



EMPLOYMENT TRIBUNALS

Claimant: Miss Rebecca Wadkin

Respondents: 1. Cheshire and Wirral Partnership NHS Foundation Trust
2. Ms M S V Williamson

Heard at: Liverpool

On: 26 February to 8 March
2024

Before: Employment Judge Ainscough
Ms C Linney
Ms P Owen

REPRESENTATION:

Claimant: In person

Respondent: Mr Gibson - Solicitor

JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. The claim of direct disability discrimination is unsuccessful and is dismissed.
2. The claim of discrimination arising from disability is unsuccessful and is dismissed.
3. The claim of indirect philosophical belief discrimination is unsuccessful and is dismissed.
4. The claim of indirect disability discrimination is unsuccessful and is dismissed.
5. The claim of failure to make reasonable adjustments is unsuccessful and is dismissed.

6. The claim of harassment related to philosophical belief is unsuccessful and is dismissed.
7. The claim of harassment related to disability is unsuccessful and is dismissed.
8. The claim of victimisation is unsuccessful and is dismissed.

REASONS

Introduction

1. The claimant brought four claims of discrimination and victimisation arising out of her employment with the first respondent as a Business Development Manager. The fourth claim was also brought against the second respondent who was the claimant's line manager for the last part of her employment with the first respondent.
2. The first claim was issued on 16 March 2022, the second claim was issued on 28 July 2022, the third claim was issued on 25 August 2022 and the final claim against both respondents was issued on 30 November 2022.
3. Prior to the start of the final hearing the claimant had also issued a fifth claim of unfair dismissal. However, during case management, it was determined that the fifth claim would be dealt with separately. This matter was listed for two weeks to accommodate the claimant's request for a reasonable adjustment to allow her sufficient time to process information in light of her disability. The claimant has ADHD and Anxiety and Depression.

Evidence

4. In order to assist the parties, the Tribunal gave time estimate indications for each part of the hearing to ensure compliance with the overriding objective that the parties were on an equal footing and had similar time to present their cases.
5. The Tribunal spent two days reading the respondents' bundle of 500 pages and the claimant's supplemental bundle of approximately 1500 pages. The Tribunal also read the claimant's witness statement which consisted of 123 pages and three witness statements from the respondents' witnesses, Carmel Hopkins the Head of Human Resources, Safieh Fraser the Transformation Manager/Acting Head of Effective Services and Vivian Williamson the second respondent and the Interim Deputy Director of People and Organisational Development.

6. The parties made oral submissions and the claimant submitted written submissions within the guidance issued by the Tribunal.
7. In light of the volume of information, the Tribunal determined at the outset that the judgment would be reserved and spent approximately three days in deliberation. This also accommodated the claimant's request for a reasonable adjustment, that she be allowed sufficient time to process information.
8. The Tribunal asked the parties to disclose a copy of the claimant's job description which was not included in either bundle. In addition, the respondents' representative disclosed a user-friendly version of the Vaccination as a Condition of Deployment (VCOD) Guidance issued on 6 December 2021.

Issues

9. The agreed list of issues is produced as an annex to this judgment.
10. At the outset of the final hearing, the claimant contended that the hypothetical comparator was a Business Development Manager, Grade 8A.
11. The first respondent clarified that it only sought to objectively justify the application of the VCOD Guidance for the purposes of the discrimination arising from disability claim and the indirect discrimination claim.
12. The claimant confirmed that she did not wish the Tribunal to make a determination of issues 7.2.17 and 7.2.18 for the purposes of the victimisation claim because those issues were included in the fifth claim for unfair dismissal. It was agreed that there was a danger of inconsistent findings should we make such determinations. The respondents had no objection to this position.
13. The list of issues that appears in the annex is the final list of issues agreed between the parties and the Tribunal prior to the start of the evidence.

Relevant	Findings	of	Fact
The	claimant's		employment

14. In November 2019 the claimant commenced a secondment with the first respondent as a Business Development Manager. By April 2020 the first respondent had offered the claimant a permanent role which she commenced on 1 May 2020. In July 2020 the claimant was appointed as the first respondent's Chair of the Disabled Staff Network.
15. The claimant worked at Grade Band 8A which the respondents' witnesses said was a management position. The Tribunal accepted the evidence of Ms

Fraser that the claimant was largely autonomous in her role and would not expect to be micro-managed.

16. The claimant's role was the development of the business development framework, project management and responsibility for bids and tenders. The claimant's role sat within the transformation team.
17. The claimant's key responsibilities were that she was expected to communicate effectively internally and externally with a range of senior people which involved, but not limited to *"Executive Directors, Associate Directors, Service Directors, Locality Managers, Clinical Service Managers, Clinicians and Clinical Teams and other clinical support services internally. NHS Trust, Local Authorities, Clinical Commissioning Groups, Third Sector and Private Provider organisations. Cheshire and Merseyside STP Partnership Organisations and STP Programme Managers"*.
18. The claimant reported to the Head of Effective Services Tracy Collins who reported directly to David Harris, the Director of People and Organisational Development.
19. The first respondent is a Trust that delivers services regulated by the Care Quality Commission. The claimant's role facilitated the delivery of such services and was therefore ancillary. The claimant was responsible for procuring the services so they could be delivered to a qualitative standard.
20. The Tribunal has determined that, on the balance of probabilities, the claimant's role prior to the pandemic was classed as non-patient facing. However, on review, during the pandemic, the first respondent determined that the claimant's role as a Business Development Manager was ancillary to the Care Quality Commission work it provided because, if the claimant were required to attend the first respondent's site, she would have face to face contact with patients.
21. The Tribunal heard evidence that part of the claimant's role was to transform services which would include speaking to service users about how such services could be transformed. The Tribunal also accepted the evidence of the respondents' witnesses that if the claimant were on site, at the very least, she could pass service users in a corridor.
22. The Tribunal has noted the claimant's evidence that from secondment to the termination of her employment, she did not work on the first respondent's site. However, the expectation was that a Business Development Manager would work on site and the first respondent reviewed the claimant's role during the pandemic on that basis.
23. During the course of the claimant's employment the first respondent operated various policies. The Dignity at Work policy provided for the process to be

followed when an employee raised concerns about bullying, harassment and victimisation. That process provided for the possibility of a facilitated discussion between the two aggrieved parties.

24. The first respondent also issued reasonable adjustments guidance to provide managers with the greater knowledge and understanding around the implementation of reasonable adjustments.
25. Finally, the first respondent had a management attendance policy that contained triggers for instigation of the formal management of an employee's attendance. Within that policy a manager had a discretion to ignore such triggers in exceptional circumstances and further, to adjust a trigger as a reasonable adjustment for a disabled person.
26. During these proceedings, the first respondent conceded that the claimant was a disabled person for the purposes of Section 6 of the Equality Act 2010 during her employment with the first respondent. The Tribunal has determined that the claimant told the first respondent on 16 August 2019 that she had a disability but did not believe it would impact on her role.

Covid Legislation and Guidance

27. In November 2021 the Government proposed draft legislation that said a person employed in respect of Care Quality Commission regulated activity would need to provide evidence that they had been vaccinated to continue deployment in that role. The Government announced that it was likely that the legislation would become law in April 2022.
28. At the same time, the Government provided guidance dated 6 December 2021 entitled "Vaccination condition of deployment for health care workers" (VCOD) to help those employees/employers affected by the proposed new legislation to plan and prepare.
29. In particular, the guidance set out who the regulations would apply to as follows: *"these regulations will apply equally across the public (NHS) and independent health sector, and will require workers aged 18 and over, who have direct, face to face contact with service users to provide evidence that they have received a complete course of a Medicine and Healthcare products Regulatory Agency (MHRA) approved Covid 19 vaccine, subject to limited exceptions by no later than 1 April 2022. This will include frontline workers, as well as non-clinical workers not directly involved in patient care but who nevertheless may have direct, face to face contact with patients such as receptionists, ward clerks, porters and cleaners"*.
30. The guidance defined CQC regulated activity by way of examples as:

“

- *Personal Care*
 - *Accommodation for persons who require nursing or personal care*
 - *Accommodation for persons who require treatment for substance misuse*
 - *Treatment of disease, disorder or injury*
 - *Assessment for medical treatment for persons detained under the Mental Health Act 1983*
 - *Surgical procedures*
 - *Diagnostic and screening procedures*
 - *Management of the supply of blood and blood derivative products*
 - *Transport services, triage and medical advice provided remotely*
 - *Maternity and midwifery services*
 - *Termination of pregnancies*
 - *Services in slimming clinics*
 - *Nursing care*
 - *Family planning services”*
31. The guidance provided that workers engaged in such activities would need the first dose of the vaccine by no later than 3 February 2022 and the second by 31 March 2022 to be considered fully vaccinated by 1 April 2022.
32. In order to implement the changes, employers were advised to assess which roles would be in the scope of the new regulations. In order to carry out this assessment, the guidance said that the employer should ask itself two questions:
- (i) Does the worker have face to face contact with patients and/or service users?
 - (ii) Are they deployed as part of the CQC regulated activity?
33. The guidance clarified that a CQC regulated activity included “*individuals working in non-clinical ancillary roles who enter areas which are utilised for the provision of CQC regulated activity as part of their role and who may have social contact with patients but are not directly involved in patient care*”. The guidance went on to state: “*the requirements would not apply to those*

employed, or otherwise engaged, in the provision of a CQC regulated activity if they do not have direct face to face contact with patients and/or service users/patients”.

34. The guidance provided a flowchart to assist with the assessment of whether a role was within scope which set out two questions:-

(i) *Is the individual deployed for the provision of a CQC regulated activity (this includes non-clinical activity)?*

If the answer to this was no, that person was not in scope. If the answer to it was yes, the next question was:

(ii) *does the individual have face to face contact with patients or serviced users in their role? This includes entering areas which are utilised for the provision of a CQC regulated activity which may result in incidental face to face contact with patients or service users.*

If the answer to that question was no the role was not within the scope, if the answer to that question was yes, the Trust was to ensure that that person was either fully vaccinated, exempt or could be redeployed.

35. On 14 January 2022 the Government issued further guidance. This guidance provided the same advice about assessing whether a role was within the scope of the draft legislation.

