EMPLOYMENT TRIBUNALS

Claimant: Mrs Aminata Mohammed

Respondent: Guy's and St Thomas NHS Foundation Trust

Heard at: **London South, by CVP**
On: 20- 24, 28 and 29 November 2023; 1, 2 February 2024
13,14 and 19 February and 11 April 2024 (in chambers)

Before: **Employment Judge Rice-Birchall**
Ms Mitchell
Ms Forecast

Representation
Claimant: Mr Egan, Counsel
Respondent: Ms Robertson, Counsel

JUDGMENT

1. **The complaint of direct disability discrimination is not well-founded and is dismissed.**
2. **The complaint of direct race discrimination is not well-founded and is dismissed.**
3. **The complaint of unfavourable treatment because of something arising from disability is dismissed on withdrawal by the claimant.**
4. **The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.**
5. **The complaint of harassment related to race is not well-founded and is dismissed.**
6. **The complaint of harassment related to disability is not well-founded and is dismissed.**
7. **The following complaint of victimisation is well founded and succeeds:**

   That the respondent ignored the claimant's repeated requests for and failed to provide the claimant with the appeal documents she set out in her appeal of 14 May 2018 and which she requested thereafter in her protected act.
8. **The remaining complaints of victimisation are not well-founded and are dismissed.**

REASONS

Background

1. The claimant commenced employment with the respondent on 31 August 2003. From October 2012 the claimant worked as a Clinical Research Sister in the Research and Development Team at Guys and St Thomas Hospital. The Tribunal understands that she remains employed by the respondent.

2. The claim refers to events from January 2016 onwards.

3. The claimant's claim was presented on 9/10/2018 and was for unlawful discrimination contrary to the Equality Act 2010 (EQA) based upon the protected characteristics of race and disability. The prohibited conduct was said to be under sections: 13 (direct); 15 (discrimination arising from disability); 20 and 21 (failure to make reasonable adjustments); 26 (harassment); and 27 (victimisation). The complaint is under s.39(2) EQA (it is assumed being subjected to a detriment s.39(2)(d)EQA) and presumably s.40 in respect of harassment.

4. A seven page document entitled Details of Claim was attached to the claim form. The details of claim were drafted by solicitors instructed by the claimant. Mr Oweyele was the claimant's representative.

5. A preliminary hearing was held on 27/2/2019 at which the claimant was represented (she was also represented when her claim form was presented). That hearing listed a five day final hearing for the 20/4/2020. The respondent complained that further details of the claim were required from the claimant and the claimant was directed to provide that information, by reference to the questions on the respondent's draft list of issues by the 13/3/2020. That should not have proved to be contentious.

6. There were various applications made (including applications for unless orders) and the position seems to have been that the claimant believed she had provided all that was required, although the respondent was still dissatisfied.

7. By the time of the April 2020 final hearing, the Covid-19 pandemic was underway and the final hearing (as all final hearings were at that time) was converted to a telephone hearing on day one (20/4/2020).In any event, on the 19/3/2020 the respondent applied for an adjournment, as it was of the view that the case was not prepared for the final hearing. The claimant was no longer represented and she did not attend the hearing. That hearing listed a final hearing over six days to commence on the 19/4/2021.The respondent had an outstanding unless order application, which the Tribunal proposed to deal with on the papers. A further case management hearing was listed for the 27/5/2020.

8. The claimant attended the hearing on 27/5/2020 and the Tribunal Judge was persuaded to make an unless order. The unless order related to the claimant providing the information requested by the respondent in the list of issues. In due course, the unless order took effect as it was deemed the claimant had not complied with it and on the 8/7/2020 the claim stood as dismissed without further Order. The claimant appealed against that dismissal of her claim. The appeal was heard on the 24/1/2023 and the Judgment was dated 24/2/2023. The claimant was represented by one of His Majesty's Counsel. The case was remitted back to the Tribunal for any necessary case management and to list the case for a final hearing.

9. Case management orders were made including for disclosure and for exchange of witness statements. In spite of these, the claimant did not send her witness statement to the respondent until the night before the hearing and was disclosing documents, which the respondent had been requesting for some considerable time, up to the hearing. Even then, she did not disclose all of the documents referred to in her witness statement, with the remaining documents being served only during the evening of the second day of the listed hearing.

10. The respondent made a strike out application at the outset of the hearing given the claimant's further non-compliance. For reasons given orally at the hearing, the respondent's application for a strike out was unsuccessful and the case proceeded to its final hearing, which was listed to determine both liability and remedy, but which, due to considerable delays resulting from the claimant's non-compliance, did not start properly until day 4 of the 7 day listing. That meant that judgment would inevitably be reserved, and that remedy, if necessary, dealt with at a subsequent hearing.

11. In the event, the claim went part heard and was listed for a further two days in February 2024. The Tribunal had four days in chambers for decision making, the latest of which was on 11 April 2024.

Issues

12. The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

1. **Jurisdiction**

1.1 Have any of the Claimant's allegations of discrimination been presented out of time?
1.2 If so, do any of the Claimant's allegations amount to a continuing act?
1.3 If any allegation is out of time, is it just and equitable to extend time?

2. **Race**

2.1 The Claimant identifies as being black and of West African origin.

3. **Disability**

3.1 Was the Claimant a disabled person within the meaning of s6 (1) Equality Act 2010 at the material time? The Claimant asserts that she has the medical conditions of dyslexia and dyspraxia.

3.2 If yes, did the Respondent know, or ought it to reasonably have known, that the Claimant was a disabled person at the material time?

4**. Direct Disability Discrimination** (**nb also pleaded as harassment related to disability and race and direct race discrimination, see below)**

4.1 Has the Respondent treated the Claimant less favourably than someone who does not have the same alleged disability as the Claimant (the Claimant relies on a hypothetical comparator)?

4.1.1 From April 2016, Mr Brazel undermined the Claimant's professional development by:

a) Nullifying the Claimant's line management and career progression plan which had been agreed with Helen Jones and in place since 2012 (paragraph 3(d)(i))

b) Blocked the Claimant's participation in Patient and Public Involvement activities that she had set up for the team (paragraph 3(d)(ii));

c) Unilaterally changed the date of her performance development review from March to April and cancelled her management training (paragraph 3(d)(iii)); NB The claimant confirmed in final submissions that this allegation was no longer pursued.

d) In October 2016 refused to approve training for the Claimant that was required for her to help Mr Brazel with his Business Planning Project (paragraph 3(d)(iv));

e) On or around 2 March 2017 rejected the Claimant's explanation in relation to her faulty telephone and the steps being taken to repair it and forced the Claimant to go to the Knowledge and Information Centre to prove that her explanation was truthful (paragraph 3(d)(v)).

4.1.2 Took Mr Burdsey over nine months to prepare his grievance report which was produced on 30 April 2018, dismissed allegations as bullying, harassment, race and disability discrimination and failed to give the Claimant a right of appeal and failed to answer her requests as to why she was not being given the right to appeal (paragraph 6(b);

4.1.3 Mr Burdsey failed to provide documentation to the Claimant to help her prepare her appeal on or after 14 May 2018 despite being asked to provide it (paragraph 6(c));

4.1.4 Mr Burdsey was aware of Mr Brazel's conduct towards the Claimant after she had raised an investigation but ignored it. In breach of policy Mr Brazel discussed the Claimant's grievance with other members of staff and Mr Burdsey failed to take steps in relation to this despite becoming aware of Mr Brazel's actions during his investigation (paragraph 6(d));

4.1.5 After raising her grievance Mr Brazel, Ms Leon and Ms Okello falsely and maliciously accused the Claimant of accusing Mr Brazel of trying to have her National Midwifery Council PIN removed (paragraph 6(e));

4.1.6 Ms Leon made false and malicious allegations against the Claimant and was moved from the Claimant's team without any attempt to verify the allegation made against the Claimant (paragraph 6(f));

4.1.7 Mr Brazel was allowed to discuss the Claimant's grievance on 22 May 2018. In contrast Ms Sreeneebus sent the Claimant an email threatening action against her for having contacted Ms Leon and Ms Okello about false and malicious allegations they had made against her whilst her grievance was being investigated (paragraph 6(g)). In contrast no such action was taken against Mr Brazel, Ms Leon or Ms Okello (paragraph 6(h));

4.1.8 Ignored the Claimant's complaints of race discrimination, bullying, harassment and victimisation brought by way of her protected acts (paragraphs 6(j) and 7);

4.1.9 Ignored her repeated requests for and failed to provide the Claimant with the appeal documents she set out in her appeal of 14 May 2018 and which she requested thereafter in her protected acts (paragraphs 6(j) and 7);

4.1.10 Breached the Respondent's Dignity at Work Policy by taking no action into her ongoing discrimination complaints raised by way of the protected acts (paragraphs 6(j) and 7);

4.1.11 Ignored the request for Ms Cashman to be recused from hearing the appeal which was made by the Claimant on 18 September 2018 (paragraphs 6(j) and 7).

4.2 If so, was the alleged treatment because of the Claimant's alleged disability?

5**. Discrimination Arising from Disability: this claim is no longer pursued and was withdrawn by the claimant**

[5.1 Was the Claimant treated unfavourably by the Respondent because of something arising in consequence of the Claimant's alleged disability, contrary to section 15 Equality Act 2010? The something arising from disability was the impact of the disability on the Claimant's speed of reading and undertaking written work.

5.2 Has the Respondent treated the Claimant less favourably by withdrawing her management responsibilities in April / May 2016 and failing to offer her subsequent posts because she did not have management experience in August 2016.

5.3 If so, did this unfavourable treatment arise because of the something arising in consequence of the Claimant's alleged disability?

5.4 If yes, can the Respondent show that the discriminatory treatment was a proportionate means of achieving a legitimate aim?]

6. **Failure to Make Reasonable Adjustments**

6.1 Did the Respondent apply a PCP which placed the Claimant at a substantial disadvantage? The Claimant has identified the following PCPs:

6.1.1 The Respondent's alleged refusal to refer the Claimant to Occupational Health for purposes of recommending reasonable adjustment to her work due to alleged disability of dyslexia and dyspraxia.

6.1.2 The alleged requirement for the Claimant to perform the research aspects of her duties with a standard issue desktop computer with no assistive software support to aid the Claimant's alleged disability of dyslexia and dyspraxia.

6.2 If so, did any such PCP put the Claimant at a substantial disadvantage when compared to those who are not disabled? Claimant has identified the following alleged substantial disadvantages:

6.2.1 Not being able to record in a timely manner or fashion patient data involved or participating in clinical trials conducted by her;

6.2.2 The Claimant's ability to process information efficiently; and

6.2.3 The Claimant suffered problems with visual-spatial processing of information associated with projects being worked on by her, particularly with the white screen background of the computer's monitor.

6.3 If so, did the Respondent know or could it reasonably be expected to know that the Claimant was likely to be placed at the disadvantage because of the PCP(s)?

6.4 Would these adjustments have ameliorated or removed the disadvantage? The Claimant has identified the following reasonable adjustments:

6.4.1 Respondent's failure to extend the provision of sick pay beyond the contractual entitlement in this concern also constitutes a failure to make a reasonable adjustment / Pro rata extension of provision of sick pay beyond the contractual entitlement: this allegation was not pursued by the claimant.

6.4.2 An adjustment to the Claimant's desktop computer by installing the necessary software to assist her with her duties in question or alternatively;

6.4.3 The provision of an adapted keyboard with larger and coloured keys;

6.4.4 Text-to-speech software, provision of information in alternative formats, extra training and support, including disability equality training;

6.4.5 A laptop computer containing the necessary software and features similar required to a desktop computer.

6.5 If so, would the adjustments have been reasonable?

7. **Harassment**

7.1 Did the Respondent engage in unwanted conduct related to the Claimant's alleged disability and/or race?

7.1.1 Mr Brazel told the Claimant that just because she had dyslexia did not mean that she could get special treatment and that he suffered from the same condition i.e. dyslexia but gets no special treatment as a result (paragraph 4(c)); The Claimant asserts that this conduct pertains to both her race and disability.

7.1.2 On or around 17 March 2017 told the Claimant that having bought himself a new laptop he was not going to give her his laptop which had software that would assist the Claimant in light of her disability and that instead he was going to give the laptop to the new Band 7 nurse, Ms Leon (paragraph 4(d)); The Claimant asserts that this conduct pertains to both her race and disability.

7.1.3 By the way that Tim Burdsey conducted himself in a meeting with the Claimant on 30 November 2017 in connection with the Claimant's grievance during which he was hostile, exhibited bias, was intimidatory and inappropriately defended Mr Brazel; Mr Burdsey told the Claimant that "he wasn't bullying her but managing her in a different way" (paragraph 6(a)); The Claimant asserts that this conduct pertains to both her race and disability.

7.1.4 In the alternative, allegations pleaded under direct race and disability discrimination at 4.1.1 to 4.1.14 (above) and 9.1.1 to 9.1.14 are pleaded as harassment.

7.2 If so, did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

7.3 If so, was it reasonable for the conduct to have, or be perceived to have, that effect?

8. **Direct Race Discrimination**

8.1 Did the Respondent treat the Claimant less favourably than it treats or would treat others?

8.1.1 Mr Brazel repeatedly ignoring the Claimant's leave requests (paragraph 3(a)).

8.1.2 Mr Brazel requiring the Claimant to justify her annual leave request and on occasion altering her request before approving it (paragraph 3(b)).

8.1.3 In relation to the Claimant's annual leave request made on 16 March 2017 for annual leave from 3 to 17 April 2017, on 30 March 2017 Mr Brazel, accused the Claimant of dishonesty and lying in relation to her annual leave record (paragraph 3(c).

8.1.4 The Claimant repeats the allegations of less favourable treatment set out under paragraph 4.1.1 to 4.1.11 above (see paragraph 7).

8.2 If this treatment took place as alleged, was this treatment because of the Claimant's race?

8.3 The Claimant relies on Elizabeth Biswell and Suzanne Dyson as her actual comparators and/or a hypothetical comparator.

9. **Victimisation**

9.1 The Respondent accepts that the Claimant has done the following protected acts within the meaning of section 27 of the Equality Act 2010:

9.1.1 formal complaint lodged with Dr Ira Madan on 24 August 2017 in which she complained of bullying, harassment, race and disability discrimination

9.1.2 Complaint made to the Respondent's Chief Executive on 11 June 2018 against TB and AM;

9.1.3 Complaint made to the Respondent's Chief Executive on 28 June 2018 against TB and AM;

9.1.4 Complaint made to the Respondent's Chief People Officer on 6 July 2018 against TB and AM;

9.1.5 Complaint made against TB and MC on 18 September 2018.

It is admitted by the respondent that each of these (9.1.1-9.1.5) were protected acts within the meaning of section 27 of the Equality Act 2010.

