loss, interest is awarded from 10 March 2022 until the date of this Judgment (15 May 2024). That is a period of 2 years and 66 days. The annual interest on the financial loss of £643.38, at the judicial rate of 8%, is $(£643.38 \times 8/100)$ £51.47. That equates to a daily sum of $(£51.47 / 365)$ £0.14. Interest on the financial loss is awarded of $((2 \times £643.38) \text{ £1,286.76} + (66 \times £0.14) \text{ £9.24})$ £1,296.
329. On balance, in respect of the injury to feelings award, interest is awarded from the midpoint between the date of the meeting with the HR Consultant (6 April 2022) and the date of the announcement (18 June 2022), to the date of this Judgment. Coincidentally, that is from 14 May 2022 to 14 May 2024. At a rate accrued interest of 8% per annum, that interest is $(£9,900 \times 8/100)$ £792 per annum, and a total of $(2 \times £772)$ of £1,584.
330. The claimant is entitled to a total award of $(£643.38 + £9,900 + £1,296 + £1,584)$ £13,423.38 in respect of the extent of her successful claims under section 26 and 27 of the EqA. We were satisfied that that overall figure squares with the relevant findings in fact and is not manifestly excessive.

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Employment Judge: C McManus
Date of Judgment: 13 May 2024
Entered in register: 28 May 2024
and copied to parties

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