36. On 31 January 2022 the Secretary of State for the Department of Health announced that the draft legislation was being reconsidered and the advice to employers was not to take any action pending the outcome of that reconsideration.

37. In March 2021, the claimant had email correspondence with Tracy Collins about vaccinations in general. In that email correspondence Tracy Collins asked the claimant if she was against vaccination. The claimant's response stated that she had sufficient immunity through her immune system and that she objected to the Government policy and propaganda around the administration of the vaccine.

First respondent's implementation of Guidance

38. The first respondent extracted people from the HR department to help prepare and plan for the draft legislation in to the Covid 19 Workforce Cell which included Carmel Hopkins, the Head of Human Resources.

39. Carmel Hopkins provided evidence that the group had an understanding of the legislation and guidance in collaboration with other Trusts as they all grappled with the implementation in the workforce.
40. At the time of the draft legislation, the first respondent had approximately 4,500 staff. Carmel Hopkins gave evidence that she knew colleagues were working on lists of job roles to determine those that would be in the scope of the legislation.
41. On 14 December 2021 the Head of the Covid 19 Workforce cell issued an email directive to managers that there had been an assessment of all staff in patient facing roles and all “who may come into contact with patients but do not provide direct care”. The first respondent’s interpretation of the draft legislation was that there would be a statutory requirement for such staff to be fully vaccinated as a condition of deployment.
42. The email stated that the next steps would be to write to all such staff for who they did not have full vaccination records and asked line managers to have a one-to-one conversation with them by 31 December 2021.
43. Carmel Hopkins confirmed in evidence that the first respondent had access to the National Immunisation Management System which revealed the vaccination status of employees but could not be relied on as up to date due to various anomalies in the system. Therefore, the first respondent had taken a decision to write to and meet with all staff for who they did not have full vaccination records.
44. The one-to-one form that accompanied the email confirmed that the management discussion would include advising staff on the impact of the draft legislation on their role.

First respondent’s application of guidance to claimant

45. The email directive was forwarded to the claimant and a colleague by Tracy Collins at 9.38 am on 15 December 2021 who stated that they had been identified as such staff and they would need to attend a one-to-one meeting with Tracy Collins to discuss the matter. Tracy Collins expressed the view that the requirement should not include those in their clinical support area.
46. By 12.56 pm on the same day, the claimant had responded stating that the draft legislation and guidance was not applicable to her and that the first respondent should be careful how it implemented the legislation in general. At 1.34 pm the claimant emailed Tracy Collins to say that she if she was considered to be a frontline worker, the first respondent would have “*the biggest strong and most aggressive Employment Tribunal that they could ever possibly conjure up in their worst nightmare on their hands*”.

47. At 2.44 pm the claimant emailed Tracy Collins for the third time to say that she had contacted ACAS, the Equality Advisory and Support Service and a solicitor about potential discrimination on grounds of philosophical belief and disability. Tracy Collins subsequently forwarded that latter part of the email to the Covid 19 Workforce cell group.
48. On 16 December 2021 the first respondent sent the claimant a letter by email and in the post, dated 15 December 2021 asking her to confirm her vaccination status because she had been identified as not vaccinated or that there was no evidence to confirm vaccination. The claimant was also informed that she would need to attend a one-to-one with her manager. The form that accompanied the letter asked the claimant to confirm one of the following three options:-
 - (i) That she was vaccinated;
 - (ii) That she was not participating in the vaccination scheme; or
 - (iii) That she was exempt.
49. The claimant confirmed in evidence that there as there was no other option that would not include revealing her vaccination status, she did not complete the form but rather, on the same date sent an email to the Covid 19 Workforce cell disputing that she engaged in any activity ancillary to CQC activity and repeated the comments about taking advice.
50. On 20 December 2021 the claimant met with Tracy Collins for the one-to-one meeting. Tracy Collins recorded that the claimant was not willing to disclose her vaccination status and that the claimant had a philosophical belief which was contrary to the requirement for a mandatory vaccination.
51. On 23 December 2021 Carmel Hopkins sent a letter to the claimant noting her objection to the disclosure of her vaccination status and informing the claimant that any substantive response to her emails would be unhelpful because the first respondent was waiting until the new year when new national guidance would be available.
52. On 24 December 2021 the claimant sent an email to Carmel Hopkins querying the first respondent's application of the draft legislation and the guidance and made reference to only having fourteen weeks to find another job. The claimant also made reference to the first respondent's various options with regard to the claimant's role which included dismissal. The claimant urged the first respondent to confirm her employment status without delay so that she could decide whether to issue Employment Tribunal proceedings.
53. On 31 December 2021 the claimant made a Subject Access Request.

54. On 4 January 2022 the claimant sent an email to Tracey Collins and stated she would only be able to do her normal role until 31 March 2022. Tracy Collins responded assuring the claimant that she had no reason to think about leaving her role.
55. On 6 January 2022 Tracy Collins emailed the claimant to say that David Harris, had informed Tracy Collins that the claimant had no reason to be seeking other employment.
56. On 8 January 2022 the claimant sent an email to Tracy Collins expressing her unhappiness about the lack of clarity about her role and reiterated that she had a deadline to submit Employment Tribunal proceedings and that she maintained her belief that she was being treated in this way on the grounds of philosophical belief and her disability.
57. By 10 January 2022, Tracey Collins had specifically included David Harris and the second respondent into the email correspondence with the claimant. Carmel Hopkins subsequently agreed to take over the management of the issue.
58. On 12 January 2022 the claimant met with Tracy Collins and Carmel Hopkins via Microsoft Teams. Carmel Hopkins told the claimant that she was of the view that it was unlikely that the claimant would have patient contact in her role, but it could be incidental. Carmel Hopkins gave evidence that she sought to reassure the claimant that the first respondent would seek to make adjustments so that the claimant could remain in her role.
59. However, Carmel Hopkins could not confirm to the claimant that her role was outside the scope of the legislation until Carmel Hopkins had seen the updated guidance.
60. On 13 January 2022 the claimant emailed Tracy Collins and told her that the meeting had been far from reassuring and that it had only been a chance conversation with David Harris who had delivered a different message which had helped. The claimant stated that David Harris had told her that he would go outside of the process to sort matters out and that it was common sense that the draft legislation would not apply to the claimant's role.
61. On 27 January 2022 Carmel Hopkins created a document headed Frequently Asked Questions. That document confirmed that the guidance applied to those *“deployed for the purpose of providing CQC regulated activities and having direct face to face contact with people receiving care”* and *“including individuals working in both clinical and non-clinical ancillary roles”*. The document stated that the first respondent's position was subject to consultation with staff side representatives and would be updated once in receipt of further Government guidance.

62. By 31 January 2022 the Government confirmed that the draft legislation was to be reconsidered and employers should not take action in accordance with the draft legislation. This message was disseminated to the first respondent and others, including the claimant, on 1 February 2022.
63. On 3 February 2022 Tracy Collins sent the claimant a letter stating that whilst the first respondent could not say that the claimant's role was outside the scope of the draft legislation it was able to confirm that the claimant's employment was not at risk and if she were to come into contact with patients, adjustments would be made. There had been an earlier draft of this letter which contained an apology to the claimant, but this was removed by Carmel Hopkins.
64. The claimant responded on the same date expressing her dissatisfaction at the first respondent's letter. The claimant did not receive a substantive response to that email, but the Tribunal has noted that by 10 February 2022 the first respondent was considering whether to escalate the matter to the Deputy Director of People.
65. The claimant received an email about her Subject Access Request on 9 March 2022 which resulted in her absence from work. The claimant reported sick from her role on 14 March 2022. On the same date, the claimant lodged her first Employment Tribunal.
66. On 29 March 2022 Ms Fraser took over the claimant's line management. During the course of the claimant's absence, she was referred to occupational health on two occasions but declined to disclose the content of those reports to the first respondent.
67. On 11 April 2022 the claimant met with Brendan Burke an Acting Human Resources Business Partner. The claimant was under the impression that the meeting was to discuss the complaints she had made about the first respondent's implementation of the Covid 19 draft legislation and guidance, but instead, the meeting focussed on the claimant's Subject Access Request. Following that meeting, Brendan Burke asked the claimant to forward a copy of her email of 16 December 2021.
68. Following receipt of this email, on 3 May 2022 Brendan Burke sent an email to the claimant saying it would not be appropriate to discuss any substantive response to the claimant's complaints about the implementation of the VCOD guidance, because the claimant had lodged Employment Tribunal proceedings.
69. On 23 May 2022 the first respondent submitted the ET3 in response to the claimant's Employment Tribunal claim in which it stated, *"it is not admitted that the claimant has a disability, or had a disability at the material time, that the*

respondent knew or ought reasonably to have known of any such alleged disability”.

70. On receipt of the respondent’s ET3, the claimant resigned from her position as Chair of the Disabled Staff Network.

Claimant’s Return to Work June 2022 and Safieh Fraser line management

71. The claimant returned to work on 27 June 2022 and met with Safieh Fraser on 28 June 2022. The claimant told Safieh Fraser that she would have difficulty working with certain people that had caused her stress. As a result, Safieh Fraser allocated the claimant work which did not involve any of those individuals.
72. The claimant next met with Safieh Fraser on 26 July 2022 in which she stated that she wanted a resolution of her complaints about the VCOD guidance and again requested the need for reasonable adjustments *“to not be in the presence of or encounter individuals who would inevitably cause me to experience extreme levels of stress”.*
73. Safieh Fraser raised concerns about whether the claimant could do her job without coming into contact with such individuals and ultimately told the claimant that it would not be her decision about whether such adjustments would be made.
74. The claimant signposted Safieh Fraser to the respondent’s reasonable adjustment guidance. Under cross examination, Safieh Fraser admitted that she was not familiar with this document and said that the discussions were focussed around the claimant’s possible secondment to another organisation.
75. On 28 July 2022 the claimant lodged her second Employment Tribunal claim.
76. Following the meeting on 26 July 2022, Safieh Fraser asked the claimant to send more details about the requested adjustments. In response the claimant confirmed the three possible adjustments that could be made were as follows:
- (i) A temporary swap of duties with another member of the team who could liaise with those people who would cause the claimant stress.
 - (ii) The employment of a personal support worker to undertake liaison with those individuals on behalf of the claimant.
 - (iii) The swapping of the claimant’s role to a role which did not require liaising with the individuals.
77. By 1 August 2022 Safieh Fraser had asked the claimant to provide a list of those people she would have difficulty liaising with. Safieh Fraser also

informed the claimant that she was working with HR and others to consider the request. On the same day the claimant responded providing a list of approximately twenty people who she could think of “off the top of her head” but warned Safieh Fraser that there could be others. The second respondent was included on the list. The claimant informed Safieh Fraser that HR and others could not assist Safieh Fraser with the making of the decision, because it was down to Safieh Fraser as to whether adjustments could be made.