9.2 Was the Claimant subjected to a detriment because of doing the above protected acts, the alleged detriments being:

9.2.1 Took Mr Burdsey over nine months to prepare his grievance report which was produced on 30 April 2018, dismissed allegations as bullying, harassment, race and disability discrimination and failed to give the Claimant a right of appeal and failed to answer her requests as to why she was not being given the right to appeal (paragraph 6(b);

9.2.2 Mr Burdsey failed to provide documentation to the Claimant to help her prepare her appeal on or after 14 May 2018 despite being asked to provide it (paragraph 6(c));

9.2.3 Mr Burdsey was aware of Mr Brazel's conduct towards the Claimant after she had raised an investigation but ignored it. In breach of policy Mr Brazel discussed the Claimant's grievance with other members of staff and Mr Burdsey failed to take steps in relation to this despite becoming aware of Mr Brazel's actions during his investigation (paragraph 6(d));

9.2.4 After raising her grievance Mr Brazel, Ms Leon and Ms Okello falsely and maliciously accused the Claimant of accusing Mr Brazel of trying to have her National Midwifery Council PIN removed (paragraph 6(e));

9.2.5 Ms Leon made false and malicious allegations against the Claimant and was moved from the Claimant's team without any attempt to verify the allegation made against the Claimant (paragraph 6(f));

9.2.6 Mr Brazel was allowed to discuss the Claimant's grievance on 22 May 2018 In contrast Ms Sreeneebus sent the Claimant an email threatening action against her for having contacted Ms Leon and Ms Okello about false and malicious allegations they had made against her whilst her grievance was being investigated (paragraph 6(g)). In contrast no such action was taken against Mr Brazel, Ms Leon or Ms Okello (paragraph 6(h));

9.2.7 Ignored the Claimant's complaints of race discrimination, bullying, harassment and victimisation brought by way of her protected acts (paragraphs 6(j) and 7)

9.2.8 Ignored her repeated requests for and failed to provide the Claimant with the appeal documents she set out in her appeal of 14 May 2018 and which she requested thereafter in her protected acts (paragraphs 6(j) and 7);

9.2.9 Breached the Respondent's Dignity at Work Policy by taking no action into her ongoing discrimination complaints raised by way of the protected acts (paragraphs 6(j) and 7);

9.2.10 Ignored the request for Ms Cashman to be recused from hearing the appeal which was made by the Claimant on 18 September 2018 (paragraphs 6(j) and 7).

Evidence

13. The Tribunal had a main hearing bundle prepared by the respondent running to 1130 pages.

14. The claimant disclosed three additional bundles, referred to as C1, disclosed on the Friday before the hearing, C2, disclosed on the Sunday evening before the start of the hearing and C3, disclosed at the end of day 2 of the hearing (but before the Tribunal started to hear evidence). Those bundles contained 198, 63 and 60 pages respectively.

15. A further document was disclosed during the hearing, which was an extract from the NHS Terms and Conditions of Service Handbook which pertained to annual leave.

16. The Tribunal had a witness statement from the claimant. For the respondent, there were witness statements for Mr Brazel, the claimant's line manager at the material times; Mr Burdsey, then the respondent's Head of Technology for the Health Innovation Network and the grievance manager; Ms Firth, Deputy Head of Employee Relations; Ms Murtagh, the respondent's Chief Operating Officer for the CRN and the Director of Research and Development Operations and the originally appointed grievance appeal officer; and Ms Sreeneebus, the respondent's Modern Matron for Research and, latterly, the claimant's line manager.

17. Given the late disclosure and exchange of witness statements, the parties were not ready to proceed with the hearing until Thursday, which was day 4 of the listed hearing. The claimant was informed that anything in the witness statement, including in relation to Professor Wolfe, would not be considered other than as background unless it pertained directly to one of the listed issues.

18. The claimant appeared highly stressed throughout the proceedings and was rocking at certain times. The Tribunal sought to take account of this by giving additional breaks and allowing the claimant's representative to speak to the claimant to ask whether any further adjustments were required. The claimant was keen to continue with the proceedings.

Findings of facts relevant to the issues

19. The claimant describes herself as a black British woman of West African descent.

20. The claimant commenced employment with the respondent as a Band 5 adult nurse on 29 September 2003. On 5 January 2010 she became a Band 6 Adult specialist intensive care nurse. From 5 September 2011, the claimant was promoted to a Band 7 role as a clinical research sister. Around October 2012, the claimant transferred to a post in the Proactive Care of Older persons Undergoing Surgery (POPS) team within the Medicines Directorate, with Helen Jones, Modern Matron as her line manager.

21. The claimant's substantive role with the respondent at all material times is a Band 7 clinical research sister in the respondent's acute medicine research team. The team's function is to organise and carry out clinical research studies within the department by working closely with consultant clinicians and research fellows, for which the department gets funding. The research is carried out by research nurses. At Band 7, the claimant was one of the most senior nurses.

22. At the material time, the research team consisted of four Band 7 nurses: the claimant; Ms Leon (who is black); Ms Dyson and Ms Biswell (both of whom are white). There were five Band 6 nurses including Ms Okello and Ms Wallace, and one Band 5 nurse. The team was initially managed by Ms Jones.

23. In October 2015, following a restructure, Mr Brazel, an experienced NHS Manager, was seconded into the post of Research Performance Manager. Following his appointment, the management of the Research team was split. Mr Brazel was tasked with tightening up administrative processes and driving efficiency, and so his role was to focus on the administrative, commercial and operational management of the team, whilst Ms Jones was to remain responsible for supervision of the clinical aspects of the role.

24. The claimant had unsuccessfully applied for the management role given to Mr Brazel, which was a Band 8a role.

25. On 4 November 2015, the claimant, along with the rest of her team, was notified, by Ms Jones, that Mr Brazel had been appointed to the manager role and that he would be responsible for annual leave. The email requested the team to book all annual leave through Mr Brazel to allow it to be registered centrally on the required e-system, with copy to Ms Jones for information. Ms Jones went on to state: "This does not change any line management arrangements but allows us to ensure that all leave is reported as required."

26. Mr Brazel's responsibilities in his new role included sickness absence management, approving holiday, target compliance and budgetary matters. Ultimately, he was there to drive performance. His role became his substantive role in March 2016.

27. Dr Madan was the line manager of Mr Brazel and Ms Jones. She emailed the team on 13 March 2016 referencing operational management accountabilities changing from week commencing 1 April 2016: "These changes are being made in order to add structure and clear lines of accountability for those who are funded by R& D money".

Disability

28. The claimant was diagnosed with dyslexia and dyspraxia in the 2015/6 academic year. A report was produced by a chartered psychologist for King's University where the claimant was studying for an MSc research degree ("the report"). The report related to the claimant's studies and was not directly relevant to the workplace. The report states: 'severity is mild.' In any event, the claimant had effective coping strategies.

29. The respondent conceded that the claimant was a disabled person within the meaning of the Equality Act, at all material times, by reason of dyslexia and dyspraxia.

30. The claimant confirmed in her oral evidence that her disability did not have a significant impact on her work other than in times of stress.

31. There was no evidence before the Tribunal to suggest that the claimant was unable to record in a timely manner data of patients involved or participating in clinical trials; to process information efficiently; or that she suffered problems with visual-spatial processing of information associated with projects being worked on by her, particularly with the white screen background of the computer's monitor. More importantly, there was no evidence whatsoever of the claimant notifying the respondent of such difficulties. In evidence she said that she had produced her own work arounds.

Annual leave

32. One of the areas for which Mr Brazel took over responsibility was annual leave. He considered that loose management of annual leave could have an impact on the productivity of the team.

33. Mr Brazel introduced a new process for recording leave which applied to all staff in the Research team for which Mr Brazel had responsibility. An

email dated 6 April 2016 outlined the procedure expected of the team before sending it to him for sign off. It says that those working compressed or annualised hours should contact him to discuss it. This new arrangement was put in place in respect of the holiday year 2016/7 (April – March). Mr Brazel introduced a new leave card template for recording not only annual leave, but all other leave such as sick leave, special leave and study leave. We note from examples of completed templates in the Bundle that the form does not note when leave is requested and when it is approved.

34. In any event, prior to submitting a leave request, the claimant and her colleagues were required to liaise with other team members, including doctors, to ensure staff cover. They would then send their annual leave request to their manager, Mr Brazel, for approval before it would be entered onto the central register.

35. Mr Brazel was particularly challenged by the fact that the claimant had a greater amount of other types of leave than was typical, including study leave, and worked a nine day fortnight. The claimant's nine day fortnight, in particular, meant that Mr Brazel paid more attention to the claimant, more so as she would not accept that working a nine day fortnight meant that her holiday entitlement would reduce slightly. There is no criticism of the claimant in that regard, as her belief that she was entitled to a full holiday entitlement remained unchallenged until Mr Brazel arrived and, from the claimant's perspective, she was still working the same number of hours. No other employees in the team worked a nine day fortnight and the claimant's holiday entitlement had not been reduced or challenged until Mr Brazel became responsible for it. The fact that Mr Brazel challenged the claimant's leave entitlement was a factor which lead to the relationship between the claimant and Mr Brazel becoming fractious. Further, Mr Brazel remained under the impression that not all of the claimant's study leave was ever recorded.

36. There was an occasion when Mr Brazel wanted the claimant to cancel booked leave to attend an initiation meeting for a new hospital at home (HAH) study. An external Trial Manager had proposed a date of 12 February 2016. There does not seem to be any reason why the meeting could not have been arranged for a different day, as reflected in the grievance findings. However, the Tribunal finds that Ms Dyson was also asked to change a leave date close to a work related deadline, which was resolved by Ms Dyson changing her leave.

37. The claimant did seek to change her annual leave from time to time, sometimes at the last minute. Although there is no criticism of that, that did mean that there would be additional focus on her holiday bookings, and it added to any confusion. An example of the claimant changing a leave request while still chasing approval for an initial request was in relation to 11 August 2016 when the claimant requested leave and, before it was approved, she changed it to add an additional day.

38. It is fair to say that Mr Brazel did not always respond quickly to leave requests. He appears not to have been well organised as regards annual leave and admitted in oral evidence that he was not on top of annual leave. The difference in understanding over the claimant's leave

entitlement was an additional factor. Neither the claimant nor Mr Brazel appeared to be aware of the annual leave calculator which the respondent had and which could have helped to clarify matters.

39. The claimant says in her witness statement that the Research Assistant who was responsible for maintaining the departmental leave records had to chase Mr Brazel to respond to an annual leave request from the claimant. In fact, the request was made on 25 January 2016 and was chased only two days later on 27 January 2016. Mr Brazel responded to the claimant on 4 February 2016 asking her to summarise the leave taken and still required for the 2015/16 leave year ending in March. The claimant replied more than a week later on 12 February 2016 and Mr Brazel met with the claimant a day later to discuss it. The claimant then had to chase Mr Brazel again on 15 February. The Tribunal finds that the claimant contributed to the delay on this occasion.

40. A further such example of delay was in relation to a request for annual leave made on 11 August 2016, for three days from 30 August- 1 September and 14 September 2016. The claimant mentioned this at a meeting with Ms Jones and Ms Biswell to discuss issues with Mr Brazel on 17 August 2016. Ms Jones advised the claimant to write again to Mr Brazel which she did the following day, also requesting an additional day's leave. As she did not get a response, she asked Ms Jones to approve it on 22 August 2016 and copied in Mr Brazel. Mr Brazel responded to Ms Jones within one hour telling her to disregard it.

41. That annual leave was an issue and that records were not accurate is exemplified as follows. By email dated 11 January 2017, the claimant advised Mr Brazel that she would be on study leave on 16 January 2017 then on annual leave for 3 days. No study leave; 'SL'; or 'S/L' is recorded for 16 January 2017 on either of two versions of the claimant's leave record for leave year commencing April 2016. However, 13 January 2017 is shown as a 'SL' day on one of the two versions (which the Tribunal was told was the final version). It appears that this was a later addition to the record as it only appeared in the later version. On 13 Jan 2017, the claimant had emailed the team to advise that she would be on a day's study leave the following Monday (that is, 16 January) and AL for the remainder of that week. In her email she gave a return date of Monday 27 January, but that is a mistake and should be Monday 23 January.

42. It is clear that Mr Brazel did prefer to try to deal with matters such as the claimant's leave requests face to face. There did appear to be a regular monthly meeting between the claimant and Mr Brazel where annual leave would often be discussed, and even the focus of attention, during the meeting.

43. On 16 March 2017, following a one to one between Mr Brazel and the claimant, the claimant wrote to Mr Brazel and updated him on leave up to March 2017 and made an annual leave request for 3 to 17 April 2017, in respect of the new annual leave year.

44. On 29 March 2017, Mr Brazel wrote back to the claimant to ask for some clarification of leave and to say that no leave had been approved for 2017/8.

45. On 30 March 2017, there was a heated conversation, which took place on the telephone between Mr Brazel and the claimant in which Mr Brazel accused the claimant of dishonesty in relation to her annual leave record. The conversation centred around the claimant having written Mr Brazel's name in as the authoriser of the annual leave, though that was an accepted practice, at least in as much as the claimant had sent other forms to Mr Brazel which showed his name in the "agreed by" column. The conversation escalated into a heated argument. Mr Brazel admitted in his evidence that he had gone too far and said he had been "overly bureaucratic".

46. The Tribunal also notes that there was an email from Ms Biswell in which she said to him: "you want me to update my annual leave form even before it is approved?????". The Tribunal finds that this demonstrates that Mr Brazel's management of annual leave was disorganised.

47. The claimant's evidence is that she suffered a breakdown as a result of this telephone conversation and was sent home by Ms Jones. The Tribunal does not seek to comment on the claimant's mental state at that time but finds that she went off sick following this altercation and remained off sick at all material times.

The claimant's line management and career progression plan

48. From 2012 until Mr Brazel's appointment, the claimant had appraisals with Ms Jones. Part of the appraisal process included setting objectives and discussing career progression. It was inevitable, following Mr Brazel's appointment and the restructure, and following the decision to make him the line manager for all of the team and to leave clinical supervision only to the nursing staff, that there would be some changes to those objectives, particularly as regards line management responsibilities, which were split.

49. It was clear from the organisation chart sent out in March 2016 that the claimant would retain clinical management of two junior nurses: Ms Okello and Ms Wallace. Mr Brazel and the claimant were to jointly carry out the appraisals of these two nurses. This was applied to all of the Band 7 nurses in the department in the same way. The claimant was unhappy about this as she was trying to develop the non-clinical side of her role and she felt that Mr Brazel was blocking her, though the decision on line management was not taken by him. The claimant had begun a leadership programme through the Open University in April 2015 and completed it in August 2016. She was motivated to develop her career.