78. On hearing evidence from the witnesses, the Tribunal has determined that the claimant did not attend team meetings, albeit she had been invited to do so.
79. On 9 August 2022 the claimant met with Safieh Fraser and Brendan Burke to discuss the adjustments. The claimant was initially asked to reveal what those on the list had done to upset her. The claimant’s response was that that was irrelevant to the question of the requested adjustments. During the meeting Safieh Fraser said that at least two of the people on the list (Tracy Collins and David Harris) were within the claimant’s team and therefore the adjustment requested would be impossible to achieve. In response, the claimant suggested that she move to a different team.
80. Safieh Fraser said that the first adjustment of sharing the work would not work and that there needed to be a referral to occupational health. In evidence Safieh Fraser said that this was necessary in order to consider the impact on both the claimant and the other members of the team of the requested adjustments. At the meeting the claimant informed Safieh Fraser that the occupational health department could not advise on adjustments, and she was concerned about the delay.
81. Safieh Fraser suggested the claimant be redeployed to a more junior role which would not require contact with those on the list and reminded the claimant that a Grade 8A would be expected to liaise with senior managers. The claimant objected to this course of action and said she would pursue Employment Tribunal proceedings. The claimant also alleged that the first respondent was trying to get rid of her.
82. Following the meeting on 9 August 2022 Safieh Fraser made a referral to occupational health. In that referral Safieh Fraser expressed her view that the adjustments would not work and stated that the claimant was not working at full capacity. The Tribunal heard evidence from the respondents’ witnesses that prior to becoming a Transformation Manager Safieh Fraser had worked in a role that included the business development role and had experience of what was required of the claimant.
83. On 17 August 2022 the occupational health department produced a report and the claimant disclosed a copy of that report to Safieh Fraser. It was the advice of the occupational health department that adjustments were a

management decision and that the claimant would likely be a disabled person within the meaning of the Equality Act 2010.

84. On 23 August 2022 the claimant met with Safieh Fraser and confirmed that she did not want a secondment to another organisation. Safieh Fraser revealed to the claimant that Brendan Burke and Carmel Hopkins had been involved in the secondment discussions and also that Tracy Collins and David Harris would make the decision about reasonable adjustments. The claimant objected to their involvement because they were all on the list of people.
85. On 25 August 2022 the claimant submitted her third Employment Tribunal complaint.
86. On 7 September 2022 Safieh Fraser told the claimant that the second respondent would like to meet with the claimant to discuss line management and adjustments. The claimant said she did not want to meet with the second respondent because this would cause her stress and anxiety.

The claimant's line management by the second respondent – September 2022

87. On 8 September 2022 the second respondent contacted the claimant. The second respondent gave evidence that she did not know why she was on the claimant's list because she had very limited contact with the claimant. It was the second respondent's evidence that she wanted a facilitated conversation with the claimant to resolve any issues so that she could then proceed with the claimant's line management.
88. The second respondent gave evidence that because the claimant's role was line managed under the Director of HR, and the second respondent was the Interim Deputy Director of HR it was appropriate for the second respondent to take over the line management of the claimant. In evidence the second respondent explained that Tracy Collins had been off sick and was not capable of line managing the claimant on her return.
89. On 9 September 2022 the claimant was invited to meet with the second respondent to discuss her line management and requested adjustments. The second respondent also sought the claimant's consent to access the occupational health report which was granted.
90. On 13 September 2022 the claimant met with the second respondent and Brendan Burke. The second respondent confirmed that she was taking over the claimant's line management because of Tracy Collins' health issues. As a result, the claimant asked to move teams. The second respondent agreed to consider the matter.
91. There was a discussion about the requested adjustments and the second respondent told the claimant that the first two suggestions were not possible if the claimant were to fulfil the core duties of her role.

92. The claimant was informed that a Grade 8A had to work with senior leadership. In evidence the second respondent said that if anybody else had liaised on the claimant's behalf it would have created more questions than answers and the same could be said of a support worker.
93. The second respondent said in evidence that she was willing to consider the claimant swapping roles but that this would have been done via the official redeployment policy. The second respondent admitted that this would have involved a risk of termination of the claimant's employment because if the claimant was unable to secure redeployment, she would have received a notice of termination. The claimant gave evidence that this was the reason she did not want to pursue this option.
94. Following this discussion, the second respondent offered the claimant the possibility of a facilitated conversation to try and resolve the issues with those on the list. The claimant initially welcomed such an opportunity but raised concerns about how well she would behave in the meetings as a result of the manifestation of her disability. The claimant also informed the second respondent that she was not on medication but that her symptoms were getting worse. As a result, the second respondent said there would need to be a further referral to occupational health.
95. The claimant told the second respondent that she had never been fit to be in work but had no choice. The second respondent gave evidence that up until that point the meeting with the claimant had been polite, calm and cordial. The second respondent recalled that the claimant informed her that the meeting had been stressful and that she was going to the Accident and Emergency department and would be going off sick. The claimant said that the first respondent had won, and the claimant would not be returning to work.
96. The second respondent and Brendan Burke informed the claimant that they would not be accepting any resignation at that meeting. The claimant then asked both to make an adjustment to the attendance policy. The claimant wanted an assurance that if she went off sick due to a lack of reasonable adjustments, her absence would not be counted towards the triggers for attendance management. Brendan Burke informed the claimant that she would be treated the same as other disabled employees.
97. On the same date the second respondent confirmed the summary of the meeting in writing to the claimant which included a conclusion that the claimant did not want to participate in a facilitated conversation and that the claimant was not fulfilling the core duties of her role. The claimant responded disputing that she was not willing to enter into a facilitated conversation and challenged the assertion that she was not performing in her role.
98. On 16 September 2022 the second respondent made a referral to occupational health seeking advice about the requested adjustments and the

claimant's fitness to attend a facilitated conversation. In addition, the second respondent sought advice about whether the claimant was fit for work at all.

99. On receipt of the occupational health referral the claimant queried the purpose of the facilitated conversations in light of the email from Brendan Burke of 3 May 2022 saying he did not want to discuss Employment Tribunal proceedings. The claimant stated that some of her questions would in fact be her cross examination in the proceedings and she didn't want to reveal her litigation strategy.
100. The second respondent tried to reassure the claimant that the facilitated conversations would not deal with the Employment Tribunal proceedings but said the second respondent would await the outcome of the occupational health referral.
101. On 21 September 2022 the claimant and the second respondent met. At the behest of Safiah Fraser, the second respondent asked the claimant to attend the team meetings. It was confirmed that both Tracy Collins and David Harris would be in attendance. The claimant queried why she would be required to attend such meetings if there was a concern about her ability to attend facilitated conversations. The second respondent agreed with the claimant's point and said that she would not be required to attend Team meetings.
102. On 29 September 2022 the claimant and the second respondent met, and the claimant informed the second respondent that the claimant was paranoid.
103. On 5 October 2022 the Information Commissioner concluded that whilst there had been an oversight by the first respondent in response to the claimant's subject access request, the first respondent had subsequently taken the necessary action to full comply with the subject access request.
104. On 27 October 2022 the claimant attended her occupational health appointment. The second respondent had tried to secure an earlier appointment, but the claimant was unable to attend.
105. The occupational health report was disclosed to the second respondent and stated that the claimant was "verging on paranoia". The report was a holding response subject to receiving any further specialist advice from the claimant's consultant.
106. On 2 November 2022 the second respondent told the claimant that it would be inappropriate for her to attend Reverse Mentoring training. This training required a junior member of staff to provide mentoring to a senior member of staff about their management.
107. In evidence the second respondent said she wanted to protect the claimant and those she would be mentoring. The second respondent also said that

she could not guarantee that the claimant would not come into contact with the managers on her list.

108. The training was subsequently cancelled, and the claimant revealed to the Training Manager that she was relieved because senior managers on her list would be attendance in the same building. The claimant subsequently told the Training Manager that she had been subject to discrimination and would be mentioning the second respondent's name specifically in her next Employment Tribunal complaint.
109. On receipt of the second respondent's decision about the training programme, the claimant sought clarity from the occupational health department. The claimant also accused the respondents of playing a "little game" and said she would be pursuing Employment Tribunal proceedings. The claimant challenged the second respondent's view that she was not performing her core role.
110. In a conversation with the second respondent the claimant had described senior managers as "bigots and dickheads" and in a follow up email had accused the second respondent of discrimination. As a result, the Second respondent referred the matter to her line manager Debbie Herring.
111. The claimant responded justifying her use of language and stated that she was lodging Employment Tribunal proceedings.
112. On 16 November 2022 Debbie Herring suspended the claimant at a meeting at which the claimant was accompanied. The first respondent wanted to investigate if there had been an irretrievable breakdown of the employment relationship. The claimant was warned that the outcome of the investigation could lead to the claimant's dismissal for some other substantial reason.
113. The claimant was provided with the respondent's disciplinary policy on the basis that it mirrored the suspension investigation policy. The claimant subsequently asked if she could resign. Debbie Herring refused to accept the claimant's resignation. The claimant informed Debbie Herring that she would be lodging an Employment Tribunal claim.
114. On 17 November 2022 the claimant sent an email asking if she could resign. On 22 November 2022 the first respondent responded to that email saying it would allow the claimant to resign if she withdrew her Employment Tribunal claims.

Relevant Legal Principles

115. Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

"An employer (A) must not discriminate against an employee of A's (B) –

- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.”