50. Partly because she wanted to progress and gain management experience, and partly because she wrongly felt it was Mr Brazel who was standing in her way, the claimant was resistant to the organisational changes made by Dr Madan (rather than Mr Brazel), changes which were made across the board and were in no way personal to the claimant.

51. The claimant was concerned about her line management responsibilities having been taken away. This was one of the concerns which led to a meeting on 24 October 2016 involving the claimant, Ms Jones and Mr Brazel. An outcome of the meeting was a note which confirmed the

responsibilities of the Band 7 nurses. It was stated that all Band 7 nurses would attend the appraisals of their direct reports along with Mr Brazel, so that the appraisal would include both clinical and general development. This was part of the process of understanding what the new structure meant for all concerned.

The claimant's Patient and Public Involvement (PPI) activities

52. The claimant participated in PPI activities. Ms Biswell participated in a different project, Delphi.

53. During one of the claimant's appraisals (November 2016), in the context of setting objectives for the following year (2017), Mr Brazel told the claimant that she should no longer participate in PPI activity and that such activity would be discussed further at the next six monthly review. Mr Brazel explained that the PDR process works around the needs of the service and that, at the time, Delphi was core and PPI was not, hence Ms Biswell being able to continue with Delphi.

54. Delphi is a tool that is based on structured interviews and can be used in research, an activity eligible for Clinical Research Network (CRN) funding. CRN funding was for the delivery of research. CRN clearly defined what activities were eligible. At the material time, PPI work would not be funded whereas Delphi based work would be. Also, Mr Brazel's understanding was that PPI was at least 50% clinical; that it involved regular meetings; a newsletter; reviewing applications and that it was going to get bigger. It was not funded at the time and there was a "pressed budget". Mr Brazel said the project should be parked because it was a big clinical project that there was not time or funding to do. As he was in charge of team budgets, this was his decision to make. He understood Delphi to be something quite different. He considered it to be a one off and requiring limited resource.

55. The claimant alleges further that Mr Brazel denied knowledge of PPI even though she had told him about it but the Tribunal finds that Mr Brazel did not do so deliberately and may simply have forgotten. He did not have a clinical role; had no clinical experience; and was seeking to focus on the core activities of the team. This was an example of the claimant taking things personally that were not personal. Mr Brazel was focussing on finance and funding and had objectives which meant that discussing what he saw as a non-core project was a lower priority.

April/June 2016 meeting

56. A meeting took place between the claimant and Mr Brazel in April 2016. The claimant alleges that she informed Mr Brazel at that meeting that she had dyslexia and dyspraxia and showed him the report. Mr Brazel has no recollection of such a conversation or seeing the report. As this is an issue of fact for the Tribunal to determine, this will be considered in the conclusions below.

57. It is worthy of note that Mr Brazel does himself have dyspraxia.

July 2016 meeting

58. Mr Brazel showed no hesitation in offering to refer the claimant to Occupational Heath (OH) for her health issues following a meeting between him and the claimant on 27 July 2016. He sent an email on the evening after their meeting (attached to the respondent's strike out skeleton) as follows: ' actions from our meeting today. I was very sorry to hear about your health issues. I know you said you don't need a referral for occupational health at this stage but please let me know if this changes. I'll be happy to do what I can".

August 2016

59. The claimant attended an interview in August 2016. Ms Jones was on the panel. The claimant was unsuccessful. Mr Brazel was a referee. In fact, he was never asked to provide a reference. Ms Jones, as the claimant's clinical supervisor and her former line manager in respect of all aspects of her role, knew about the claimant's work and would have been able to comment on her performance.

Business Planning project: October 2016

60. Around October 2016, Mr Brazel requested the claimant to assist with business planning. The request was in line with her objectives, as the claimant had asked for experience in business planning in order to broaden her management experience.

61. The claimant felt unable to complete the task and asked for some additional training. She told Mr Brazel that she had found a course that she considered to be relevant. Mr Brazel did not consider it to be relevant and did not agree to the claimant attending the course. He had requested from the claimant an indication of what staff would be needed to deliver the projects for the next year, something he felt that she was amply experienced enough to be able to provide.

62. On one occasion, security training was agreed to by Mr Brazel only after Ms Jones has agreed it. He did not accept the claimant's word or experience when she told him the training was required. Others also confirmed to him that the training was needed, but Mr Brazel still sought Ms Jones' input before agreeing to the training.

Meeting to discuss line management

63. A meeting took place on 24 October 2016 as the claimant wanted clarification of her line management duties. Following the meeting the claimant sent a follow up meeting which confirmed that she had discussed, and agreed, with Mr Brazel and Ms Jones, that she would "continue to mentor/line manage junior member of staff on nursing related issues in relation to developing their as a research nurse. Jeff to lead on and support Aminata on the HR aspect of line management." The claimant also confirmed that it had been agreed that she would take part in shortlisting and interviewing a potential candidate which Ms Jones and Mr Brazel would help to organise.

Recruitment

64. In October 2016, it was agreed that the claimant would be involved in recruitment, in line with her objectives.

65. The claimant was asked to do some recruitment by Mr Brazel which involved seeking to secure a Band 4 research assistant from Staffbank. This differed to a recruitment exercise in which the respondent sought to engage someone who was not already on their books.

66. Ms Biswell was used on the latter type of recruitment exercise. Mr Brazel explained that recruitment happened a lot and who was given responsibility for it depended on availability.

67. Mr Brazel explained that, whilst there are two different methods of recruitment, recruiting from Staffbank is essentially the same as recruiting externally in that candidates still have to be interviewed. They are two different routes, but ultimately both are recruitment.

Mobile phone incident: March 2017

68. Around March 2017, when Mr Brazel and the claimant met, there was a discussion about the claimant's mobile phone, which the claimant had in her desk drawer because it was broken. As a result, the claimant was uncontactable by mobile phone, which was a source of frustration to Mr Brazel. The claimant had been told that the phone would be cheaper to replace than to repair.

69. Mr Brazel then accompanied the claimant to the Knowledge and Information Centre (KIC) with a view to sorting the issue out. It seemed to him that it was a waste of money to replace the phone and that to do so would cause further delay.

70. In fact, the staff at the KIC confirmed that the claimant would need a new mobile phone.

71. During the course of the grievance process, a witness statement was taken from the relevant employee in the KIC. He confirmed that the atmosphere had been tense when Mr Brazel had attended the KIC with the claimant but also says it was consistent with his memory of the sort of person Mr Brazel was and that he wanted to resolve the matter and get back to work.

72. Mr Brazel then sought to track down what had happened. He asked the claimant who the request had gone to for approval. He then asked Ms Jones to take another look, which she did, and approved the order.

March 2017

73. Also in or around March 2017, a conversation took place in the office in which the claimant worked between Mr Brazel and the claimant.

74. The conversation was about a new laptop that Mr Brazel had been given which had on it some assistive software for dyspraxia. The claimant said something to the effect of the fact that she had dyslexia/dyspraxia and asked if she could have Mr Brazel's old laptop as it might assist her also.

In the course of the conversation, Mr Brazel said words to the effect that he had not let dyspraxia hold him back and had not had any special treatment.

75. The Tribunal finds that this conversation took place in March 2017 and not in June 2016 as the claimant suggests in her witness statement.

The claimant's grievance

76. The claimant raised a grievance on 24 August 2017. In the eleven page grievance, there was an initial focus on leave issues. In the accompanying form, the claimant stated that her desired outcome was a formal investigation into the grievance, to be managed by someone else and to have as little contact as possible with Mr Brazel. This was the claimant's first protected act. The grievance mentions that she had been diagnosed with dyslexia and dyspraxia and that the claimant had disclosed that to Mr Brazel at a one to one meeting. She also disclosed that she had suggested some adjustment to her computer or a work laptop to help her with her work.

77. Mr Burdsey was appointed to hear the grievance over one month after the grievance was received. It was Mr Brazel's first grievance after his training, so he was an inexperienced grievance manager, as exemplified by the fact that he produced 24 drafts of the grievance report before it was finalised, with significant input from HR.

78. Mr Burdsey interviewed the claimant, who was accompanied by an experienced union representative. He invited her to a fact finding meeting to understand more about her grievance and to discuss who else would need to be interviewed. The meeting on 31 October 2017 was adjourned and reconvened approximately one month later on 30 November 2017. The Tribunal finds that Mr Burdsey behaved appropriately during that investigation meeting. The claimant's union representative was an experienced representative who would speak out if he was not happy with how an employee was being treated or questioned. There was no such intervention in this case. Sarah Tolladay from HR also in attendance and took notes.

79. In the course of the meetings with the claimant, the claimant identified five witnesses to be consulted. On 5 December 2017, Mr Burdsey wrote to the claimant to ensure he had understood her complaints and summarised his understanding of her grievance. He also confirmed that he proposed to conclude his investigation and provide a outcome by 22 December 2017 and that the matter would be dealt with under the respondent's Bullying and Harassment Complaints Procedure.

80. Mr Burdsey also interviewed Mr Brazel, having written to him on 8 December 2017, attaching his summary of the complaints. He asked Mr Brazel to keep the matter confidential. He told Mr Brazel that he could be accompanied if he wished. The investigation interview appears to have taken place on 14 December 2017.

81. There were no minutes or notes available of this meeting, but Mr Burdsey quoted extensively from notes taken at the meeting in his investigation

report. Nonetheless, Mr Burdsey's evidence was very confused about the interview with Mr Brazel, and, in particular, whether there were any notes and, if so, what had happened to them. His witness statement stated that no notes were taken of the interview with Mr Brazel: "..I did not have anyone to take notes. I realise in hindsight that it would have been better if I had taken some notes even if they were rough, but I think that reflected my lack of experience in these processes." The same is confirmed at the appeal outcome letter: "I can also confirm that there is no record of the notes of the meeting with Mr Jeff Brazel on the 14th December 2017". In oral evidence Mr Burdsey confirmed that he did take notes of the meeting and that he had provided all documentation which related to the appeal to HR. Further, his grievance outcome report quoted extensively from something, which the Tribunal assumes were his notes of that meeting.

82. Mr Burdsey interviewed Ms Dyson on 20 December 2017 and Mr Olideje from the Knowledge and Information Centre on 5 January 2018. Mr Burdsey did speak to Ms Dyson about Mr Brazel. It is important to note that Ms Dyson was employed by Kings College London and her management was shared. Her relationship with Mr Brazel was therefore different. It is reported in the final investigation report prepared by Mr Burdsey that Ms Dyson's view of Mr Brazel was that he "came in a bit bullish". She acknowledged that he "had a tough job to do; difficult targets to hit." She described Mr Brazel as "firm but fair" , but not "touchy-feely". She said that he did not want to know detail but whether you had the money.

83. One of the other intended witnesses, Josette Leon, initially intended to be interviewed but withdrew from the process by an email dated 15 January 2018.

84. Mr Burdsey also tried to interview other nurses from the team but they were unwilling to co-operate and said they were concerned about the potential consequences of doing so. This led to Mr Burdsey being suspicious about the team dynamics and commenting on that in his grievance report. The report also suggests that Mr Burdsey conferred with Dr Madan about this to discuss the possibility of her intervening.

85. Mr Burdsey had been keen to interview Ms Jones but recorded in the footnote of his investigation report that he had been told that, because she had left, she could not be called upon to participate in the investigation.

86. Mr Burdsey also spoke with Dr Madan about the lines of accountability following restructuring which Dr Madan acknowledged were anything but clear. She acknowledged the management shortcomings in this regard.

87. On 20 Jan 2018, Dr Madan chased Mr Burdesy for an update on the investigation expressing concerns about Mr Brazel's health and the need for everyone to move forward. Mr Burdsey replied the same day, advising that he was extending the investigation until 31 January 2018 to enable him to engage reluctant witnesses. There is no evidence to suggest he informed the claimant of the delay, though it appeared that HR agreed the extension.

88. Dr Madan replied on 22 January 2018 to express her concern over the delays in process and to urge Mr Burdsey to complete his investigation.

89. Further delays were caused, due to Mr Burdsey's inexperience, in concluding the report. There were some 24 drafts before the final version was available.

Meeting with Ms Sreeneebus on 19 October 2017

90. Around October 2017, the claimant met with Ms Sreeneebus. One of the things discussed was the possibility of the claimant having dyslexia. Following the meeting, Ms Sreeneebus contacted OH in relation to an assessment to assess the claimant's dyslexia. She asked how to refer a staff member. She was told that OH were not involved with the arrangement of assessments and the staff member should ideally arrange it themselves. The Tribunal finds that this request for a referral indicates that the claimant had not told Ms Sreeneebus that she had already had an assessment and that that assessment had not been disclosed to the respondent.

The PIN issue

91. On 10 November 2017, Ms Leon approached Mr Brazel to request that she be moved to another role, because she understood that the claimant had established contact with her colleague, Ms Okello and had alleged that Mr Brazel had taken steps to have the claimant's NMC PIN withdrawn. Such a withdrawal would mean that the claimant would be struck off as a nurse. As Ms Leon did not wish to be involved, believing that Ms Okello was trying to negatively influence her opinion of Mr Brazel, she requested a work relocation. Ms Leon, along with Ms Biswell, told Ms Okello that it was not true.

92. On 13 November 2017, Mr Brazel wrote to Dr Madan to inform her of his conversation with Ms Leon, as he considered that this was inappropriate behaviour by the claimant, if it were true. He wrote: "She said that Aminata is in touch with Jane (Okello) and is negatively influencing her. Josette (Leon) said she doesn't want to be involved. Josette told me that Aminata had told Jane that she thinks I'm trying to have Aminata's NMC PIN taken away from her. This is such nonsense! Josette said Josette and Lizzie (Biswell) had met with Jane and explained this is not true."

93. There was no evidence before the Tribunal that Mr Brazel discussed the grievance or the investigation with anyone though he did accept Ms Leon's request to relocate.

94. Both Ms Okello and Ms Leon are black women.

Grievance outcome

95. It took Mr Burdsey some seven months to prepare his grievance report, taking account the month delay in HR allocating the grievance to him. The report was produced on 30 April 2018. Mr Burdsey liaised closely with HR in producing his report, with multiple drafts being prepared, as stated above.

96. The grievance was not upheld and Mr Burdsey dismissed the claimant's allegations of bullying, harassment, race and disability discrimination. He did however recommend that Mr Brazel should have training on interpersonal skills.

97. Mr Burdsey added a footnote to the outcome report which indicated that he was alarmed "at sensing colleagues' obvious unease about participating in the investigation." He referenced Ms Biswell's "fear of potential "consequences" which he felt seemed to "indicate something unpleasant is possibly at work in the culture of her team".