116. Harassment during employment is prohibited by section 40(1)(a).

Direct Discrimination

117. The definition of direct discrimination appears in section 13 and so far as material reads as follows:

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

118. The concept of treating someone “less favourably” inherently requires some form of comparison, and section 23(1) provides that:

“On a comparison of cases for the purposes of section 13 ... there must be no material differences between the circumstances relating to each case”.

Harassment

119. The definition of harassment appears in section 26 which so far as material reads as follows:

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

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

(b) the conduct has the purpose or effect of

(i) violating B's dignity, or

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

(4) In deciding whether conduct has the effect referred to sub-section (1)(b), each of the following must be taken into account -

(a) the perception of B;

(b) the other circumstances of the case;

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

Discrimination arising from disability

120. Section 15 of the Equality Act 2010 states that there will be discrimination arising from disability if:

- “(a) A treats B unfavourably because of something arising in consequence of B’s disability and**
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.”**

Indirect discrimination

121. Section 19 of the Equality Act 2010 provides:

- “(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.**
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—**
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,**
 - (c) it puts, or would put, B at that disadvantage, and**
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”**

Reasonable adjustments

122. Section 20 of the Equality Act 2010 sets out the following duty:

20 Duty to make adjustments

- (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 whom 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.**
- (4)**

21 Failure to comply with duty

- (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.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Victimisation

123. Section 27 of the Equality Act 2010 provides that:

“(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.”

Code of Practice on Employment (2011)

124. The Tribunal has considered the Code of Practice on Employment issued by the Equality and Human Rights Commission which came into force on 6th April 2011, and in particular:

(a) Chapter 2 with deals with the protected characteristics and the meaning of belief;

(b) Chapter 5 which deals with discrimination arising from disability and the meaning of “unfavourable” treatment;

- (c) Chapter 6 which deals with reasonable adjustments and whether adjustments suggested are reasonable;
- (d) Chapter 7 which deals with harassment and whether acts of harassment are related to the claimant's disability and
- (e) Chapter 9 which deals with victimisation and the meaning of "detriment".

Burden of Proof

125. The burden of proof provision appears in section 136 and provides as follows:
- “(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.
 - (3) But sub-section (2) does not apply if A shows that A did not contravene the provision”.
126. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that “could conclude”, in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment.
127. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. Further, unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment: **Zafar v Glasgow City Council [1998] IRLR 36**.
128. It cannot be inferred from the fact that one employee has been treated unreasonably that an employee without the protected characteristic would have been treated reasonably. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

Philosophical Belief

129. Section 10(2) of the Equality Act 2010 defines belief as “any religious or philosophical belief.”
130. In the case of **Grainger PLC v Nicholson (2010) IRLR 4 EAT**, the Employment Appeals Tribunal set out principles to assist in establishing whether a belief is protected under the Act. Those principles are also now contained in the Code of Practice on Employment 2011. The Code specifically mentions Humanism as an example of philosophical belief.
131. For a belief to be protected under the Act the Code states:
- “it must be genuinely held;
 - It must be a belief and not an opinion or viewpoint based on the present state of information available;
 - It must be a belief as to a weighty and substantial aspect of human life and behaviour;
 - It must attain a certain level of cogency, seriousness, cohesion and importance;
 - It must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental human rights of others.”

Submissions

Respondents' Submissions

132. It was the respondents' submission that the chronology from December 2021 until 22 November 2022 was the sum total of the issues that the claimant had with the respondents. The respondents contended that the number of claims brought by the claimant was disproportionate to that period of time.
133. The respondents contended that the evidence given by the claimant about her philosophical belief was different to that which she revealed to Tracy Collins in March 2021.
134. The respondents submitted that the claimant was denied the ability to attend facilitated conversations and training in light of occupational health concerns and not because of direct discrimination. The respondents also submitted that it was clear from the claimant's claim of the need for reasonable adjustments that she was not capable of fulfilling the core duties of her role.

135. The respondents denied any threat to the claimant's employment and asserted that they had adequately dealt with the claimant's request for reasonable adjustments. The respondent contended that the claimant had no objection to her line management and that the second respondent had not denied the claimant facilitated conversations nor training but had merely acted in accordance with occupational health advice.
136. The respondents contended that the claimant fundamentally misunderstood the second respondent's comments about not fulfilling her role as one of capability rather than the need for reasonable adjustments.
137. The respondents denied discrimination arising from disability but submitted they had knowledge of the claimant's disability from August 2019.
138. The respondents contended that the claimant could not make a claim for indirect discrimination on the grounds of philosophical belief or disability because she could not prove a group disadvantage.
139. The respondents submitted that a number of the provisions, criteria or practices only affected the claimant and were not mutually applied to all employees.
140. The respondents contended they did not have knowledge of any substantial disadvantage caused to the claimant until August 2022. The respondents submitted that they had taken the adjustments of allocating the claimant specific work and trying to arrange facilitated conversations. The respondents denied that there had been a refusal to adjust the attendance management policy.
141. The respondents denied that the claimant had been offended by the Employment Tribunal response.
142. The respondents did not take issue with the protected acts contended by the claimant but disputed that the detriments were caused by the protected acts. The respondents justified the claimant's suspension because of the breakdown in the relationship and denied that the offer to accept the resignation had caused the claimant a detriment.

Claimant's submissions and response to respondents' submissions

143. The claimant submitted a ten-page written submission which the Tribunal read prior to hearing from the claimant during the hearing.
144. The claimant submitted that the first respondent had accepted that it wrote to all employees without assessing whether they were in the scope of the legislation. The claimant also submitted that she was required to disclose her status despite her role not being within scope. The claimant contended that she never received the reassurance she needed to stop the detriment.

145. The claimant submitted that she never received an adequate response to her subject access request and her issues with that were still ongoing up until September 2022.
146. The claimant submitted that she was right to refuse disclosure of occupational health reports because they were not relevant to the issue of her return to work but rather about her absence from work. The claimant maintained that the respondents failed to do anything to assist with her maintenance at work in the absence of advice from occupational health.
147. The claimant reiterated her philosophical belief. The claimant admitted that she did not use the phrase Humanist but that this was an overarching principle to which she subscribed as a result of her freedom of choice, freedom of right to express beliefs and freedom of thought.
148. The claimant submitted that the denial of facilitated conversations and training was because she was disabled and contended there was no attempt to consult with her about reasonable adjustments and maintained that there was a difference between a core duty and achieving an objective.
149. The claimant maintained that any reference to impact on role meant termination of employment.
150. It was the claimant's contention that the second respondent did not carry out an objective assessment of the reasonable adjustments suggested. The claimant disputed that a facilitated conversation was a reasonable adjustment.
151. The claimant maintained that there could have been adjustment to the attendance policy, but she was shut down.
152. The claimant submitted that she did object to the inclusion of the second respondent as her line manager in emails to Safiah Fraser. The claimant also maintained that she never refused to attend facilitated conversations.
153. The claimant submitted that there were concerns over her capability and not merely about whether she was fulfilling the core duties of her role. The claimant stated that she was right to express her feelings in the way she did, and this would have been the whole purpose of a facilitated conversation.
154. The claimant maintained that the respondents did have knowledge of her disability and the substantial disadvantage. The claimant submitted that the respondents could have applied other reasonable adjustments other than those highlighted by the claimant.
155. The claimant maintained that the effect of reading the ET3 was significant and there was no reason for the first respondent to include it in response to the claim. The claimant also maintained that her suspension was because of her Employment Tribunal proceedings and the first respondent only wanted to

accept her resignation if the Employment Tribunal proceedings were withdrawn.

Discussion and Conclusions

Burden of proof

156. The Equality Act 2010 provides for a shifting burden of proof. The claimant is required to prove facts from which the Tribunal could conclude that there was discrimination. The burden then shifts to the respondents to prove that discrimination did not occur.
157. The Tribunal has applied this test in reaching the conclusions about the claims.

Direct Discrimination

158. The comparator identified by the claimant at the outset of the hearing was a Business Development Manager Grade 8A. Section 23 of the Equality Act 2010 provides that for the purposes of direct discrimination there must be no material differences between the circumstances relating to each case.

Denial of facilitated conversations

159. The claimant complains that she was denied an opportunity to engage in facilitated conversations. The Tribunal has identified the comparator as a Business Development Manager at Grade 8A who had expressed concern about being in control of their behaviour during a facilitated conversation but who was not disabled.
160. Whilst the respondent did stop the claimant from engaging in facilitated conversations, the Tribunal determines that this did not amount to less favourable treatment or a detriment. The purpose of the denial of the facilitated conversation was done to protect the claimant from herself and to protect those who would engage in the facilitated conversations with the claimant. The Tribunal determines that the comparator would also have been subjected to such treatment.
161. The claimant readily admitted during evidence that she had told the second respondent she would only attend such conversations if she could be completely honest with those in attendance or else that she would not feel the benefit of her attendance. Given that the claimant had revealed that she could lose control the Tribunal has determined that stopping the claimant from attending facilitated conversations was to the claimant's advantage.

Claimant's capability

162. The claimant has complained that the second respondent had raised unfounded concerns about her ability to perform her role.
163. The Tribunal has determined that the raising of the concerns about the claimant's capability was not unfounded.
164. The claimant admitted in evidence when discussing the claim for a failure to make reasonable adjustments, that she had required the respondents to make reasonable adjustments to her role because she had difficulty in performing all aspects of the role required of her. The second respondent, therefore, had a well-founded concern about the claimant's ability to fulfil the core duties of her role.
165. The job description required the claimant to meet with a range of senior people. A range of senior people were included on the claimant's list of those she could not meet with in the performance of her role. The second respondent gave evidence that she was aware that the claimant would soon be asked to complete a tender which would require liaison with some of the people on the list and therefore there was a concern that the claimant would not be able to fulfil that part of her role.

Denial of Reverse Mentoring training

166. The claimant's final complaint of direct disability discrimination is that the second respondent denied the claimant an equitable opportunity to attend a training programme. The comparator for the purposes of this claim is a Business Development Manager Grade 8A who had raised concerns about being in control in meetings with colleagues.
167. However, the denial of the opportunity to attend this training programme did not amount to less favourable treatment for the same reason that the second respondent denied the claimant the opportunity to attend facilitated conversations. It was for the claimant's benefit and for the benefit of those who were to attend the training programme. If the claimant had lost control that would be to her disadvantage. The comparator would have also been denied the opportunity to attend the training on the same grounds.
168. The claimant has not proven facts from which the Tribunal could conclude that she was subjected to direct discrimination.

Discrimination arising from disability

Threat to claimant's employment

169. The Tribunal has considered the email sent to the claimant on 15 December 2021 from her line manager Tracy Collins in which she forwarded an email from the Covid 19 Workforce cell dated 14 December 2021. The Tribunal has determined that neither the Tracy Collins email nor the email of 14 December 2021 with accompanying documents threatened the claimant with termination of employment if she did not disclose her vaccination status.
170. The claimant states that her understanding of these documents was that her employment would be terminated if she did not disclose her vaccination status. The Equality and Human Rights Commission Code of Practice on Employment (2011) defines unfavourable treatment as the claimant being put at a disadvantage. Whilst the claimant may have taken this view, the Tribunal does not accept that it is a reasonable view to take. The claimant had the initial reassurance from her direct line manager. The letter from the Covid 19 Workforce cell did not state either in the email or the accompanying documentation that a failure to disclose vaccination status would result in the termination of employment.
171. The letter sent to the claimant dated 15 December 2021, and received on 16 December 2021 did not state that if she did not disclose her vaccination status this could impact upon her employment. The letter set out that there would be a requirement to be fully vaccinated as a condition of deployment. The letter asked for disclosure of the claimant's vaccination status but did not state in the letter nor the form that if she did not do this her employment would be terminated.

Response to claimant's complaint – December 2021

172. The Tribunal has determined that the claimant was sent a holding response to her complaint of 16 December 2021. The Tribunal does not accept that there was a failure to retract the threat of impact on the claimant's employment because no such threat was made.
173. The Tribunal has determined that the holding response was not unfavourable treatment. The claimant was not denied the opportunity to air her issues and was told that her concerns had been recorded and the discussion deferred until the new year when further national guidance was expected.

Meeting with claimant – 12 January 2022

174. On 12 January 2022 Carmel Hopkins and Tracy Collins were unable to confirm that the claimant's role did not fit within the scope of the legislation and the guidance because they awaited further Government guidance. The Tribunal has determined that this was not unfavourable treatment because the

claimant remained deployed in her role and there had not been any threat to the claimant's employment.

Consultation about reasonable adjustments

175. The Tribunal has determined that there was not a refusal to engage in proper consultation and discussion with the claimant about adjustments. On the claimant's return from work on 28 June 2022 Ms Fraser sought to engage with the claimant about her request for adjustments up until August 2022 when the second respondent then sought to engage with the claimant about adjustments.
176. The Tribunal has determined that there was not a refusal to objectively assess the practicability of any adjustment because the respondent was not in a position to do so because the claimant would not provide information about the list of people which she had identified as those she could not work with. When the claimant provided the list on the 1 August 2022, the claimant did not explain why those people were on the list.
177. The second respondent's refusal of a short trial period for the provision of a support worker did not amount to unfavourable treatment because Tracy Collins and David Harris had told the second respondent that such an adjustment was unworkable. The Tribunal has accepted the evidence of the second respondent that this option would not work. The claimant's job description required her to liaise with a number of individuals and that the provision of a support worker would raise more questions than answers. Therefore, the refusal to trial an unworkable solution did not place the claimant at a disadvantage.

Adjustment to "Managing Attendance Policy"

178. The first respondent did not treat the claimant unfavourably in refusing to make an adjustment to its managing attendance policy. The claimant wanted an assurance from Brendan Burke and the second respondent that if she were to go off sick because of the denial of her requested adjustments, her absence would not trigger the policy which could, ultimately, lead to the termination of her employment.
179. The first respondent stated that there was no need to amend the policy. The second respondent said this was because the policy had two provisos: that the triggers could be altered at the managers discretion and further, that the triggers could be adjusted for a disabled person by way of a reasonable adjustment. The policy did not need the amendment requested by the claimant as such adjustments were already within the policy.

Claimant's line management

180. The respondent did not fail to provide the claimant with appropriate line management arrangement when the second respondent took over the claimant's line management in September 2022. The second respondent explained in evidence that she was in the direct line management of the claimant as the Interim Deputy Director of People and had had very little contact with the claimant up until that point.
181. During her live evidence, the claimant explained, for the first time, that the second respondent had been involved in the administration of the first respondent's administration of VCOD. However, the Tribunal has determined that the second respondent did not personally deal with the claimant about her issues with VCOD and was an appropriate line manager. The second respondent gave evidence that she had hoped she would be the first participant of the facilitated conversations with the claimant in order to understand the claimant's concerns, address them and move on so that she could appropriately line manage the claimant.

Claimant's participation in facilitated conversations and training

182. The Tribunal has determined that the denial of the opportunity to attend facilitated conversations was not unfavourable treatment. The first respondent was seeking to protect the claimant from harm during these conversations in light of her disclosures to the second respondent on 13 September 2022.
183. The Tribunal has also determined that the denial of the opportunity to attend the training programme was not unfavourable treatment for the same reasons.

Claimant's capability

184. The Tribunal has determined that the respondents did not raise unfounded concerns about the claimant's capabilities to fulfil her role because the claimant was not fulfilling all of the core duties of her role. The claimant conceded that the request for reasonable adjustment acknowledged this fact.
185. The claimant has not proven facts from which the Tribunal could conclude that there has been discrimination and the claim of discrimination arising from disability is unsuccessful.

Failure to make reasonable adjustments

Provision, criterion or practice – Claimant's role

186. The first respondent did have a provision, criterion or practice of a requirement for a Business Development Manager to liaise and meet with a wide and unlimited variety of internal stakeholders across the Trust. The job

description lists those people the claimant was required to liaise with but was not limited to those people.

Substantial Disadvantage

187. The claimant was put at a substantial disadvantage as a result of the provision criterion or practice because she perceived those people on the list to have threatened her employment and the thought of meeting with them caused her stress and anxiety. This meant the claimant couldn't perform all the all duties of her role.

Respondents' knowledge

188. The Tribunal has determined that the first respondent knew of the claimant's disability when she joined in August 2019. The Tribunal has also determined that the respondents would have had knowledge of the substantial disadvantage following the claimant's meeting with Ms Fraser on 28 June 2022 and the 26 July 2022.

Respondents' actions

189. The claimant submits that the respondents should have made adjustments of not requiring her to liaise or meet with those individuals, the provision of a support worker or a swap of roles with another colleague.
190. Whilst the respondents did not make the adjustments requested by the claimant, because two were unworkable, the respondents did take such steps as it was reasonable to take to avoid the disadvantage.
191. The claimant was offered the opportunity to attend facilitated conversations, pending advice from occupational health. Further, Ms Fraser had allocated the claimant work that meant the claimant was not liaising with those particular individuals.

Provision, criterion or practice – Managing Attendance Policy

192. The respondent did not have a provision criterion or practice of pursuing disciplinary action against employees in relation to periods of sickness absence under its managing attendance policy.
193. The managing attendance policy provided for the management of sickness absence. There are various stages within that policy as to how sickness absence will be managed but they do not amount to disciplinary action.
194. The second respondent gave evidence that had the policy applied to the claimant she could have used her management discretion to disapply any trigger by way of a reasonable adjustment.

195. The claimant has not proven facts from which the Tribunal could conclude that there has been discrimination and the claim for a failure to make reasonable adjustments therefore is unsuccessful.

Victimisation

Protected Acts

196. The respondents' representative accepted in submissions that the claimant had performed the seven protected acts set out in the List of Issues.
197. The Tribunal has subsequently made findings of whether the sixteen acts complained of occurred and if they did, whether they amount to a detriment and if so, whether they were because of the protected acts.

Do the following amount to detriments because of a protected act?

198. The Code of Practice on Employment (2011) sets out detriment in the context of a victimisation claim as "anything which the individual concerned might reasonably consider changing their position for the worse or put them at a disadvantage". In addition, "a detriment might also include a threat made to the complainant which they take seriously, and it is reasonable for them to take it seriously". The guidance states "an unjustified sense of grievance alone would not be enough to establish detriment".
199. In **Ministry of Defence v Jeremiah (1980) ICR 12, CA** the Court of Appeal also stated that detriment cannot be proven by mental distress unless it was deemed objectively reasonable.
200. In **Derbyshire and others v St Helens Metropolitan Borough Council and others (2007) ICR 841, HL**, the House of Lords stated that it was hard to imagine circumstances in which honest and reasonable action by employers during legal proceedings would amount to a detriment.

Response to claimant's complaint – December 2021

201. The Tribunal has determined that on 23 December 2021 the first respondent provided a holding response to the claimant's complaint submitted on 16 December 2021 but did not fail to retract the threat of impact on employment because no such threat was made.
202. This did not amount to a detriment to the claimant, because she was not put at a disadvantage by such a holding response because the first respondent was awaiting further guidance before it made a decision about the claimant's deployment.
203. The Tribunal does not accept that the holding response put the claimant in a worse position or at a disadvantage. The holding response could not be

reasonably taken as a serious threat to the claimant's continued employment but rather a manager confirming that the first respondent was awaiting further guidance before any permanent decisions were made.

Meeting with claimant – 12 January 2022

204. The Tribunal has determined that on 12 January 2022 the first respondent refused to admit that the Government guidance did not apply to the claimant's role. There was no failure to retract a threat because the Tribunal has determined that no such threat was made.
205. This did not put the claimant in a worse position nor was it to her disadvantage. Whilst the claimant considered it to be to her disadvantage, the Tribunal does not accept that this was a reasonable point of view. The claimant had reassurance from her line managers that her job was not under threat and adjustments would be made if required to ensure her continued deployment.

Email to claimant – 3 February 2022

206. The Tribunal has determined that the letter attached to the email of 3 February 2022 failed to acknowledge that the Government guidance did not apply to the claimant's role. It was the evidence of Carmel Hopkins that the claimant's role was within the scope of the draft legislation and guidance.
207. However, the Tribunal has concluded that this could not amount to a detriment because by 3 February 2022, the Government had confirmed that the draft legislation and guidance was being reconsidered and told the first respondent and other employers not to take any action in light of the proposed reconsideration. The claimant was therefore, not put at a disadvantage.