98. The outcome letter did not give the claimant a right of appeal, but the respondent's policy says a meeting should take place to discuss the findings and any recommendations with the claimant. In accordance with that policy, the letter which enclosed the grievance outcome invited the claimant to a meeting to discuss the findings of the investigation, and gave her the right to be accompanied at that meeting. The claimant did not engage and did not want to meet.

99. On 10 May 2018 Dino Williams, the claimant's union representative, wrote pointing out that the right of appeal had been omitted.

100. The claimant then wrote to Mr Burdsey on 14 May 2018 stating that she disagreed with the outcome of the grievance. She wrote, "As you were also recently informed by my union representative, you failed to give me a right of appeal against your decision. This is despite the fact that such right is clearly provided for in the Trust's Policy." She goes on to say: "Is it that you were unaware that I had a "Right of Appeal" against your decision or that you were aware but didn't bother giving me this because you needed to hear from me first. In the latter event I would ask that you please identify where in the Policy it states that my "Right of Appeal" is dependent on you hearing from me first…."

101. The claimant, in her letter, also explained that she would be appealing the decision and demanding provision of certain documentation including the "notes of record of the response of all persons that you interviewed in connection with my grievance including me"; emails sent and received from witnesses; and all other documentation considered by Mr Burdsey in reaching his decision on her grievance.

102. The claimant was given a right of appeal by Ms Tolladay of HR on 15 May 2018. Mr Burdsey deferred to Ms Tolladay, or HR, in this regard as he did in all procedural matters Ms Tolladay responded to the claimant to inform her that any appeal should be sent to Ms Murtagh and that the usual 14 day time limit for appeals would apply from the date of the letter.

103. In a follow up email, the claimant argued against the 14 day time limit, making the point that she had not received the documentation she had requested and that the 14 day time limit should run from the receipt of those documents.

104. Following receipt of the grievance outcome, the claimant contacted Ms Leon and Ms Okello to discuss the PIN allegation. Ms Sreeneebus

sent the claimant an email, on 22 May 2018. The letter said, " It has been brought to my attention that you have contacted some of the witnesses of the investigation that is underway. I am writing to ask you to stop emailing the witnesses and not to contact them by any means as this matter is confidential." The letter informed the claimant that someone would be in touch with her regarding the matter.

105. During this period, the claimant's long term sickness absence was being managed. Ms Sreeneebus was the claimant's line manager who was responsible for doing so. The claimant wrote to her to say that she did not want any contact with work until she saw her GP again, scheduled to be in three weeks' time. Ms Sreeneebus responded to say that, whilst they could keep contact to a minimum, the claimant would still need contact with the Trust regarding her sickness absence. The claimant wrote: "…I would question if you were in my shoes, whether you would want to continue to be contacted by someone who without justification accuses you of contacting fellow staff members who have made false, malicious and defamatory allegations about you….with no regard for the effect that such conduct would have on your well-being." She wanted Ms Sreeneebus to no longer manage her sickness absence. She also refused consent to be referred to OH. In a further letter she stated: "I reiterate that anyone being supportive would not have behaved in the manner that you have….They would have answered my enquiries about their conduct and apologised for the distress and damage to my health that this has caused me. As such, I do not accept your comments, which are simply self-serving." Later she says. "I do not expect to hear from you again other than in connections with my pending grievance against you."

106. Further, on 11 June 2018, the claimant wrote a four page letter to Ms Sreeneebus which included the following: "..I don't agree or accept that your conduct is reasonable or that you had any authority or basis whatsoever to write to me in such derogatory and threatening terms. This was with reference to the email to the claimant sent by Ms Sreeeneebus on 11 May 2018. The claimant continued: "I must once again express my profound disappointment with your conduct..as it is not designed to improve my health or advance the aim of the Sickness Absence Policy. I am also most surprised by your comments about the wording of my letter. Again you fail to specify how or in what respects my said correspondence is "intimidating". I am confident that such claim is highly untenable…" The Tribunal finds that the claimant's letters and emails to Ms Sreeneebus were unwelcome and intimidating to Ms Sreeneebus.

107. On 11 June 2018, the claimant made a complaint to the respondent's Chief Executive about Mr Burdsey and Ms Murtagh, who, she said, had ignored her repeated requests to provide her with the information she had requested. She also requested Ms Murtagh to step down as the appeal officer as she did not consider her to be impartial. This was the claimant's second protected act. The letter was acknowledged on 12 June 2018.

108. The claimant continued to request Ms Murtagh to stand down from the appeal process.

109. On 28 June 2018, Mr Burdsey sent some material shared with him by Mr Brazel following the interview in December 2017. The claimant stated that all she ever received was the information she herself had submitted for the grievance. As far as Mr Burdsey was concerned he had sent the claimant the relevant documentation, as evidenced by his email to her which states: “Please find enclosed some material shared with me by Jeff Brazel following my interview with him…Given that I now understand that you are seeking the primary evidence for the investigation, I thought it important for you to consider these documents alongside the witness testimonies and other documentary evidence I have shared.

110. The claimant made a further complaint to the respondent's Chief Executive on 28 June 2018. Again this was a complaint against Mr Burdsey and Ms Murtagh and centred around the evidence the claimant had requested not being provided to her in order to prepare for her appeal. This was her third protected act.

111. An informal investigation was completed on 6 July 2018, following the claimant sending Ms Biswell; Ms Leon and Ms Okello emails querying extracts from the HR Investigation report. It was Ms Biswell who had escalated her concern about the email to HR due to the anxiety the emails had caused to her and the other nurses. The report concluded, inter alia, that it had been inappropriate for the claimant to email the other staff on this issue.

112. Also on 6 July 2018, the claimant made a further complaint, this time to the respondent's Chief People Officer against Mr Burdsey and Ms Murtagh. This was the claimant’s fourth protected act.

113. On 24 July 2018, the Director of Research and Development, Professor Wolfe, wrote to the claimant in response to her complaint of 28 June 2018. The letter confirmed that, whilst the report is shared with the complainant, statements and other documentation are not generally shared as part of the report. He said that an independent review of the documentation had been undertaken and that, after consideration and advice, the claimant would be sent a copy of the information that Mr Burdsey used to draft his report and decide on his recommendations. It excepted the emails from the staff who refused to take part in the investigation. He says ‘I can see no reason why or how these emails can assist with your appeal since no information was provided by these staff.’ It is clear that the respondent’s understanding was that it was these emails with the nurses who had refused to take part in the investigation the claimant wanted.

114. As regards the appeal hearing, the Director stated: “You have made some disparaging remarks against Ms Murtagh, which I believe are unfounded and not in line with the Trust’s Values and Behaviours….. I would like to remind you that any interactions with staff and management at any level should always be professional. Ms Murtagh’s actions towards you have always been in line with Trust policy…” Nonetheless, Ms Murtagh was stood down from the appeal at the claimant’s request. Mr Hill was appointed.

115. On 26 July 2018, documents were sent to the claimant by recorded delivery. Again, in fact, these were the documents the claimant already had.

116. The claimant's reply to Professor Wolfe challenges the decision taken as regards the emails with the nurses who refused to take part in the investigation. That letter does not raise anything else specifically that might be missing.

117. The claimant wrote, on 1 August 2018 to Mr Hill: "I have yet…..to be provided with any of the information requested..particularly the outstanding information/evidence requested in my appeal letter…". but at no point did either the claimant or the respondent discuss what particular documents were missing. She sets out that she has noticed that the documents sent to her so far are those she provided to Mr Burdsey in support of her grievance against Mr Brazel.

118. The respondent tried to press on with the appeal hearing but the claimant still hadn't received the documents she was expecting. The respondent thought it had sent her the documents. She wrote again on 14 August 2018.. "I have not been provided with documents requested in my appeal letter of 14 May and you only included copies of the very same documents that I provided to Mr Burdsey in the first place."

119. At this time, Mr Hill was replaced by Ms Cashman, Deputy General Manager, Specialist Ambulatory Services as the appeal officer. The claimant wrote again on 28 August 2018 saying, "I really do not have any concerns other than the fact that since 14 May 2018 (some 31/2 months ago now) documents I have requested to enable me to particularise my grounds of appeal have not been forthcoming." Still, the particular documents the claimant was requesting were not itemised.

120. On 4 September 2018, Ms Cashman wrote to the claimant to arrange the appeal hearing for 19 September 2018. She stated: Please be assured that all of the relevant documents, emails, statements and investigation report have been passed onto me and I have reviewed these in the entirety." She stated that the documents the claimant had requested but had not been forthcoming would be considered as part of the claimant's appeal.

121. The claimant responded on 10 September 2018 to express her concern at not being provided with the documents. Ms Cashman responded on 12 September 2018, reiterating her belief that the claimant had now received the documents that formed part of the investigation including the witness statements and that, if the claimant believed there were documents missing still, this could be discussed as part of the appeal.

122. On 18 September 2018, the claimant made a complaint to the respondent's Chief Executive against Mr Burdsey and Ms Cashman re-iterating that the promise to provide her with the documents had not been kept and alleging that Mr Burdsey had discriminated against her by ignoring her requests for evidence. The claimant concluded: I am bitterly complaining about further and continuing bullying, harassment and

discrimination as well as victimisation to which I have been subjected." She repeated a request she had made to Ms Cashman that Ms Cashman should recuse herself. This was her fifth protected disclosure.

123. Ms Cashman proceeded with the appeal in the claimant's absence and interviewed Mr Brazel on 21 September 2018. As part of the appeal, Ms Cashman identified six emails which had not been provided to the claimant which were attached to the appeal outcome and which Ms Cashman did not consider were material. Ms Cashman also confirmed that there was no record of the notes of the meeting with Mr Brazel, which is consistent with what was available to this Tribunal. Ms Cashman took the trouble to set out the documents that had been received. This was the first time there had been any clarity over the documents which formed part of the grievance.

124. The claimant's appeal was dismissed. Ms Cashman agreed with the recommendations made by Mr Burdsey.

Law

Knowledge of disability

125. Where the protected characteristic is disability, the employer's knowledge of the disability is relevant to the question of whether the employer treated the employee less favourably on the grounds of that protected characteristic. The requisite knowledge that the employee is disabled may be actual or constructive and is of the facts constituting the disability, namely (as also clarified by the Equality Act 2010 (EqA), Sch 1) a physical or mental impairment, and that the impairment has a substantial and long-term adverse effect on the employee's ability to carry out normal day-to-day activities.

126. Provided that the employer has actual or constructive knowledge of such facts, it need not be shown that the employer was aware, as a matter of law, that these facts meant the employee was a 'disabled person' within the meaning of the legislation.

127. It is for the employer to make its own judgment as to whether or not it considers the employee to be disabled, and not to simply rely on the opinion of an adviser.

128. Knowledge of disability in one part of an organisation, or on the part of one individual in an organisation, does not mean that that knowledge can be imputed to the organisation generally, or to any or all of its employees, for all purposes, and in particular in the context of deciding whether there has been direct discriminatory conduct.

129. In **Gallop v Newport City Council** 2014 IRLR 211, CA the Court of Appeal held that it will be sufficient to establish knowledge of disability if the employer knew or ought to have known the facts which when analysed satisfy the statutory definition of disability. That requires knowledge of an impairment but not necessarily a diagnosis; knowledge that that

impairment has a substantial effect on ordinary day to day activities; and knowledge of the facts that establish the long term condition.

130. This does mean that knowledge of a label or bare diagnosis, such as ‘dyslexia’ is not conclusive. That is because the range of experiences is wide and the effect of the condition is variable, so not all will satisfy the Eq A statutory tests. The respondent must also have knowledge of the substantial effect on ordinary day to day activities and that it has lasted at least a year, or is likely to do so.

131. This also means that for constructive knowledge, more than the bare label is required – some expression of disability or need, or an identification of difficulty, something to trigger or prompt a deeper check.

132. It also follows that the threshold for triggering constructive knowledge is a low one – see also Code of Practice para 5.15: “An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.’ Whether or not the employer is found to have constructive knowledge turns on what would have reasonably been known to it after those enquiries had been made.

133. If there was too high a standard for triggering constructive knowledge, that would reward ignorance and put the emphasis back on the process of what was done or not done and why. It would defeat the object of the legislation. However, that has to tie up with the standard for knowledge and constructive knowledge in **Gallop**.

<u>Direct discrimination</u>

134. Section 13(1) EqA provides:

“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.”

135. Section 23(1) EqA requires that there be no material difference between the circumstances relating to each case.

136. The Tribunal is aware that the burden of proving the discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the “shifting burden of proof” was developed to deal with this. The concept is discussed in a number of cases and is set out in s136 EA which states that: “if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred [but] if A is able to show that it did not contravene the provision then this would not apply.”

137. In **Igen v Wong**, in relation to a predecessor provision to section 136 EqA, the Court of Appeal held that it is for the claimant who complains of discrimination to prove, on the balance of probabilities, facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of unlawful discrimination. In deciding whether the claimant has proved such facts, it is important to remember that the outcome, at this first stage of the analysis by the Tribunal, will usually depend on the inferences which it is proper to draw from the primary facts found by the Tribunal. The Tribunal is looking for primary facts to consider which inferences of secondary fact might be drawn. In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts. Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourable on the ground of [here] race, it is then for the respondent to prove that it did not commit that act. That requires a Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but, further, that it is adequate to discharge the burden of proof, on the balance of probabilities, that race was not a ground for the treatment in question.

138. In **Shamoon v Chief Constable of Royal Ulster Constabulary** [2003] IRLR 285 HL, Lord Nicholls of Birkenhead referred to the question of whether the claimant had received less favourable treatment than the appropriate comparator as “the less favourable treatment issue” and the question of whether the less favourable treatment had been on the relevant proscribed ground as “the reason why issue”. At paragraphs 7 and 8 he observed:

> “7. Thus, the less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining.
>
> 8. No doubt there are cases where it is convenient and helpful to adopt this two-step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined.”

139. At paragraph 11 he continued:

> “[…] employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of the all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.”

140. In the case of **Laing v Manchester City Council** (EAT) ICR 1519 the EAT spelt out how the burden of proof provisions should work in practice: “First, the onus is on the complainant to prove facts from which a finding of discrimination, absent an explanation, can be found. Second, by contrast, once the complainant lays that factual foundation, the burden shifts to the employer to give an explanation. The latter suggests that the employer must seek to rebut the inference of discrimination by showing why he has acted as he has. That explanation must be adequate, which as the courts have frequently had cause to say does not mean that it should be reasonable or sensible but simply that it must be sufficient to satisfy the Tribunal that the reason had nothing to do with race.”

141. In every case, the Tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in **Nagarajan v London Regional Transport** [1999] IRLR 572: “this is the crucial question.” It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment then that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

142. As Elias J stated in **Laing**, in some cases it is still appropriate to go right to the heart of the question of whether or not the claimant’s protected characteristic was the reason for the treatment: “The focus of the Tribunal’s analysis must at all times be the question whether or not they can properly and fairly infer [race] discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious [racial] discrimination, then that is the end of the matter. It is not improper for a Tribunal to say, in effect, “There is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race.” Whilst…. it will usually be desirable for a Tribunal to go through the two stages suggested in *Igen*, it is not necessarily an error in law to fail to do so.”

Comparators

143. The Tribunal firstly needs to assess if the actual comparators are correct comparators in accordance with the law. In **Shamoon** it was stated that: ”A comparison of the cases of persons of a different sex…must therefore be such that all the circumstances which are relevant to the way they were treated in the one case are the same, or not materially different, in the other.”

144. At paragraph 116 of **Shamoon**, Lord Scott of Foscote held as follows:

“…I would readily accept that it is possible for a case of unlawful discrimination to be made good without the assistance of any actual comparator. …. But in the absence of comparators of sufficient evidential value some other material must be identified that is capable of supporting the requisite inference of discrimination. Discriminatory comments made by the alleged discriminator about the victim might, in some cases, suffice.

Unconvincing denials of a discriminatory intent given by the alleged discriminatory, coupled with unconvincing assertions of other reasons for the allegedly discriminatory decision, might in some cases suffice. But there is nothing of that sort in the present case, or, at least, no reference to anything of that sort was made by the Industrial Tribunal."

145. In **Madarassy v Nomura International plc** [2007] ICR 867, CA, Mummery LJ stated that: 'The bare facts of a difference in status and a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination'.

146. In **Strathclyde Regional Council v Zafar** [1997] 1 WLR 1659 at paragraph 12, Lord Browne-Wilkinson said

"…It cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances.

Detriment

147. In order to bring a successful direct discrimination claim, it is necessary to show that there has been less favourable treatment because of a protected characteristic. However, it is also necessary to show that the discrimination falls under the relevant part of the EqA by showing that there has been a detriment.

148. In the context of the Part 5 (work) provisions, a claimant claiming direct discrimination needs to satisfy the terms of section 39 EqA in order to show that the discrimination has occurred in the work context and falls under that part of the Act. Section 39 provides that a detriment could arise where an employer unlawfully discriminates against an employee in the terms of employment, opportunities for promotion, transfer, training or any other benefit offered to them or by dismissing. There is also a catch-all which captures subjecting them to "any other detriment".

149. The term "detriment" is not defined in the EqA 2010 and courts and tribunals have looked to the meaning of detriment established by case law. In **Shamoon**, it was held that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work.

150. There is therefore no need for the claimant to prove some physical or financial consequences of the detriment (**Shamoon)**. The reference to a "reasonableness" test in **Shamoon** makes the concept of detriment similar (although not identical) to the concept of less favourable treatment.

<u>Harassment</u>

151. Harassment will have occurred if a person, A, engages in unwanted conduct related to the claimant's disability and/or race, and that conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding

whether conduct has this effect, it is necessary to take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Failure to make reasonable adjustments

152. The claimant also brings a claim of in respect of the respondent's alleged failure to make reasonable adjustments. The EqA, at section 20, provides that:

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

(2) The duty comprises the following three requirements:

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

153. The requirement must put the disabled person at a 'substantial disadvantage in comparison with persons who are not disabled' which the statute defines as something that is 'more than minor or trivial', see: s. 212(1) EqA 2010. The Tribunal is under an obligation to identify the nature and extent of the disadvantage to which the claimant is subjected with some degree of precision. As substantial disadvantage must be established via a comparison of 'persons who are not disabled', the duty to make reasonable adjustments will only be triggered if it is established that the relevant PCP causes greater disadvantage to the disabled claimant than it does to non-disabled people, not generally, but in relation to persons to whom the requirement is applied.

154. The claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred — absent an explanation — that the duty has been breached.

155. Section 21 then provides:

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

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

156. Once satisfied that the s. 20 duty has potentially been triggered, the tribunal will turn its mind to what adjustments could and should have been made. It will need to identify the 'step' or 'steps', if any, the employer could reasonably have taken to prevent the claimant suffering the disadvantage in question. Again, the onus falls on the claimant, not the employer, to identify in broad terms the nature of the adjustment that would ameliorate

the substantial disadvantage. Having done so, the burden then shifts to the employer to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.

Reasonableness

157. The test of reasonableness in this context is an objective one and, per the EHRC Code, [6.23],: '…will depend on all the circumstances of each individual case.'

158. A step that is relatively easy for the employer to take is more likely to be reasonable than one that is difficult, see: **Secretary of State for Work and Pensions (Jobcentre Plus) and ors v Wilson** EAT 0289/09.

159. Likewise, low cost and low disruption adjustments are also more likely to be reasonable than those which are expensive as compared to the failing to make the adjustment and given the circumstances of the employer, and as compared with adjustments which are disruptive.

Knowledge

160. By paragraph 20 of Part 3 of Schedule 8 of the EqA, it is further, relevantly, provided:"(1) A is not subject to a duty to make reasonable adjustments if A does not know. and could not reasonably be expected to know….that an interested disabled person has a disability and is likely to be placed at the disadvantage."

161. For the duty to arise, the respondent must have actual or constructive knowledge of both disability and of the substantial disadvantage alleged, see: Sch. 8, Para 20(1) EqA 2010.

162. The question is what objectively the employer could reasonably have known following reasonable enquiry.

Victimisation

163. Section 27 of the Equality Act 2010 states as follows:
(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

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

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

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

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

Detriment

164. The definition of detriment in **Shamoon** invites the Tribunal to find that "*by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work*" (para 34).

165. The reference to a "*reasonable worker*" means that an unjustified sense of grievance is not enough to show that a claimant has been subjected to a detriment.

Because of a protected act?

166. The claimant must demonstrate that the protected act "*had a significant influence on the outcome*" according to **Warburton v Chief Constable of Northamptonshire Police** [2022] EAT 42, para 64.

Time limits

167. Section 123 EqA sets time limits within which claims of discrimination must be brought.

168. A discrimination claim must normally be brought before the end of "the period of three months starting with the date of the act to which the complaint relates".

169. Acts occurring more than three months before the claim is brought may still form the basis of the claim if they are part of "conduct extending over a period", and the claim is brought within three months of the end of that period.

170. In **Hendricks v Metropolitan Police Commissioner** [2002] EWCA Cov 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. In **Pugh v National Assembly for Wales** UK/EAT/0251/06 the EAT held that a tribunal should consider the allegations "in the round" and ask whether, on the facts, the employer was responsible for an ongoing state of affairs where the claimant was treated less favourably.

171. If the original matters complained of amount to discrimination and the grievance process in relation to those complaints of discrimination is, itself, discriminatory it is possible that that the original matters complained of and the subsequent grievance process can be a continuing act: **South Western Ambulance Service NHS Foundation Trust v King** [2020] IRLR 168.

172. Pursuant to section 123(1(b) EA 2010, the tribunal can extend time for bringing a discrimination claim by such period as it thinks just and equitable.

Conclusions

<u>Disability: knowledge</u>

173. The claimant was diagnosed with dyslexia and dyspraxia in the 2015/6 academic year. It was undertaken by a chartered psychologist for King's University where the claimant was studying for an MsC research degree. The report related to the claimant's studies and was not directly relevant to the workplace.

174. The respondent conceded that the claimant was a disabled person within the meaning of the Equality Act 2010 by reason of dyslexia and dyspraxia. The claimant confirmed in her oral evidence that her disability did not have a significant impact on her work other than in times of stress.

175. What is in dispute is when the respondent had knowledge, actual or constructive, of the claimant's disability.

June 2016 meeting

176. The claimant alleges that the respondent knew of her disability following the meeting in June 2016 in which the claimant alleges that she informed Mr Brazel of her disability. In her witness statement she says that she asked Mr Brazel to refer her to OH for reasonable adjustments to be made and explained that there was assistive software that could be added to a laptop. She says that Mr Brazel refused to make the referral and that, when she asked for assistive software he told her that, just because she had dyslexia, she would not get special treatment.

177. However, the Tribunal finds that that conversation did not take place in the way it is recalled by the claimant. Mr Brazel does not recall it being an issue raised in or around June 2016. The Tribunal finds that it is a conversation that Mr Brazel would be likely to remember as he has dyspraxia himself.

178. Generally speaking, where there is a conflict of evidence, the Tribunal preferred the respondent's evidence. The Tribunal found that the claimant generally had a tendency to personalise things that happened to her and seemed to be unable to understand a different perspective to her own, even if it was standard practice, for example the fact that she was actually entitled to less holiday as a result of her working pattern. The claimant appeared to have a tendency to categorise management decisions she did not like as discrimination or victimisation.

179. In addition, Mr Brazel was ready to respond appropriately only a month later when, following a meeting on 27 July 2016, he offered to refer the claimant to OH for her health issues. His cover email sent at 18:20 on 27.7.16, showing that attachment, was attached at the 10th page of the PDF attached to the respondent's strike out skeleton argument. Mr Brazel

said ‘ actions from our meeting today. I was very sorry to hear about your health issues. I know you said you don’t need a referral for occupational health at this stage but please let me know if this changes. I’ll be happy to do what I can”. Given this response, the Tribunal finds that the probabilities of him responding appropriately to any request for help are high. Further, on receipt of that email the claimant could have confirmed that she did want an OH referral for her disability.

180. Whilst it is possible that the claimant said something in passing, Mr Brazel did not pick up on it. There is no evidence that she showed him the report. The Tribunal concludes that, on the balance of probabilities, as an experienced manager, he would have taken further steps, and considered that he needed to do something about it had the claimant been clear about what she was asking for.

181. The Tribunal finds that, generally, the claimant was supported by Mr Brazel on health issues, such as when she needed surgery, which meant that he was not unapproachable about these issues.

182. In addition, the claimant continued to report to Ms Jones, with whom she had a good relationship, on the clinical side. The claimant could have raised it with Ms Jones in the first instance, rather than with Mr Brazel, with whom she had an aggravated relationship. Further, if the claimant had raised it with Mr Brazel but it had not been acted upon, she could have easily raised it with Ms Jones, with whom she was on good terms. The Tribunal finds that it is not credible that she would not have raised it with Ms Jones if Mr Brazel had ignored it. She raised other issues with Ms Jones that she felt Mr Brazel had not dealt with properly, such as her line management responsibilities. In fact, the claimant had no hesitation in raising other issues with Ms Jones, including annual leave.

183. The claimant explained in evidence that it was shame that prevented her from raising the issue of her dyslexia in any other way or at an earlier stage. She explained that, in her culture, mental health issues are a mark of shame. However, whilst informing others, such as Ms Jones, would widen the pool of people who would know of her dyslexia/dyspraxia, this would be an issue which would be confined to the workplace and to her team. It also did not prevent her from raising it with Ms Sreeneebus when she became her line manager, around October 2017, or from raising it in her grievance.

March 2017

184. Mr Brazel had knowledge of the label of dyslexia/dyspraxia in March 2017 when he happened to refer to his own dyspraxia in the context of the laptop assisting him with it.

185. However, knowledge of a label or bare diagnosis, such as ‘dyslexia’ is not conclusive because the range of experiences is wide and the effect of the condition is variable, so not all will satisfy the statutory tests. The respondent must also have knowledge (actual or constructive) of the substantial effect on ordinary day to day activities and that it has lasted at least a year, or is likely to do so. Because the claimant’s coping strategies

were effective, and in any event the severity of her condition is mild, that hurdle was not met at this time.

186. The Tribunal finds that the conversation between the claimant and Mr Brazel in March 2017 was not a serious request for reasonable adjustments or to highlight a disability or difficulties being faced. The claimant was not normally slow to raise matters. She gave no indication, in terms of how she carried out her role, that would suggest to the respondent that there was any significant, or even slight, impact on her in terms of her day to day activities. She had the opportunity, either with Ms Jones, with whom she had a good relationship, or Mr Brazel to raise any disability related issues at any time.

187. In this conversation, the claimant has turned a general comment into a personal slight. Mr Brazel's view had been not to let dyspraxia hold him back. The claimant might have been taken aback by someone saying that they didn't get any special treatment so she wouldn't, and it is fair to say that the comment was clumsy, but it was in the context that Mr Brazel had seen no impact of the condition whatsoever in the context of the claimant's work. There was no indication that she was struggling in any way, and the Tribunal have found that it had not been raised with him previously. The comment was really aimed at himself. Despite that, she absolutely took the comment to heart.

188. The fact that there was no apparent impact on the claimant of her disability was also borne out by Ms Sreeneebus whose evidence, which is accepted, was that she did not see any signs of the claimant having difficulties apart from the odd insignificant spelling mistake. The claimant had succeeded in achieving an MSc with no adjustments as far as the respondent was aware. Had the claimant needed assistive technology or a laptop she would have requested this or a workplace assessment leading to this at a much earlier stage of her employment before being aware of Mr Brazel having a new laptop with assistive technology. He would have used the early assessment made for academic reasons as the basis for requesting such an assessment.

189. As stated above, although the claimant said she didn't want to raise her disability because of cultural issues, on the basis that mental health issues are a mark of shame in her culture, this did not stop her bringing it up with the university. The claimant has not explained what was different about that in comparison to work. At any time, the claimant could have raised it confidentially. The Tribunal finds that she had plenty of opportunity to raise it as part of her one to ones. In fact, she had a professional responsibility to raise it if it would have impacted on her professional work. Whilst the Tribunal accepts that it was her view that acknowledging mental health issues may be stigmatised in her community, and whilst we understand she may have felt reluctant to widen the pool of people who were aware of her diagnosis this would be an issue that would be completely confirmed to the workplace, as it would previously have been confined to the university.

190. Mr Brazel could not reasonably ought to have known that the claimant was disabled at this stage. Although an employer cannot turn a blind eye, and must do all they can reasonably be expected to do to find out

whether an employer has a disability, he had no reason to do so as the claimant had not given any indication of any disadvantage. For constructive knowledge, more than the bare label is required. There must be some expression of disability or need, or an identification of difficulty, or something to trigger or prompt a deeper check. Mr Brazel did not know, nor ought he to have known that, despite the claimant telling him that she had dyslexia, it had an adverse effect on her ability to carry out normal day-to-day duties which was either substantial nor long-term. He had seen no evidence that it had any effect on her ability to carry out such duties.