Claimant's subject access request

208. The first respondent did not fail to adequately respond to the claimant's subject access request. In reaching this conclusion, the Tribunal has specifically considered the findings of the Information Commissioner. The Information Commissioner concluded that whilst there had been an oversight in the response to the subject access request, there had been no infringement of the claimant's data protection rights and the oversight was rectified.

Respondent's response to claimant's concerns about VCOD

209. The Tribunal has determined that the first respondent did not substantively respond to the claimant's letters of complaint about the VCOD guidance of 16 December 2021, 24 December 2021 and 3 February 2022.
210. However, the Tribunal has not determined that this was a detriment to the claimant. The failure to respond to the claimant did not put her in a worse

position or subject her to a disadvantage. The claimant had been reassured by her managers that the guidance should not apply to her role, or if it did, then adjustments would be made to her role so that it did not affect her deployment in that role.

Respondent's ET3

211. The claimant complained that the first respondent issued upsetting and offensive correspondence when submitting a response to the claimant's first ET1.
212. The Tribunal has determined that the first respondent did not admit that the claimant had a disability or that it had knowledge of the claimant's disability.
213. This was not a detriment because the claimant was not put at a worse position nor at a disadvantage by such a statement. The claimant was not denied the opportunity to pursue her claim. The first respondent subsequently accepted that the claimant was a disabled person for the purposes of the Employment Tribunal claim, and the claimant's claim was allowed to progress.

Treatment of claimant on her return to work

214. The Tribunal has determined that the claimant was not largely ignored following her eventual return to work on 27 June 2022. The claimant met with Ms Fraser the very next day and had correspondence and meetings with Ms Fraser in an attempt to resolve the request for adjustments. The Tribunal has also determined that the claimant and the second respondent regularly met to discuss the claimant's concerns.
215. The second respondent attempted to set up facilitated conversations to resolve the claimant's complaints but was unable to do so as a result of medical concerns about the claimant. The respondents did attempt to resolve the claimant's complaints and did not ostracise the claimant.

Consultation about adjustments

216. The Tribunal has determined that there was no failure by the respondents to engage in proper consultation about requested adjustments. The Tribunal has also determined that there was no refusal to undertake any objective assessment of the requested adjustments because the respondents were not in a position to do so due to the lack of information provided by the claimant.
217. There was a failure to grant the claimant a short trial period within which to evidence the practicability and effectiveness of the second adjustment requested, that of a support worker.

218. However, the second respondent had concluded, by speaking to Tracy Collins and David Hopkins, that the provision of a support worker would not work and therefore, the claimant was not placed at a disadvantage.

Claimant's line management

219. The Tribunal has determined that the claimant was provided with appropriate line management arrangement and therefore did not suffer a detriment.

Claimant's participation in facilitated conversations and training

220. The Tribunal has determined that the respondent did deny the claimant the opportunity to engage in facilitated conversations. However, this could not amount to a detriment. The purpose of the denial was to protect the claimant and others. Those involved in the facilitated conversations could have raised complaints against the claimant should she have reacted in the way that she indicated she might act.
221. The denial of the claimant attending the training programme, whilst it occurred, was not a detriment because it was for the claimant's own protection and for those who would also have attended the training.

Claimant's capability

222. The Tribunal has determined that the concerns raised about the claimant's ability to perform in her role were not unfounded, in light of the claimant's own admissions during evidence that she needed adjustments to her role and therefore could not amount to a detriment.

Claimant's suspension

223. The Tribunal has determined that the claimant was suspended on the 16 November 2022. The first respondent told the claimant that it was in order to investigate a breakdown in the employment relationship. In the suspension letter, the first respondent made reference to comments "made by the claimant in her Employment Tribunal claim" as evidence of the alleged breakdown in the relationship.
224. The act of suspension was a detriment to the claimant. The claimant was put in a worse position and disadvantaged.
225. However, this was not because of any of the protected acts. The claimant was told that the suspension was because the first respondent had to investigate the breakdown in the employment relationship. The examples given to the claimant of such a breakdown included comments made by the claimant about senior managers in emails and in her Employment Tribunal claim.

226. During live evidence, the claimant admitted under oath that she was a “nightmare to manage”. The claimant also made references to being a disruptor if she felt certain rights had been breached and accepted that she had stated that she was the wrong person to mess with.
227. The first respondent was sufficiently concerned that the employment relationship had broken down such that it needed to investigate the viability of continuing with that relationship notwithstanding the Employment Tribunal proceedings.

Provision of disciplinary policy on suspension

228. The Tribunal has determined that the claimant was issued with a copy of the disciplinary policy and procedure on 17 November 2002. The claimant was not put in a worse position by the provision of this policy and therefore was not at a disadvantage.
229. The policy provided the claimant with information about the procedure that would be followed during the investigation. The first respondent set out in the suspension letter that the claimant was not being subject to a disciplinary sanction or a disciplinary investigation as the matter was not considered to be misconduct. However, the claimant was told that the procedure that would be followed mirrored that of the disciplinary policy and was provided with a copy.

Respondent's acceptance of claimant's resignation

230. The Tribunal has determined that on 22 November 2022 the first respondent did offer to accept the claimant's resignation provided she withdrew her Employment Tribunal claims.
231. The first respondent's condition of acceptance of the claimant's resignation was not a detriment to the claimant. The first respondent responded to the claimant's request to resign and in so doing took honest and reasonable action in attempting to resolve all issues between the claimant and the first respondent.
232. The claimant's distress on receipt of the first respondent's response was not objectively reasonable. The claimant was seeking to leave employment with the respondent on favourable terms. The first respondent was also seeking to resolve all issues on favourable terms.
233. The claim for victimisation is unsuccessful.

Philosophical Belief

234. The question of whether the claimant has a philosophical belief in accordance with Section 10 of the Equality Act 2010 is a question of fact. The claimant asserts that she is a Humanist.

Humanism

235. The fundamental principles of modern Humanism are set out in the “Amsterdam Declaration”.
236. Humanists strive to be ethical which includes accepting morality and being motivated by helping others with reason and compassion. Humanists recognise individuals and a right to freedom compatible with the rights of others. Humanists reject prejudice and recognise personal liberty must be combined with a responsibility to society.
237. Humanists strive to be rational and solve problems with human reason. Humanists seek to use science to enhance human well-being.
238. Humanists strive for fulfilment in their lives without harm to others.
239. Humanism is an alternative belief system which evolves through observation, learning and rethinking. Humanists are committed to unfettered exchange of ideas and co-operation with those of different beliefs.
240. The organisation Humanist UK published the following statement on their website about Covid 19 vaccination:

At Humanists UK, we trust to the scientific method when trying to understand how the universe works; we support humanists in making their ethical decisions based on reason and empathy, guided by concern for the welfare and fulfilment of human beings and other sentient animals; and support them to make a positive contribution to building a better society.

That approach leads us to support the uptake of the Covid-19 vaccines. The published data on the efficacy of the authorised vaccines, which have been through random controlled trials and peer review, suggests that they are effective and safe.

This evidence has been produced independently of any government agency and has gone through the trial processes and safety checks that we would expect of all vaccines before being made available to the general public.

“We also know that the overwhelming majority of humanists share our views – if anything, humanists and the non-religious are more in favour of vaccination than the public as a whole. A survey of all our members and supporters found

that 95% of responding members and 92% of responding supporters saying they intended to get vaccinated (with 1% and 2%, respectively, saying they are unsure), while YouGov polling data suggests that humanists are more likely to get vaccinated than the population as a whole.”

241. Humanists UK encouraged those with Humanist beliefs to get the vaccine.

The claimant's belief

242. The claimant gave evidence that she lived by Humanist ethics and beliefs and in particular:

“I advocate for human rights and dignity through individualism, personal agency, autonomy, consent and freedom, including freedom of choice and freedom of speech, based on reason and rationality and enabling and empowering people to be central to the decisions which govern their own lives. I wholeheartedly reject all forms of oppression and control of and dictatorship towards individuals whilst unwaveringly championing principles of truth, equity and justice. “

243. The claimant told the Tribunal that her beliefs were genuine and governed the way she lived her life. The claimant said her campaigning and representation for and of disabled people was an example of this.

244. In March 2021 the claimant was asked by her line manager about her views on the Covid 19 vaccination. In response the claimant said that she did not need it because she was not at risk of catching Covid and if she did, she would be asymptomatic and recover quickly.

245. The claimant also said that she considered the Government messages about Covid were to “incite fear, restrict freedom and control the masses.” The claimant said she resisted the Government’s Covid policy and compared the Government’s actions to Hitler, a dictatorship and tyranny.

246. In evidence the claimant pointed to this email as an expression of her Humanist belief. The claimant admitted that she did not use the word Humanist in this email or in other emails where she made reference to her philosophical belief but said the opinion she expressed was because of her Humanist belief.

247. Humanist principles on the Covid vaccination are that the vaccination is to be encouraged on the basis of scientific evidence and for the fulfilment and welfare of human beings.

248. The Amsterdam Declaration sets out that Humanist beliefs includes helping others. Whilst a Humanist recognises an individual right to freedom it must be compatible with the rights of others and personal liberty must be combined with a responsibility to society.