Grievance and after

191. The claimant's dyslexia was raised in her grievance and with her line manager in August 2017 and October 2017 respectively. It was accepted by the respondent that constructive knowledge would be prompted by the claimant's grievance in August 2017 and by the meeting with Ms Sreenebus on 19 October 2017 as this was the first time the claimant's disability was formally raised, and the respondent was formally on notice that the claimant may have a disability. That formal communication of dyslexia/dyspraxia meant that the respondent should make reasonable enquiries to find out more. It is not until the respondent had the 2022 Access to Work report that it could have actual knowledge, as only then did the impact on her become apparent.

192. The Tribunal is satisfied that the claimant had never told the respondent that she had had a report, nor had she shown it to the respondent. Had she done so, and given his response in relation to other health issues, the Tribunal is satisfied that Mr Brazel would have offered to refer the claimant to OH. Later, Ms Sreeneebus's email to OH asking how to refer the claimant for an assessment indicates that the claimant hadn't told her she already had had an assessment.

<u>Direct disability discrimination</u>

From April 2016, Mr Brazel undermined the Claimant's professional development by:

- *Nullifying the Claimant's line management and career progression plan which had been agreed with Helen Jones and in place since 2012*

193. This allegation is pleaded as direct disability discrimination; direct race discrimination and/or harassment related to disability and/or race.

194. The respondent did not have constructive knowledge of the claimant's disability until August 2017 and this allegation precedes that date. The claims of direct disability discrimination and harassment related to disability therefore fail.

195. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

196. It was not Mr Brazel who changed the claimant's line management responsibilities. This was a consequence of a re-organisation which

resulted in Mr Brazel's appointment and which was determined by Dr Madan. As result of Dr Madan appointing Mr Brazel and giving him non-clinical line management responsibility, some changes to line management, and, consequently to a career progression plan which had been in place since 2012, were inevitable. The management structure of the team had changed and this was bound to affect objectives conceived before the change.

197. There was no evidence to suggest that Mr Brazel undermined the claimant's professional development in this regard. Further, the fact that the claimant attributed all of these issues to Mr Brazel, when he was implementing the new structure put into place by Dr Madan, goes a long way to explain why the claimant felt as she did. She seems to have been unable to see the bigger picture and that these changes were applied across the board, and instead focussed on Mr Brazel as the source of everything that happened, particularly in consequence of the restructure, that she did not like. Her focus on Mr Brazel stemmed partly, the Tribunal concludes, because she was unhappy that he had the role she had applied for despite the fact that he did not have a clinical background and she perceived him to be an impediment to her progress.

198. The organisation chart sent out in March 2016 indicated that the claimant would retain the clinical management of Ms Okello and Ms Wallace. It set out that Mr Brazel and the claimant would carry out performance reviews, but that Mr Brazel was responsible for line management processes, such as HR processes. The claimant struggled to acknowledge that and felt her management responsibilities were being removed even though she retained management responsibility on the clinical side.

199. The Tribunal does not accept that Mr Brazel sought to take over the claimant's clinical line management duties because Mr Brazel had no clinical experience and was unable to manage effectively in that respect. The reality is that the claimant, understandably, did not like the changes because they impacted on her own aspirations, but she was wrong to blame Mr Brazel for them. It appeared to the Tribunal that there may have been some blurred lines between what amounted to the clinical management of the nurses and line management responsibility, and that this lack of clarity may have caused some further issues, but this again was not Mr Brazel's fault and, in particular, the claimant was not singled out in this regard. She was treated the same as the rest of her team to whom the new structure equally applied. There is no evidence that they were unhappy with the new structure or raised any issues about it.

200. The Tribunal saw no evidence to suggest that any of the other Band 7 nurses were treated any differently. Certainly the changes that were made as a result of the restructure applied to all, as indicated on the organogram which was sent at the time. Whilst the management of the junior staff used to be all one, it had been separated into clinical and line management. It was not surprising that it was unclear and took some bedding in, as Dr Madan later acknowledged. The claimant remained unhappy because she wanted management experience and was trying to develop the non-clinical side of her role. However, it is far from true to say

that Mr Brazel blocked her as he was trying to implement the system put in place by Dr Madan.

201. There are no facts from which it can be inferred that discrimination occurred and the burden of proof does not pass to the respondent. If it did, then the explanation for the claimant's treatment would be the restructure.

202. The respondent did not engage in unwanted conduct related to the claimant's disability and/or race. Mr Brazel did not nullify the claimant's line management and career progression plan.

- *Blocking the claimant's participation in Patient and Public Involvement (PPI) activities that she had set up for the team (in November 2016)*

203. This allegation is pleaded as direct disability discrimination; direct race discrimination and/or harassment related to disability and/or race.

204. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

205. The respondent did not have constructive knowledge of the claimant's disability until August 2017 and this allegation precedes that date, it having been discussed in November 2016. The claims of direct disability discrimination and harassment related to disability therefore fail.

206. The Tribunal finds, and the respondent admits, that Mr Brazel did block the claimant's participation in the PPI activities. By contrast, Ms Biswell was not stopped from continuing to participate in the Delphi project.

207. As in **Laing,** although that leads to a question of whether or not the burden has shifted, the Tribunal is satisfied here that, even if it has, the respondent has given a fully adequate explanation as to why Mr Brazel behaved as he did.

208. The Tribunal finds that the reason for the treatment was not the claimant's race or disability, nor indeed was it related to those protected characteristics for the reasons set out below.

209. The claimant's case is based on the assertion that it was reasonable to compare Delphi to PPI. Both Mr Brazel and Ms Murtagh explained why that was not so. In substance, at that time, PPI work would not be funded, whereas Delphi based work would be, hence the different approaches that Mr Brazel took to the two activities. Race or disability had nothing to do with Mr Brazel's decision-making.

210. Delphi is a tool that is based on structured interviews and can be used in research (an activity eligible for Clinical Research Network (CRN) funding. PPI was not at the time an eligible activity, (though it is now). CRN funding was for the delivery of research. This was clearly defined by the CRN regarding what activities are eligible. At that time the funding model had money directly based on the number of patients recruited. At

the time, the PPI activities were not an eligible activity for nurses funded by CRN.

211. This provides a clear non-discriminatory explanation and reason for Mr Brazel's decision-making. His evidence was that the PDR process works around the needs of the service. He specifically stated that the team were, and are, there to deliver the needs of the service and that whilst personal development is a priority, it is not the reason for the department's existence.

212. Mr Brazel was responsible for allocating the resource of the team and for budgets. His evidence, which is accepted, was that he believed that the PPI project was not funded. It is possible that Mr Brazel did not fully understand at the time what the project entailed, as he was still relatively new to the role, but he saw the PPI project as a "nice to have" rather than an essential element of what the team needed to deliver. Further, Mr Brazel's understanding of what the two projects required, in terms of resource, was relevant. He believed that the PPI project would involve significantly more time and input than Delphi, which he believed would involve a couple of meetings and a one day event, most of which would be done in Ms Biswell's spare time.

213. The Tribunal does not therefore accept that it is reasonable to compare Delphi to PPI. PPI work would not be funded, whereas Delphi based work would be, at least in Mr Brazel's understanding of the matter. This explains the different approaches that Mr Brazel took to the activities.

214. Further, Mr Brazel's evidence was that the PDR process works around the needs of the service. Delphi was core, PPI was not. He believed that Delphi was research-focused and was in Ms Biswell's own time, with just one one-day event in June that she'd organise in worktime. PPI required significantly more resource. It was at least 50% clinical, it involved regular meetings and a newsletter and was going to get bigger. There was no funding and he had a pressed budget. That is why Mr Brazel suggested it should be put on hold. He was not happy with people spending time on anything which was not funded, other than to a minimum degree. He had decided to refocus on core activities, an approach which was applied to all.

215. As a finance person, managing projects, the costs aspect is central. This was a professional business decision he was entitled to make. Mr Brazel wanted to re-focus on care activities, a decision which would have also impacted on others.

216. The respondent did not engage in unwanted conduct related to the claimant's disability and/or race. For the reasons set out above Mr Brazel's decision was not related to race or disability but related to the commerciality of the activities and the funding thereof.

- *Unilaterally changed the date of her performance development review from March to April and cancelled her management training*

217. This allegation was withdrawn by the claimant during submissions.

- *In October 2016 refused to approve training for the Claimant that was required for her to help Mr Brazel with his Business Planning Project*

218. This allegation is pleaded as direct disability discrimination; direct race discrimination and/or harassment related to disability and/or race.

219. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

220. The respondent did not have constructive knowledge of the claimant's disability until August 2017 and this allegation precedes that date. The claims of direct disability discrimination and harassment related to disability therefore fail.

221. This allegation is not upheld as the Tribunal find that the training requested by the claimant was not "required". The training that was available was not considered suitable and was not necessary training. The claimant had not specifically named a course that was relevant. The claimant wanted to go on a generic type of course which Mr Brazel did not consider really to be relevant.

222. The context of this allegation was that Mr Brazel gave the claimant an opportunity to support her development by asking her to be involved in business planning. The Tribunal accepts Mr Brazel's evidence that what was asked of the claimant should have been something she could do without further training. The claimant's response was to consider that Mr Brazel had set her up to fail, notwithstanding that she had asked for the opportunity.

223. The claimant has been unable to show that they have been treated less favourably than a person of another race or without dyslexia/dyspraxia whose circumstances are not otherwise materially different. The Tribunal is satisfied that Mr Brazel would also refuse requested training a person with the same material circumstances of the claimant who did not have the claimant's disability and/or was not the same race as the claimant. There are no facts from which the Tribunal can infer that discrimination occurred.

224. In any event, the reason for the treatment was that Mr Brazel did not consider the course to be relevant.

225. For the reasons set out above, the respondent did not engage in unwanted conduct related to the claimant's disability and/or race. The reason for the treatment was that the course was irrelevant, which is in no way related to the claimant's race or disability.

226. The Tribunal further does not accept that refusing the course could have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or that it would be reasonable for it to have that effect.

227. The claims of direct race discrimination and harassment related to race also fail for the reasons set out above.

- *On or around 2 March 2017 rejected the Claimant's explanation in relation to her faulty telephone and the steps being taken to repair it and forced the Claimant to go to the Knowledge and Information Centre (KIC) to prove that her explanation was truthful.*

228. This allegation is pleaded as direct disability discrimination; direct race discrimination and/or harassment related to disability and/or race.

229. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

230. The respondent did not have constructive knowledge of the claimant's disability until August 2017 and this allegation precedes that date. The claims of direct disability discrimination and harassment related to disability therefore fail.

231. This allegation is not upheld. The Tribunal does not accept that Mr Brazel forced the claimant to go to the KIC to prove that her explanation was truthful, but in order to try to resolve the issue. It was not a question of Mr Brazel rejecting the claimant's evidence, but the fact that the KIC were saying that the claimant needed a new phone (rather than a repair) seemed to him to be a waste of money as well as causing further delay, and Mr Brazel wanted to resolve the issue.

232. Whilst Mr Brazel was a little abrupt, according to the witness from the KIC, that was usual, which is a further indication that the claimant was not being singled out for treatment because of her protected characteristics.

233. The claimant having been told it would be cheaper to replace her phone rather than repair it was likely the source of frustration for Mr Brazel, along with the fact that the claimant's phone had been out of use for a period of time which rendered her difficult to contact for Mr Brazel and others.

234. In any event, the Tribunal is satisfied that the reason for the claimant's treatment was Mr Brazel's frustration and impatience to resolve the matter. The witness from the KIC remembered the visit some 21 months later, when he was interviewed for the grievance, and recalled a tense atmosphere, but indicated that that was not out of the ordinary and he knew Mr Brazel, and this was typical of him and someone who wanted something fixed "right now". The Tribunal accepts Mr Brazel's evidence that he was trying to be supportive.

235. The Tribunal is satisfied that the claimant was not treated less favourably than an actual or hypothetical comparator.

236. The Tribunal is satisfied here that, even if the burden had shifted, the respondent has given a fully adequate explanation as to why Mr Brazel behaved as he did.

237. Whilst the Tribunal accepts that the claimant may have felt humiliated as a senior person herself being taken down to the KIC, on the basis that she may have felt that she was not being trusted to sort it out herself, the Tribunal can understand Mr Brazel's position, which is that the claimant was uncontactable, and had been for some time, and her phone was just in her drawer with seemingly no progress being made. The claimant had been told that her phone needed to be renewed, and whilst the claimant had made a formal request, she was not being proactive in getting things sorted out.

238. Whist this may have been unwanted conduct which may have caused the claimant to feel humiliated, the Tribunal concludes that Mr Brazel's actions were, for the reasons stated above, in no way related to race or disability.

- *Took Mr Burdsey over nine months to prepare his grievance report which was produced on 30 April 2018, dismissed allegations as bullying, harassment, race and disability discrimination and failed to give the Claimant a right of appeal and failed to answer her requests as to why she was not being given the right to appeal*

239. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and victimisation

240. It took Mr Burdsey from his appointment in October 2017 until the report was sent on 30 April 2018 to conclude the grievance. That is approximately six months that it took to prepare his grievance report. This was the first grievance Mr Burdsey had been appointed to hear and he produced 24 versions of the report before he was happy with it. Whilst it took nine months from the claimant raising the grievance to receiving an outcome, it took HR some time to allocate the grievance to Mr Burdsey.

241. The Tribunal considers that such a timescale is far from unusual in the public sector, though such a delay, particularly if the person who raises the grievance is off sick, is undesirable. There was no evidence to suggest that, in this regard, the claimant was treated less favourably than an actual or hypothetical comparator without the claimant's protected characteristics.

242. Though the allegation is not upheld, in that it did not take Mr Burdesy over nine months to produce the outcome, even if the burden shifted, the Tribunal is satisfied here that the respondent has given an adequate explanation as to why Mr Burdsey behaved as he did, one of the factors which caused delay being the reluctance of witnesses to participate in the investigation, and Mr Burdsey seeking to encourage them to do so. The other factor was Mr Burdsey's inexperience and desire to run multiple drafts past HR in order to try to "get it right".

243. Although the Tribunal accepts that such a delay would be unwanted by the claimant, the Tribunal finds that the reason for the delay in no way related to the claimant's race or disability, for the reasons stated above.

244. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the EqA, to the extent there was a detriment, the Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on the delay.

245. The Tribunal further accepts that Mr Burdsey dismissed the claimant's allegations of bullying, harassment, race and disability discrimination. Whilst he failed to uphold the allegations, he did follow the grievance process and he did thoroughly investigate the claimant's allegations and grievances. Whilst the claimant disagrees with the outcome, Mr Burdsey had the right to reach the outcome he did, and did so after proper reflection and consideration. There was no evidence before the Tribunal to suggest that the claimant had been treated less favourably than a comparator in the same circumstances as the claimant but without her disability and/or of a different race.

246. In any event, the reason Mr Burdsey acted as he did was because he believed he evidence pointed to a finding that the claimant had not been discriminated against because of race or disability or been bullied or harassed. He properly investigated the grievance raised and approached the grievance with an open mind.

247. Whilst the findings may have been unwanted, the Tribunal finds that making those findings was not conduct which had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, nor would it have been reasonable for the conduct to have that effect. When a grievance is raised it is always possible that it will not be upheld. The Tribunal takes into account, in particular, that Mr Burdsey strived to "get it right".

248. For the reasons set out above, the conduct does not relate to the claimant's disability and/or race, but rather that Mr Burdsey found that there had been no discrimination, bullying or harassment.

249. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the EqA, to the extent there was a detriment, the Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on Mr Burdsey's findings.

250. As regards the appeal, the Tribunal accepts that the claimant was not offered a right of appeal in Mr Burdsey's initial outcome letter.

251. However, the allegation is not upheld. As soon as a right of appeal was requested, it was given. The claimant was given a right of appeal by Ms Tolladay of HR on 15 May 2018, a matter of approximately two weeks from the date of the grievance outcome. Further, Mr Burdsey deferred to Ms Tolladay in this regard. Mr Burdsey, as an inexperienced grievance manager, relied totally on HR for advice about procedural matters. The Tribunal finds that he was not responsible for the failure to offer a right of appeal from the outset.

252. The Tribunal finds no evidence to suggest that a hypothetical comparator who was the same as the claimant but was White British or did not have dyslexia/dyspraxia would have been treated differently to the way the claimant was treated.

253. The Tribunal is satisfied here that, even if the burden had shifted, the respondent has given a fully adequate explanation as to why Mr Burdsey behaved as he did.

254. It is usual, according to the respondent's policy, to have a meeting to explain the findings. Whilst the Tribunal finds that it would be best practice to have a clear explanatory letter, to state that there would be a meeting to explain the findings and then a right of appeal would be offered, this did not happen and it lead to confusion. Nonetheless, the respondent was following process and there is an explanation for why the right of appeal was not included in the initial outcome letter.

255. There was no unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the Equality Act 2010. In any event, Mr Burdsey's actions were in no way related to the claimant's race or disability for the reasons set out above.

256. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the Equality Act 2010 as set out above, to the extent there was a detriment the Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on the right of appeal.

- *Mr Burdsey failed to provide documentation to the Claimant to help her prepare her appeal on or after 14 May 2018 despite being asked to provide it*

257. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and victimisation

258. The Tribunal does not accepts that Mr Burdsey failed to provide documentation to the claimant that she requested in order to prepare her appeal. His letter of 28 June 2018 confirms that he was willing, and did, send documents.

259. However, there are no facts from which the Tribunal could conclude that Mr Burdsey had discriminated against the claimant in this regard. The Tribunal finds no evidence to suggest that a hypothetical comparator who was the same as the claimant but was White British or did not have dyslexia/dyspraxia would have been treated differently to the way the claimant was treated.

260. In any event, Mr Burdsey was acting at all times on the advice of HR. As set out in the letter from Dr Wolfe, the respondent's policy is that, whilst the report is shared with the complainant, statements and other documentation are not generally shared as part of the report. The Tribunal considers that this approach is shared by many organisations and would

be standard practise for the respondent in dealing with grievances. Nonetheless, Mr Burdsey had sent the documents he considered to be relevant.

261. The Tribunal is satisfied here that, even if the burden had shifted, that the respondent has given a fully adequate explanation as to why Mr Burdsey behaved as he did, namely by acting on the advice of HR, who, in turn, were following their own policy s regards documentation in the grievance process. In any event, Mr Burdsey sent documents to the claimant on 28 June indicating that he believed he had sent all the relevant documents.

262. There was no unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the EqA, nor was it reasonable for it to have that effect. Further, Mr Burdsey's actions were in no way related to the claimant's race or disability for the reasons set out above.

263. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the EqA as set out above, there was no detriment as these were documents the claimant was not, at this stage, entitled to because of the respondent's policy on grievance documents. It was only once Dr Wolfe agreed the claimant could have them that she had any entitlement to them. The Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on Mr Burdsey's failure to provide the documents.

- *Mr Burdsey was aware of Mr Brazel's conduct towards the claimant after she had raised an investigation but ignored it. In breach of policy Mr Brazel discussed the claimant's grievance with other members of staff and Mr Burdsey failed to take steps in relation to this despite becoming aware of Mr Brazel's actions during his investigation*

264. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and victimisation.

265. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

266. The Tribunal assumes from the claimant's submissions that the "conduct" referred to is in relation to the PIN issue. However, it appears to be based on a misunderstanding by the claimant. Mr Burdsey had no evidence to suggest Mr Brazel had done anything following the claimant raising the grievance. In fact, Dr Madan forwarded the email from Mr Brazel to Mr Burdsey, but that email did not make any suggestions about Mr Brazel's conduct.

267. Further, Mr Brazel did not discuss the claimant's grievance with anyone. In fact, Ms Leon had gone to him to ask to relocate and talked about her reasons why which included that she understood that the claimant had established contact with her colleague, Ms Okello and had alleged that Mr Brazel had taken steps to have the claimant's NMC PIN

withdrawn. Mr Brazel passed the information on to Dr Madan who forwarded the information to Mr Burdsey. There was no evidence that the grievance was mentioned at all. Even if it had been mentioned, there was no evidence whatsoever to suggest that he was discussing the content or the outcome.

268. There was no basis for Mr Burdsey to take any action against Mr Brazel. He was investigating the grievance. In reality, a more experienced grievance manager may not have included it at all.

269. The Tribunal finds no evidence to suggest that a hypothetical comparator who was the same as the claimant but was White British or did not have dyslexia/dyspraxia would have been treated differently to the way the claimant was treated.

270. There was no unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the Equality Act 2010. Further, there was no evidence before the Tribunal to suggest that Mr Burdsey's, actions were in any way related to the claimant's race or disability.

271. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the EqA as set out above, the Tribunal finds there was no detriment for the reasons set out above. Further, the Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on Mr Burdsey's alleged failure.

- *After raising her grievance Mr Brazel, Ms Leon and Ms Okello falsely and maliciously accused the Claimant of accusing Mr Brazel of trying to have her National Midwifery Council PIN removed*

272. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and/or victimisation.

273. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

274. The Tribunal is satisfied that there was no evidence whatsoever, other than the claimant's assertion, that Mr Brazel, Ms Leon and Ms Okello "falsely and maliciously" accused the claimant of accusing Mr Brazel of trying to have her PIN removed.

275. There was no evidence before the Tribunal, other than the claimant's assertion, to suggest that the facts as set out above were not a true reflection of events.

276. The Tribunal, for the avoidance of doubt, does not accept the claimant's assertion that the allegation about the claimant accusing Mr Brazel of trying to have her PIN removed was false. The claimant's evidence is not credible in this regard and is not supported by the contemporaneous events and documents, namely Ms Leon being moved

from the department and Mr Brazel's letter to Dr Madan. It is not credible that Mr Brazel, Ms Leon and Ms Okello would conspire against the claimant in this way and the claimant did not produce any evidence t support her assertion.

277. This allegation is not upheld and is not therefore direct race or disability discrimination, race or disability harassment or victimisation.

- *Ms Leon made false and malicious allegations against the Claimant and was moved from the Claimant's team without any attempt to verify the allegation made against the Claimant*

278. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and/or victimisation.

279. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

280. As a result of the grievance and/or the atmosphere in the team, Ms Leon asked to move. She did not want to work in a team where there were poor relationships, which is completely understandable. Whilst it is accepted that the allegation was not investigated, this was because the grievance was already underway and it would have complicated and delayed matters further.

281. If the claimant is alleging that a White British person, or a person without a disability, would be treated differently in that Ms Leon would not have been allowed to leave the department before the allegation made was investigated if she had made an allegation about them, that is not accepted by the Tribunal. There was no evidence before the Tribunal to suggest that that would be the case, in particular when the grievance was underway.

282. There was no unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the Equality Act 2010. Further, there was no evidence before the Tribunal to suggest that Ms Leon's actions (she is black) or the respondent's actions in moving Ms Leon or failing to investigate the allegations were in any way related to the claimant's race or disability.

283. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the EqA as set out above, the Tribunal finds there was no detriment for the reasons set out above.

284. This allegation is not upheld.

- *Mr Brazel was allowed to discuss the Claimant's grievance on 22 May 2018. In contrast Ms Sreeneebus sent the Claimant an email threatening action against her for having contacted Ms Leon and Ms Okello about false and malicious allegations they had made against her whilst her*

grievance was being investigated. In contrast no such action was taken against Mr Brazel, Ms Leon or Ms Okello

285. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and/or victimisation.

286. It is not the case that the email from Ms Sreeneebus, as regards this issue, threatened action against the claimant for having contacted Ms Leon and Ms Okello. There is no threat within the email. It asks her not to contact the witnesses and says someone will be in touch with her to discuss it. The allegation is not upheld.

287. The circumstances of Mr Brazel speaking with Ms Leon when she went to him as her manager asked to move, and the claimant seeking to contact the witnesses who had refused to partake in the grievance investigation once she received the grievance outcome are totally different and, in fact, incomparable.

288. Mr Brazel was not allowed to discuss the grievance and there is no evidence whatsoever to suggest that he did so.

289. There was no unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the Equality Act 2010. Further, there was no evidence before the Tribunal to suggest that Ms Leon's actions (she is black) or the respondent's actions in moving Ms Leon or failing to investigate the allegations were in any way related to the claimant's race or disability.

290. There was no detriment for the purposes of the victimisation claim.

291. This allegation is not upheld.

- *Ignored the Claimant's complaints of race discrimination, bullying, harassment and victimisation brought by way of her protected acts; and*
- *Breached the Respondent's Dignity at Work Policy by taking no action into her ongoing discrimination complaints raised by way of the protected acts*

292. These allegations are pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and/or victimisation.

293. It is accepted that the respondent did not investigate or consider the claimant's protected acts 2-5 as a standalone grievance. However, her complaints to the Chief Executive and others were not ignored. They were acknowledged. On 18 September 2018, the claimant was reminded that she could raise her outstanding concerns 'tomorrow as part of the appeal process. We want to work with you to resolve these concerns and therefore I do encourage you to attend'.

294. There are no facts from which the Tribunal could conclude that the claimant was discriminated against in this regard. The Tribunal finds no evidence to suggest that a hypothetical comparator who was the same as

the claimant but was White British or did not have dyslexia/dyspraxia would have been treated differently to the way the claimant was treated.

295. Even if the burden had shifted, the Tribunal is satisfied that there were two reasons as to why the respondent did not treat the claimant's protected acts as grievances. The first is that the grievance was still ongoing and, to add further complaints and issues or new grievances formally would have made things far more complicated, and delayed further. The respondent felt these issues could be dealt with in the appeal. Further, the claimant's grievance was clear that she was raising a grievance and wanted it dealt with as such. In the case of the subsequent protected acts, that was not the case.

296. There was no unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the Equality Act 2010. Further, there was no evidence before the Tribunal to suggest that the respondent's actions in failing to deal with protected acts 2-5 was in any way related to the claimant's race or disability.

297. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the Equality Act 2010 as set out above, to the extent there was a detriment the Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on the respondent's actions.

- *Ignored her repeated requests for and failed to provide the Claimant with the appeal documents she set out in her appeal of 14 May 2018 and which she requested thereafter in her protected acts*

298. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and/or victimisation.

299. The allegation is not made out as set out by the claimant, though she did not receive all the documents she was requesting.

300. When the claimant's request was dealt with by Dr Wolfe, it was not ignored. He wrote to the claimant on 24 July 2018, to confirm that, whilst the grievance report is shared with the complainant, statements and other documentation are not generally shared along with the report. He said that an independent review of the documentation had been undertaken and that, after consideration and advice, the claimant would be sent a copy of the information that Mr Burdsey used to draft his report and decide on his recommendations. It excepted the emails from the staff who refused to take part in the investigation.

301. The problem was that, at no stage did anyone think to itemise the documents so that there was total clarity on what documentation was being discussed.

302. Therefore, the claimant's allegation up to and including 24 July 2018 is not upheld as there was a valid reason why the documentation was not sent to the claimant before this date. Further, following 26 July

2018, the respondent believed the claimant had been sent the valid documents.

303. There was no evidence before the Tribunal to suggest that a White British person, or a person without a disability, would be treated differently.

304. In any event, the reason for the treatment was that the respondent believed the claimant had been sent all of the relevant documents bar the emails with the nurses who had refused to take part in the investigation, but neither engaged with the other to explain what was missing. If the burden had shifted, the Tribunal is satisfied that the reason for the treatment was that the respondent believed it had provided the claimant with the documentation she needed, and that what she was requesting was the correspondence with the nurses who chose not to partake in the grievance investigation. That was coupled with a frustration at the claimant continuing to complain that she had not received all of the documents in her protected acts.

305. The Tribunal accepts that the claimant not receiving the documents she was requesting and feeling that her protected acts were not being properly responded to (by giving her the documents requsted) following the grievance would be unwanted conduct which could reasonably cause the claimant to feel harassed within the meaning of section 26 of the Equality Act 2010.

306. However, there was no evidence before the Tribunal to suggest that the respondent's actions in failing to provide the documents or not engaging with the protected acts was in any way related to the claimant's race or disability, but rather was because the respondent believed that it had sent the claimant the documents she was requesting and that her request related to documents that sh had been told she could not have, namely those with the nurses, as well as the sense of frustration as mentioned above..

307. As stated above, the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the Equality Act 2010. The Tribunal considers that failing to engage more meaningfully with the protected acts was a detriment.

308. The Tribunal also finds that, as regards this allegation, the claimant's protected acts did have an influence on the respondent's actions in preventing them from meaningfully engaging with her requests. They were simply not listening to her when she said she had not received all of the documents, and the Tribunal finds that the respondent's failure to engage became quite wilful, and was influenced by their irritation over the claimant repeatedly doing protected acts. They felt that they did not want to engage and that, by doing so, they would add to an explosion of complaints and appeals.

- *Ignored the request for Ms Cashman to be recused from hearing the appeal which was made by the Claimant on 18 September 2018*

309. This allegation is pleaded as direct disability discrimination; direct race discrimination; harassment related to disability and/or race and/or victimisation.

310. The request for Ms Cashman to recuse herself was not ignored, but it was considered by the respondent that there was no need or reason for her to recuse herself.

311. This allegation lacks a cogent evidential basis. The 'something more' required by **Madarassy** is also absent. The claimant has treated a decision by the respondent that she does not like as discrimination with no real basis to do so.

312. There was no evidence before the Tribunal to suggest that a White British person, or a person without a disability, would be treated differently. The respondent chose not to accede to the claimant's request which had nothing to do with any prohibited or protected factor.