249. The Tribunal has determined that the claimant does not hold Humanist beliefs in accordance with the Amsterdam Declaration. The claimant gave evidence, and the Tribunal saw evidence in the email correspondence, that if the claimant believed that there had been a breach of her human rights she would respond robustly in the defence of those rights, without regard to the rights of those who she perceived had breached her human rights or the rights of society as a whole if they differed to her beliefs.
250. The claimant's belief that she was entitled to do this was not compatible with the rights of others. Humanist UK supported the vaccination programme for the benefit of society. The Tribunal has determined that the claimant's opposition to the programme was incompatible with Humanist principles.
251. The Tribunal heard evidence that the first respondent removed Tracey Collins as the claimant's line manager following a period of ill health. The claimant complained that she was subject to discrimination when Tracey Collins returned to manage the rest of the team. However, the first and second respondent gave evidence that they were concerned about exacerbating Tracey Collins ill health should she continue to line manage the claimant.
252. The tone and content of the claimant's correspondence with the first and second respondent does not fit with Humanist principles. The claimant made derogatory comments about colleagues and from the outset threatened to pursue the first respondent in the Employment Tribunal. When asked about how that person might feel on receipt of such an email, the claimant said that person should be prepared to receive such a response in light of what they had done to the claimant. The Tribunal could not find evidence of respect for those with different beliefs to that of the claimant.
253. The Tribunal was not persuaded that the claimant's beliefs about "*individualism, personal agency, autonomy, consent and freedom, including freedom of choice and freedom of speech.*" were any different to any other member of society and the way that they wanted to live their lives. When the claimant was asked to distinguish her beliefs from an ordinary member of society, she said that she prioritised her beliefs in every part of her life. However, the Tribunal did not accept that the claimant's role as a campaigner and representative of and for disability rights was evidence of weighty and substantial beliefs that governed the claimant's life.
254. The Tribunal has determined that the claimant gave evidence with pride that she was a "nightmare to manage" a "disruptor" and "the wrong person to mess with". The claimant's steadfast belief that she has the right to defend any perceived breach of her human rights without regard to the fundamental rights of others is incompatible with respect for a democratic society and Humanist beliefs.

255. The Tribunal has therefore determined that the claimant did not have the philosophical belief of Humanism.
256. As a result of this finding, the Tribunal has not considered whether the claimant was subject to indirect discrimination on the grounds of philosophical belief or whether she was harassed on those grounds.

Harassment

Threat to claimant's employment

257. The Tribunal has concluded that on 15 December 2021 the first respondent did not threaten the claimant with termination of her employment if she did not disclose her vaccination status. In addition, the Tribunal has also concluded that on 16 December 2021 the first respondent did not send the claimant a letter informing her that if she did not disclose her vaccination status this could impact upon her employment.

Response to claimant's complaints

258. On 23 December 2021 the first respondent did send a holding response to the claimant's complaint and on 12 January 2022 failed to admit that the legislation did not apply to the claimant's role.
259. Those two acts were unwanted by the claimant. The Tribunal has determined however, that they did not relate to the claimant's disability.
260. In both instances, Carmel Hopkins gave evidence that she was awaiting the updated guidance from the Government before decisions were made about the claimant's deployment. Carmel Hopkins was of the view that the claimant had been given sufficient reassurances by herself, Tracy Collins and David Harris that even if the guidance and legislation did apply to the claimant's role, adjustments would be made to the claimant's role so she could be deployed in that role.
261. The correspondence sent on 23 December 2021 and the message given in the meeting of 12 January 2022 were the same. There was no threat to the claimant's employment, and she had been assured of that.

Respondent's ET3

262. The Tribunal has determined that the first respondent did not refute that the claimant was a disabled person in its response to the Employment Tribunal proceedings. Rather, the first respondent did not admit that the claimant had a disability for the purposes of an Employment Tribunal claim and as it submitted, required the claimant to prove such status before she was allowed to progress with her claim.

263. The claim for harassment is unsuccessful.

Indirect Disability Discrimination

Requirement to disclose Covid-19 vaccination status

264. The first respondent did have a requirement for employees to disclose their vaccination status and therefore provide special category personnel health information. This provision criterion or practice was applied to the claimant. The provision, criterion or practices was applied to all of the first respondent's workforce for whom the first respondent did not have up to date information about vaccination status and therefore applied to persons with whom the claimant did not share the protected characteristic of disability.
265. The claimant states that the requirement would put persons of whom the claimant shared the characteristics at a particular disadvantage when compared to those who did not share the characteristics because they would not want to disclose their Covid 19 vaccination status.
266. However, the Tribunal has concluded that not every person with ADHD and depression and anxiety would not want to disclose their Covid 19 vaccination status. The claimant was unable to provide cogent evidence to show that people with this type of disability would not want to disclose their vaccination status.
267. The Tribunal accepts that the claimant did not want to disclose her vaccination status but does not accept that everybody with ADHD, depression anxiety would take the same view. The Tribunal has concluded that there would not be a particular disadvantage to this group of people.

Requirement for a Business Development Manager to meet with unlimited internal stakeholders

268. The Tribunal has determined that the second and fifth provision criterion or practice about which the claimant complains were in fact the requirement for a Business Development Manager to liaise and meet with the wide and unlimited variety of internal stakeholders across the trust. It is implied that in order to fulfil the core duties of the role a person would need to meet with such stakeholders.
269. The Tribunal has determined that the first respondent did have this provision criterion or practice and applied it to the claimant and would have applied it to anybody who performed this role who did not have the protected characteristic of a disability.
270. The claimant states that it would have put people with whom she shares the characteristic of ADHD depression and anxiety at a particular disadvantage in that they would be more prone to stress and anxiety than people without the

impairment, if expected to meet with individuals who had previously caused substantial distress, a decline in mental state and negatively impacted psychological wellbeing.

271. However, the Tribunal does not accept that all people with ADHD, depression anxiety would feel this way. The claimant did not provide cogent evidence to suggest that those with the same disability would react in the same way as the claimant. Therefore, the Tribunal has concluded that the claimant has not proven that those with whom the claimant shares the protected characteristic would be at a particular disadvantage.

Practice of pursuing disciplinary action against employees with sickness absence

272. The Tribunal has determined that the first respondent did not have a provision criterion or practice of pursuing disciplinary action against its employees in relation to periods of sickness absence under its management attendance policy.

Requirement to liaise with unlimited internal stakeholders in facilitated conversations without suffering anxiety

273. The first respondent did not have this provision criterion or practice. The first respondent did not require the claimant to meet with a wide and unlimited variety of internal stakeholders but rather, those on the list that she had created. Such a provision, criterion or practice could not be applied to everybody because it was specific to the claimant's list and her need to resolve her issues with those people.

Requirement to attend training with unlimited internal stakeholders without experiencing anxiety

274. The first respondent did have a requirement for attendees at its face-to-face reverse mentoring training programme to be able to meet and liaise with a wide and unlimited variety of internal stakeholders across the trust without experiencing anxiety.
275. This provision criterion or practice was applied to the claimant as well as to others who did not share the protected characteristic of disability. The claimant states that people with the protected characteristic of disability of ADHD, depression and anxiety would be more prone to stress and anxiety than people without the impairment and more likely to be denied the opportunity to attend a face-to-face training programme than people without the impairment.
276. The Tribunal has determined that not all people with ADHD, depression and anxiety will be incapable of attending a face-to-face training programme

because of their disability. The claimant did not provide cogent evidence to prove that this was the case.

277. The claim of indirect disability discrimination is unsuccessful.

Conclusion

278. The claimant was not able to prove facts from which the Tribunal could conclude that the claimant had been subjected to unlawful discrimination. As a result, the claimant's claims are unsuccessful.

Employment Judge Ainscough
13 May 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
21 May 2024

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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

Recording and Transcription

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

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

**Case Nos. 2401966/2022
2403847/2022
2406580/2022
2409563/2022**

ANNEX

CASE NUMBERS – 2401996/2022

2405847/2022

2406580/2022

2409563/2022

IN THE EMPLOYMENT TRIBUNAL

BETWEEN:

MISS REBECCA WADKIN

Claimant

and

CHESHIRE AND WIRRAL PARTNERSHIP NHS FOUNDATION TRUST

Respondent

AGREED LIST OF ISSUES

Sections in Italics are those sections the Claimant wishes to include, but which are not agreed by the Respondent, as directed by Employment Judge Benson on 16th November 2023.

1. Philosophical Belief

- 1.1 Do the claimant's beliefs amount to a philosophical belief in accordance with section 10 of the Equality Act 2010?

2. Direct discrimination (Equality Act 2010 section 13)

- 2.1 Did the respondent subject the claimant to a detriment by:

2.1.1 Repeatedly denying the claimant the opportunity to engage in facilitated conversations with a number of its officers *in order to attempt to resolve the difficulties that the claimant had expressed.*

2.1.2 On 13 September 2022 and on 2 November 2022 raising unfounded concerns about the claimant's capability to fulfil the core duties of her role. *whilst failing to substantiate this allegation.*

2.1.3 On 2 November 2022 denying the claimant equitable opportunity to attend a training programme.

2.2 Did the respondent treat the claimant less favourably than it treated or would have treated others in the same material circumstances?

2.3 If so, was this less favourable treatment because of disability?

3. Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the respondent treat the claimant unfavourably by:

3.1.1 On 15 December 2021 threaten the claimant with termination of employment if she did not disclose her vaccination status.

3.1.2 On 16 December 2021 the respondent sent the claimant a letter informing her that if she did not disclose her vaccination status this could impact upon her employment.

3.1.3 On 23 December 2021, in response to the claimant's complaint of 16 December 2021, the respondent sent a holding response to that complaint *and failed to retract the threat of impact upon the claimant's employment.*

3.1.4 On 12 January 2022 the respondent refused to admit that the legislation did not apply to the claimant's role *and failed to retract the threat of impact on her employment.*

3.1.5 *The respondent refused to engage in proper consultation and discussion with the claimant regarding identifying an effective and practicable adjustment, refused to undertake any objective assessment of the practicability of making a reasonable adjustment and refused to grant the claimant a short trial period within which to evidence the practicability and effectiveness of a reasonable adjustment.*

3.1.6 *On 13 September 2022 the respondent refused to make a reasonable adjustment to its managing attendance policy.*

3.1.7 The respondent failed to provide the claimant with an appropriate line management arrangement.

3.1.8 The respondent repeatedly denied the claimant the opportunity to engage in facilitated conversations with a number of its officers *in order to attempt to resolve the difficulties that the claimant had expressed.*

3.1.9 The respondent on 13 September 2022 and on 2 November 2022 raised unfounded concerns about the claimant's capability to fulfil the core duties of her role.

3.1.10 The respondent on 2 November 2022 denied the claimant equitable opportunity to attend a training programme.

3.2 Did the following things arise in consequence of the claimant's disability?

3.2.1 The need to remain in control in order to avoid becoming severely distressed, overwhelmed and unable to cope.

3.2.2 The claimant's instigation of proceedings against it for disability discrimination, *and her extremely vocal and exceptionally public complaint about its refute of the fact that she is a disabled person.*

3.2.3 *The anxiety experienced by the claimant when expected to engage in liaison with particular individuals within the organisation.*

3.3 Was the unfavourable treatment because of any of those things?

3.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

3.4.1 Compliance with Government guidance and pending legislation for compulsory vaccination in the NHS environment (in respect of 2.2.1).