313. Even if the burden had shifted, the Tribunal is satisfied that there was a non-discriminatory reason for the refusal of the request. The claimant had already been successful in persuading the respondent to recuse one appeal manager, Ms Murtagh, with no real reason to do so and saw no reason to recuse Ms Cashman. They wanted to get on with the appeal so that the grievance process could be concluded.

314. Although the respondent admits that the claimant has done five protected acts within the meaning of section 27 of the Equality Act 2010 as set out above, to the extent there was a detriment the Tribunal is satisfied that, for the reasons set out above, the claimant's protected acts had no influence on the respondent's actions. They wanted to conclude the grievance process and felt that the claimant would request anyone who dealt with the process to recuse themselves.

<u>Discrimination arising from disability</u>

315. This claim was withdrawn by the claimant.

<u>Failure to Make Reasonable Adjustments</u>

- *Did the Respondent apply PCPs?*

316. The first alleged PCP is the respondent's alleged refusal to refer the claimant to Occupational Health for purposes of recommending reasonable adjustments to her work due to her alleged disability of dyslexia and dyspraxia.

317. This was not a PCP applied by the respondent. The Tribunal finds that the respondent did not refuse to refer the claimant to OH. If the claimant had formally notified the respondent of her disability, the step would have been taken.

318. The Tribunal found that Mr Brazel had no hesitation in referring the claimant to OH for other health issues.

319. In any event, once the claimant had notified Ms Sreeneebus, the referral was made, albeit that OH said that they would not perform such an assessment, as they were not in a position to do an assessment themselves and needed to refer it on. Ms Sreenebus didn't realise there was a report already, as she suggested a report. The steps which OH would recommend would therefore depend on an external assessment, not an assessment by the respondent. Once that external assessment had been done, then the respondent would have followed up.

320. Ms Sreeneebus's actions in contacting OH, and Mr Brazel's actions in offering an OH referral for other health issues, does not demonstrate a policy or practice of refusing a referral. In any event, the PCP needs to be a policy capable of being repeated and not only applicable to the claimant.

321. The claimant has failed to establish this PCP.

322. The second alleged PCP is the alleged requirement for the claimant to perform the research aspects of her duties with a standard issue desktop computer with no assistive software support to aid the claimant's alleged disability of dyslexia and dyspraxia.

323. Again, a PCP needs to be a policy capable of being repeated and not only applicable to the claimant.

324. The claimant has failed to establish this PCP.

- *Substantial disadvantage*

325. There was no evidence before the Tribunal that the PCPs put the claimant at a substantial disadvantage when compared to those who are not disabled. The alleged disadvantages to not actually relate to PCP 1 at all, in any event.

326. The claimant identified the following alleged substantial disadvantages:

   a. Not being able to record in a timely manner or fashion patient data involved or participating in clinical trials conducted by her. There was no evidence of this before the Tribunal.
   b. The claimant's ability to process information efficiently. Again, there was no evidence of this before the Tribunal; and
   c. The claimant suffered problems with visual-spatial processing of information associated with projects being worked on by her, particularly with the white screen background of the computer's monitor. Again, there was no evidence of this before the Tribunal.

327. There can be no assumption that these were substantial disadvantages. The claimant gave no evidence on these alleged disadvantages. They must be established by evidence. The claimant has failed to do so.

328. The report prepared when the claimant was at University noted that the claimant tends to ramble when she writes but the claimant had got to Band 7 with coping strategies and without any request or difficulties of which the respondent was made aware. The report says nothing about the claimant being unable to record in a timely manner. It states that her verbal skills are above average. There is nothing in the report about visual spatial processing nor about white screens being required.

329. Even if it was in report the respondent did not see it and had no knowledge of the claimant's alleged substantial disadvantage.

330. The useful things/adjustments would have been useful all along and once she knew from 2015 she had the condition, if there was anything the claimant was having real difficulty with she could have made the request earlier, and indeed had a professional obligation to do so in the evnt that it was hindering her performing her job properly.

331. The respondent did not know nor could it reasonably be expected to know that the claimant was likely to be placed at the disadvantage because of the PCPs. In any event, the Tribunal has found that they didn't know of her disability at all until August 2017.

332. The Tribunal finds that the respondent had no knowledge of the alleged substantial disadvantage.

333. The claim fails and is dismissed.

Harassment

- *Mr Brazel told the Claimant that just because she had dyslexia did not mean that she could get special treatment and that he suffered from the same condition i.e. dyslexia but gets no special treatment as a result*

334. The claimant asserts that this conduct pertains to both her race and disability.

335. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

336. The Tribunal accepts that this comment was made by Mr Brazel to the claimant.

337. The Tribunal does not find that the comment related to the claimant's disability and/or race.

338. There was nothing before the Tribunal to indicate that such a comment could be related to the claimant's race.

339. It further not related to the claimant's disability, as it was a comment made in the context that Mr Brazel had seen no impact of the claimant's disability whatsoever in the context of the claimant's work and did not know at that time that the claimant had a disability. There was no indication that she was struggling in any way, and the Tribunal have found

that it had not been raised with him previously, hence he had no knowledge of the claimant's disability.

340. The Tribunal finds that such a comment could have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. However, it was not reasonable for the conduct to have, or be perceived to have, that effect. The comment was really aimed at himself.

341. In this conversation, the claimant has turned a general comment into a personal slight. Mr Brazel's view had been not to let dyspraxia hold him back. The claimant might have been taken aback by someone saying that they didn't get any special treatment so she wouldn't, and it is fair to say that the comment may have been clumsy, but she absolutely took the comment to heart.

- *On or around 17 March 2017 Mr Brazel told the claimant that having bought himself a new laptop he was not going to give her his laptop which had software that would assist the claimant in light of her disability and that instead he was going to give the laptop to the new Band 7 nurse, Ms Leon*

342. The claimant asserts that this conduct pertains to both her race and disability.

343. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

344. Mr Brazel did give his laptop to Ms Leon, who is black. The claim of racial harassment therefore fails.

345. The reason Mr Brazel gave the laptop to Ms Leon was because she was peripatetic and not desk based like the claimant. It was not related to the claimant's disability of which Mr Brazel was unaware at the time.

346. The Tribunal finds it was not reasonable for the conduct to have, or be perceived to have, the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

- *By the way that Tim Burdsey conducted himself in a meeting with the claimant on 30 November 2017 in connection with the Claimant's grievance during which he was hostile, exhibited bias, was intimidatory and inappropriately defended Mr Brazel; Mr Burdsey told the Claimant that "he wasn't bullying her but managing her in a different way" (paragraph 6(a)); The Claimant asserts that this conduct pertains to both her race and disability.*

347. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

348. The notes of the grievance investigation do not reveal any concerns of the nature referred to by the claimant.

349. Further, the Tribunal heard from Ms Firth about her personal experience of being in meetings with Dino Williams, the union representative, who used to be staff side chair. She recalled him walking out of a meeting which she was at when something was said he did not like. If anything inappropriate had occurred at these meetings between the claimant and Mr Burdsey, from the evidence ET has heard, he would have been voluble.

350. The Tribunal does not accept that Ms Tolladay would have edited the notes she was taking. The Tribunal also finds that Ms Tolladay would have spoken up had the meeting been inappropriately dealt with.

351. This allegation is not upheld.

352. In any event, there is no evidence to suggest that any such conduct was related to the claimant’s race or disability.

353. It is not accepted that the alleged conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant or that it was reasonable for the conduct to have, or be perceived to have, that effect.

<u>Direct Race Discrimination</u>

- *Mr Brazel repeatedly ignoring the Claimant’s leave requests*

354. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

355. The Tribunal does not find that Mr Brazel repeatedly ignored the claimant’s leave requests, although there were often delays in his responses. There were occasions, as set out above, when the claimant requested leave late or changed her leave, or there was confusion over leave dates.

356. In light of the above, the allegation is not made out, There are no facts from which it can be inferred that discrimination occurred and the burden of proof does not pass to the respondent.

357. The situation of the claimant’s comparators was different as they did not frequently request leave late and change their leave requests or have a more complex annual leave entitlement. They are not therefore relevant comparators in this regard.

358. For completeness, if the burden did pass to the respondent, to the extent that there was a delay, this was caused by the claimant’s more complex leave situation than others and Mr Brazel’s confusion and poor grasp of the claimant’s leave entitlement at any given time, not helped by the leave template. Most significantly, the claimant routinely requested leave very late, often only a couple of weeks in advance. This was a management headache for Mr Brazel, who admitted he was not on top of

annual leave and this was worse in the claimant's case because of the issue over her nine day fortnight which meant there was a dispute over her holiday entitlement. This also took place in the context of Mr Brazel seeking to tighten up leave, in particular the administration of it, for the whole team.

- *Mr Brazel requiring the Claimant to justify her annual leave request and on occasion altering her request before approving it*

359. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

360. The Tribunal does not find that Mr Brazel had a practice of requiring the claimant to justify her annual leave request. He did however, on one occasion, ask her to alter her leave request before approving it. Whilst this may not have been strictly necessary, it was done with the intention of accommodating a team training day for the HAH training. Any justification required by Mr Brazel was in order to ensure that he understood the correct purpose of the leave for the purposes of recording it correctly.

361. There does not seem to be any reason why the meeting could not have been arranged for a different day, as reflected in the grievance findings. However, the Tribunal finds that Ms Dyson was also asked to change a leave date close to a work related deadline, which was resolved by Ms Dyson changing her leave. The claimant cannot therefore establish that there was less favourable treatment than her comparators.

362. Even if the burden had shifted, the Tribunal finds that reason for the claimant's treatment was that the relationship between the claimant and Mr Brazel was fractious because he challenged the claimant's leave entitlement, and was in fact correct to do so, even though she did not consider him to be correct. The claimant, in continuing to take her full annual leave entitlement despite working a nine day fortnight, had gone unchallenged for a long time. She had been taking the wrong leave entitlement and Mr Brazel was trying to manage it because the claimant was taking too much annual leave for her working pattern. The claimant would not accept that and stated in evidence that she made sure she continued to take all the annual leave she considered she was entitled to. That caused a serious issue between her and Mr Brazel as she would not accept what he was saying about her annual leave entitlement.

- *In relation to the Claimant's annual leave request made on 16 March 2017 for annual leave from 3 to 17 April 2017, on 30 March 2017 Mr Brazel, accused the Claimant of dishonesty and lying in relation to her annual leave record*

363. This allegation is also out of time (see below). The Tribunal does not have jurisdiction to consider this allegation.

364. In respect of the leave request which caused the claimant to go off sick, Mr Brazel told the claimant he had not approved her leave only a

matter of a few days before she was due to take it. That is not good management and would inevitably lead to the claimant feeling aggrieved.

365. Mr Brazel did accuse the claimant, on 30 March 2017, of dishonesty and lying, or words to that effect, in relation to her annual leave record. It is acknowledged by both the claimant and Mr Brazel that the conversation got very heated and was upsetting. It was over the claimant putting Mr Brazel's name on the timesheet as authoriser. Mr Brazel admitted that both parties were upset, that the conversation went too far; and that he had been "overly bureaucratic".

366. The claimant's comparators are not relevant comparators as regards annual leave as their circumstances were not materially the same, notably because the claimant would not accept the fact that her holiday entitlement reduced because of the nine day fortnight working pattern, but also because of late leave requests.

367. The Tribunal finds that the claimant cannot therefore establish that her treatment was less favourable.

368. However, as in **Laing,** rather then concerning itself with questions of whether the burden has shifted, the Tribunal finds that the fundamental reason for the treatment was a lack of trust between the claimant and Mr Brazel stemming from the annual leave entitlement and related issues. This caused their relationship to be fractured and overly bureaucratic.

369. Whilst the Tribunal can understand why the claimant was upset, the situation was exacerbated by many late leave requests and applications to change her requested annual leave, in circumstances in which Mr Brazel was struggling to manage and keep on top of the claimant's annual leave requests. The claimant was understandably upset in the telephone call about the authorisation of her leave still not having been given just days in advance. Additionally the practice of putting the name of the authoriser was already established and she had done it before.

370. However, the reason for Mr Brazel's treatment of the claimant in this regard was not her race or disability, it was the fact that their relationship was fractured and the fact that he believed she was taking too much holiday and was ignoring what he had told her which was that she had a lesser entitlement. He was trying to keep a handle on it. He saw her as being insubordinate as she refused to accept what he said about her entitlement. The claimant insisted on still taking the leave she believed she was entitled to and he did not want to sign it off. This standoff caused both parties distress, but was unrelated to the claimant's race and/or disability.

371. Additionally, the claimant had applied for the job Mr Brazel had been appointed to and was resistant to being managed by him, which was an additional factor, especially as he had little or no clinical expertise.

Time limits

372. The claimant's claim was presented on 9/10/2018.

373. A discrimination claim must normally be brought before the end of "the period of three months starting with the date of the act to which the complaint relates". Given the EC dates, (28 July 2018 to 11 September 2018) the last day of the primary limitation period is 29 April 2018.

374. The Tribunal finds that any allegation before 29 April 2018 is out of time. The claimant has not established "conduct extending over a period". The grievance process has not established a continuing act. There was no ongoing state of affairs for which the respondent was responsible as the claimant's claims are not upheld save as respects one allegation of victimisation.

375. Further, the Tribunal does not consider it to be just and equitable to extend time. The claimant was represented, or at least supported, by her union at all material times. Dino Williams was a very experienced union representative. The claimant is a senior clinical research nurse, with a BSc degree and an MSc. Any ignorance, in context, is not reasonable. The prejudice to the respondent is shown in fading to non-existent memories.

376. Although the claimant suffered a breakdown in March 2017, she was able to bring a detailed and lengthy grievance in August 2017 and engage in the process. She was able to engage in articulate and lengthy correspondence with the respondent including on 11 June 2018; 28 June 2018; and 6 July 2018 (the protected acts) and indeed from May 2018 when she engaged in detailed and lengthy correspondence over the appeal.

377. The question is not whether she was prevented from bringing proceedings by the medical condition but whether, in the round, it is just and equitable to extend time in the light of the claimant's medical difficulties, even if they were not such as actually to prevent the claimant commencing proceedings. In light of the above correspondence, it is clear that the claimant was able to fully engage with the respondent and was well aware of her rights. There is no evidence that her medical condition, at the time, had any impact on her ability to articulate herself or understand her rights.

378. Although a trial has been possible, there has been significant impact on the witnesses' memories due to the effluxion of time.

379. It is not just and equitable to extend the time limit.

Employment Judge Rice-Birchall

Date: 4 May 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON
15th May 2024

FOR THE TRIBUNAL OFFICE

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