3.5 The Tribunal will decide in particular:

3.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 could something less discriminatory have been done instead;

3.5.3 how should the needs of the claimant and the respondent be balanced?

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

4. Indirect philosophical belief and disability discrimination (Equality Act 2010 section 19)

4.1 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

4.1.1 The requirement for employees to disclose their COVID-19 vaccination status and therefore provide special category personal health information.

4.1.2 The requirement for its Business Development Manager to liaise and meet with a wide and unlimited variety of internal stakeholders across the Trust.

4.1.3 Pursuing disciplinary action against its employees in relation to periods of sickness absence under its managing attendance policy.

4.1.4 The requirement for participants in facilitated conversations to be able to liaise and meet with a wide and unlimited variety of internal stakeholders across the Trust *without experiencing anxiety in order to be able to participate.*

4.1.5 The requirement for its Business Development Manager to be able to liaise and meet with a wide and unlimited variety of internal stakeholders across the Trust *without restriction in order to be considered capable to fulfil all of the core duties of the role.*

4.1.6 The requirement for attendees at its a face to face training programme to be able to liaise and meet with a wide and unlimited variety of internal stakeholders across the Trust *without experiencing anxiety in order to be able to attend.*

4.2 Did the respondent apply the PCP to the claimant?

4.3 Did the respondent apply the PCP to persons with whom the claimant does not share the characteristics of disability or the philosophical belief of humanism, or would it have done so?

4.4 Did the PCP put persons with whom the claimant shares the characteristics, at a particular disadvantage when compared with persons with whom the claimant does not share the characteristics (in respect of 4.1.1, in that they would not want to disclose their COVID-19 vaccination status), (in respect of 4.1.2, in that they would be more prone to stress and anxiety than people without the impairment when expected to liaise and meet with individuals who have previously instigated substantial distress, a decline in their mental state and negatively impacted their psychological wellbeing), (in respect of 4.1.3-6, in that they would be more prone to stress and anxiety than people without the impairment, *thereby more prone to sickness absence cause by work related stress and thereby more prone to disciplinary action in line with the respondent's managing attendance policy and procedure, more likely to be denied the opportunity to participate in facilitated conversations, more likely to be considered incapable to fulfil all of the core duties of the role and more likely to be denied the opportunity to attend a face to face training programme than people without the impairment*).

4.5 Did the PCP put the claimant at that disadvantage?

4.6 Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

4.6.1 Compliance with Government guidance and pending legislation (in respect of 3.1.1).

4.7 The Tribunal will decide in particular:

4.7.1 Was the PCP an appropriate and reasonably necessary way to achieve those aims?

4.7.2 Could something less discriminatory have been done instead?

4.7.3 How should the needs of the claimant and the respondent be balanced?

4.8 Did the respondent know, or could it reasonably have been expected to know, that the claimant had the philosophical belief? From what date?

5. Failure to make reasonable adjustments (Equality Act 2010 section 20 and 21)

5.1 Did the respondent apply to the claimant and to others without the disability the PCP of a requirement *for its Business Development Manager* to liaise and meet with a wide and unlimited variety of internal stakeholders across the Trust?

5.2. Did the PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled? *The claimant says that she was put at a disadvantage because the requirement made her more stressed and more anxious than it would make people without her impairment.*

5.3. Could the respondent reasonably be expected to know that the claimant had a disability and was likely to be placed at the disadvantage?

5.4. If so, did the respondent fail to take such steps as it would have been reasonable to take to avoid that disadvantage? The claimant says that the respondent should have made the adjustment of not requiring her to liaise or meet with certain individuals who are especially likely to cause her stress and anxiety.

5.5 Did the respondent apply to the claimant and to others without the disability the PCP of pursuing disciplinary action against its employees in relation to periods of sickness absence under its managing attendance policy?

5.6 Did the PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled? *The claimant says that she was put at a disadvantage because the requirement made her more stressed and anxious than it would make people without the impairment and therefore made her more prone to sickness absence and thereby more prone to disciplinary action than it would make people without the impairment.*

5.7 Could the respondent reasonably be expected to know that the claimant had a disability and was likely to be placed at the disadvantage?

5.8. If so, did the respondent fail to take such steps as it would have been reasonable to take to avoid that disadvantage? The claimant says that the respondent should have made the adjustment of agreeing not to pursue disciplinary action against her in relation to periods of sickness absence caused by work related stress in response to liaison and meetings with certain individuals who are especially likely to cause her stress and anxiety.

6. Harassment related to philosophical belief and disability (Equality Act 2010 section 26)

6.1 Did the respondent do the following things:

6.1.1 On 15 December 2021 threaten the claimant with termination of employment if she did not disclose her vaccination status.

6.1.2 On 16 December 2021 the respondent sent the claimant a letter informing her that if she did not disclose her vaccination status this could impact upon her employment.

6.1.3 On 23 December 2021, in response to the claimant's complaint of 16 December 2021, the respondent sent a holding response to that complaint *and failed to retract the threat of impact upon the claimant's employment.*

6.1.4 On 12 January 2022 the respondent refused to admit that the legislation did not apply to the claimant's role *and failed to retract the threat of impact on her employment.*

6.1.5 *On 23 May 2022 the respondent produced upsetting and offensive correspondence which refuted the fact that the claimant is a disabled person, despite it having full, undeniable, indisputable, proven and evidenced knowledge of her diagnosis and of her resulting impairment.*

6.2 If so, was that unwanted conduct?

6.3 Did it relate to disability or philosophical belief?

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

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

7. Victimisation (Equality Act 2010 section 27)

7.1 Did the claimant do a protected act as follows:

7.1.1 On 15 December 2021 the claimant told her line manager that she had spoken to ACAS, a solicitor and another equality advisory body about potential discrimination and allegations that the respondent had breached the Equality Act.

7.1.2 On 16 December 2021 the claimant told the respondent that if they continued to intimidate her, she would lodge Employment Tribunal proceedings.

7.1.3 On 11 January 2022 the claimant instigated ACAS early conciliation.

7.1.4 On 16 March 2022 the claimant lodged Employment Tribunal proceedings.

7.1.5 On 28 July 2022 the claimant lodged Employment Tribunal proceedings.

7.1.6 On 25 August 2022 the claimant lodged Employment Tribunal proceedings.

7.1.7 On 30 November 2022 the claimant lodged Employment Tribunal proceedings.

7.2 Did the respondent do the following things:

7.2.1 On 23 December 2021 the respondent only provided a holding response to the claimant's complaint submitted on 16 December 2021 *and did not retract the threat of impact on her employment.*

7.2.2 In a meeting on 12 January 2022 the respondent refused to admit that Government guidance did not apply to the claimant's role *and did not retract the threat of impact on employment.*

7.2.3 In an email on 3 February 2022 the respondent failed to acknowledge that the Government guidance did not apply to the claimant's role.

7.2.4 The respondent failed to adequately respond to the claimant's subject access request made on 31 December 2021.

7.2.5 The respondent did not substantively respond to the claimant's letters of 16 December 2021, 24 December 2021 and 3 February 2022.

7.2.6 *The respondent issued upsetting and offensive correspondence, which the claimant viewed as hostile and offensive conduct.*

7.2.7 The respondent largely ignored the claimant following her eventual return to work on 27 June 2022, ostracising her through failing to pursue any attempt to resolve the upset and offense that it has caused and continues to cause.

7.2.8 *The respondent refused to engage in proper consultation and discussion with the claimant regarding identifying an effective and practicable adjustment, refused to undertake any objective assessment of the practicability of making a reasonable adjustments and refused to grant the claimant a short trial period within which to evidence the practicability and effectiveness of a reasonable adjustment.*

7.2.10 The respondent failed to provide the claimant with an appropriate line management arrangement.

7.2.11 The respondent repeatedly denied the claimant the opportunity to engage in facilitated conversations with a number of its officers *in order to attempt to resolve the difficulties that the claimant had expressed.*

7.2.12 The respondent on 13 September 2022 and on 2 November 2022 raised unfounded concerns about the claimant's capability to fulfil the core duties of her role, whilst failing to substantiate this allegation.

7.2.13 The respondent on 2 November 2022 denied the claimant equitable opportunity to attend a training programme.

7.2.14 The respondent on 16 November 2022 suspended the claimant from her employment for an indefinite period *with immediate effect pending a proposed investigation into an allegation that the employment relationship between the respondent and the claimant had deteriorated irretrievably, stating that this had occurred partly as a direct result of allegations that the claimant had made within correspondence with the Employment Tribunal.*

7.2.15 The respondent on 17 November 2022 issued the claimant with a copy of its Disciplinary Policy and Procedure, *despite it having stated that the claimant's suspension was not a disciplinary sanction, nor was the investigation a disciplinary investigation, as the matter did not pertain to any allegation of misconduct.*

7.2.16 The respondent on 22 November 2022 wrote to the claimant advising that it would be willing to agree to the claimant tendering her resignation from her employment in advance of the commencement of the proposed investigation, only on the condition that the claimant must withdraw her existing three Employment Tribunal claims against it, confirming that in the absence of any Employment Tribunal claims against it, the respondent would consider the matter resolved.

7.2.17 The respondent on 25 November 2022 sent the claimant a terms of reference document for the proposed investigation, which confirmed that the investigation was not intended to be conducted in an impartial, transparent or fair manner and made it abundantly clear that such an investigation was being utilised purely as a mechanism to secure the claimant's removal from her employment.

7.2.18 The respondent on 28 November 2022 very hastily dismissed all of the claimant's concerns that she advised it of in relation to the proposed investigation as outlined within the terms of reference document.

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

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

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

8. Remedy for discrimination or victimisation

8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

8.2 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

8.3 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

8.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.5 Did the respondent or the claimant unreasonably fail to comply with it?

8.6 If so, is it just and equitable to increase or decrease any award payable to the claimant?

8.7 By what proportion, up to 25%?

8.8 Should interest be awarded? How much?